



REPORT OF THE ADJUDICATOR

WASPA Member	Always Active Technologies
Service Type	Advertisement
Source of Complaints	WASPA Monitor
Complaint Number	5174
Date lodged	12 November 2008
Code of Conduct version	6.2
Advertising Rules	2.3

Complaint

The WASPA Media Monitor raised possible breaches of section 6.2.2 of the Code of Conduct and section 9.2. of the Advertising Rules flowing from an advertisement which did not display the cost of sending an SMS in response thereto. Following investigation it was ascertained that this cost was R3 per SMS.

The advertisement in question set out a special offer which was only available for a limited period until 14 November 2008. The complaint was lodged on 12 November 2008. The Monitor accordingly felt the matter was urgent and requested that the WASPA member take remedial action as follows:

“If this advert or marketing message is altered immediately and a copy of the amended advert provided to the WASPA Secretariat, it is likely that this complaint can be resolved informally. this remedy might prevent fines from being imposed for breaches of the WASPA Code.”

The WASPA Monitor further requested that the member provide a clear plan of action for dealing with this advert, for example:

- This advert has been withdrawn and will not be flighted from [date].
- The following changes have been made to the advert: ...
- The revised advert is scheduled to appear again on [date].

The complaint was sent to the member on 12 November and the member acknowledged receipt on this date, before supplying a revised advert the next day along with a copy of an email sent to their client.

This reply was sent to the Media Monitor for feedback on 13 November, but the Monitor remained unsatisfied with the resolution proposed and the matter was thereafter escalated to the formal dispute resolution process.

SP Response

The WASPA member supplied a further formal response on 17 November 2008.

“[W]e have done the following:

1. Contacted our Client and mentioned the complaint and what needs to be done.
2. Client amended the advertisement
3. We forwarded the amended Advertisement through to you for review.

As [...] also mentioned, our client insists that the SMS Cost was always included in the emailed Advert at the bottom but somehow it was taken out or removed.

Although he mentions this was the case, he did re-add the SMS Cost to the Ad and sent it through.

The Stop Date for that particular AD was the 14th of November anyway, so it is definitely not being flighted any longer.”

Sections of the Code considered

The following sections of the WASPA Code of Conduct and Advertising Rules were considered:

Code of Conduct

6.2.2. All advertisements for services must include the full retail price of that service.

Advertising Rules

9.2.2 DISPLAY RULES FOR COST AND T&C INFORMATION – see

http://www.waspa.org.za/code/advert-rules/009_waspa.ad.rules_v2.3_chapter09.pdf

Decision

There is a clear breach of section 6.2.2 of the Code of Conduct. A failure to display pricing is a serious breach of a basic provision.

Although it has not been publicly displayed (and therefore cannot be considered to be a breach of the Code of Conduct or Advertising Rules) the corrected advert as sent through remains deficient in that it does not comply with section 9.2 of the Advertising Rules. An example of this non-compliance would be that the positioning of the cost of access text is not

“displayed **immediately** below, or above, or adjacent to the unique access number or Content access code in a non-serif font” (see section 9.2.1.2).

The WASPA member is urged to consult this section and ensure that future advertising complies therewith.

It is further well-established through precedent that a WASPA member remains responsible for the non-compliance of any information provider with which they contract to provide services. See for example <http://www.waspa.org.za/code/download/0045.pdf>.

In determining an appropriate sanction in this matter the Adjudicator has taken into consideration the following:

- that the WASPA member has a relatively clean record in respect of complaints with only one prior finding of non-compliance under complaint 0172 (see <http://www.waspa.org.za/code/download/0172.pdf>);
- that this prior complaint was for a breach of section 6.2.2 of the Code and section 9.2. of the Advertising Rules (the member was formally reprimanded);
- that the error appears to have been an oversight or miscommunication between the WASPA member and the information provider in question;
- the limited exposure of the advertisement;
- that the member has responded promptly to the complaint and attempted to rectify matters; and
- that there is a great deal of applicable precedent, the Adjudicator being of the opinion that the decision in complaint 4848 is both recent and relevant (see <http://www.waspa.org.za/code/download/4848.pdf>).

The WASPA member is fined the sum of R15 000, of which R10 000 is suspended for a period of six months subject to the member not being found to be in contravention of either section 6.2.2 of the Code of Conduct or section 9.2. of the Advertising Rules during that time. The balance is payable to the WASPA Secretariat within five days of date of notification hereof.