



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	Exact Mobile
<b>Information Provider (IP):</b>	Not applicable
<b>Service Type:</b>	Misleading Advertising
<b>Complainants:</b>	Competitor
<b>Complaint Number:</b>	5996
<b>Code Version:</b>	6.2
<b>Advertising Rules Version:</b>	N/A

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### Complaint

The Complainant lodged the following complaint:

“Sms ME to 32829.

This advert contains misleading pricing as it claims in the voice over that all downloads are free but it is a subscription service, thereby contravening 6.2.4.

Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.”

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### Service provider’s response

The SP provided the following response:

“I wish to draw the adjudicator attention to a previous complaint no 3319, which is very similar to this complaint. The only difference between the ads is that the keyword has been changed as the use of the keyword “free” was recently banned by WASPA. In this complaint, one of the clauses that the complaint was lodged was clause 6.2.4.the same as this complaint.

The TV ad prompts the user to SMS the keyword “ME” to the short code 32829. The user will then be sent 2 welcome messages.

1. Welcome to Free Me! To access all the specials, go to [www.exactmobile.mobi/freeme](http://www.exactmobile.mobi/freeme) (on WAP). Cost R10/week. (R7.50/week for NOW! Club Members). Enjoy!
2. To manage your account (stop, FAQ, etc go to [www.exactmobile.mobi/freeme/ac](http://www.exactmobile.mobi/freeme/ac) (WAP). Help 0822 302 222(VAS). Terms and conditions at [www.exactmobile.co.za](http://www.exactmobile.co.za)

**Clause 6.2.4** of the code of conduct states as follows:

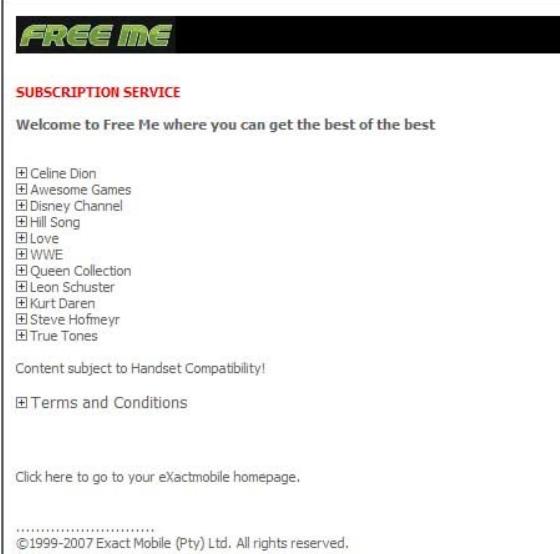
6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

### Response:

This clause was specifically implemented in the code to prevent WASP's from advertising a service which costs R6.00 as being advertised as R3.00 per SMS but 2 SMS are required.

In our ad, there are a number of independent interactions which need to take place. The user first sends us a R0.50 Premium Rated SMS. The subscription service cost of R10.00 and is then billed via Online Billing. GPRS is then charged at the network rates, determined by the Data bundle of the customer. It is therefore not possible to combine all these costs into one cost as they vary per subscriber and are billed at different times and across different billing platforms. Therefore all the costs have to be mentioned separately.

Once the user accesses our WAP site to download the content, the following shows what the user sees: The terms and conditions are also clearly displayed on the WAP Site.



**FREE ME**

**SUBSCRIPTION SERVICE**

Welcome to Free Me where you can get the best of the best

- Celine Dion
- Awesome Games
- Disney Channel
- Hill Song
- Love
- WWE
- Queen Collection
- Leon Schuster
- Kurt Daren
- Steve Hofmeyr
- True Tones

Content subject to Handset Compatibility!

Terms and Conditions

Click here to go to your eXactmobile homepage.

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**Terms and Conditions.**

Free Me! is a subscription service. You will be charged R10.00 per week until you unsubscribe.  
All prices include VAT. Errors are billed.  
Content downloads are free, however you will have to pay GPRS charges at applicable  
Operator rates for access to our WAP sites and for the download bandwidth.  
No free minutes or SMS apply. If applicable, please obtain the bill payer's permission before using this service.  
We will bill you periodically depending on your payment history.  
If you fail to pay the subscription fees for a period of 90 days, we will automatically unsubscribe you.  
The service is offered by Exact Mobile (Pty) Ltd. Helpline: 0822 302 222 (VAS rates/no free minutes).  
To cancel your subscription at any time, SMS STOP FREE to 3 28 29 (R1/SMS).  
For full Exact Mobile Services Terms & Conditions, please go to [www.eXactmobile.co.za](http://www.eXactmobile.co.za)

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**Title:** A New Day Has Come  
**Artist:** Celine Dion  
**Price:** R 15.00  
**Discount:** - Free item  
You pay: R0 + WAP charges

Proceed

Also available in:  
 Polyphonic Ringtones (R 3.75)

◀ Back  
◀ Ringtones



Terms and Conditions.

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The 3 screen shots above clearly show:

- That this is a subscription service,
- The terms & conditions of the service,
- That content that normally costs R15, for example, is discounted to zero as a result of the user being a member of Free Me. There is also no limit to the number of downloads that users can download for nothing.

Therefore one can see that the content downloads are free. This is what is advertised in the TV ad.

The TV ad also clearly states that the content downloads are free. It clearly states that the cost is R10.00 per week and that GPRS charges apply to download. There are not multiple communications required to receive the content.

**FREE ME** exactmobile R10/Week  
KURT DARREN - AF EN AF  
FREE DOWNLOADS  
SUBSCRIPTION SERVICE  
R10/week per service. Network + WAP charges extra. Free content.  
SMS STOP ME to 3 73 95(50c/SMS). Ecos Billid. Exact Mobile (Pty).  
Help: 0822 302 222 (VAS). T & C at www.exactmobile.co.za

**SMS ME** TO 32829 R10/Week  
SUBSCRIPTION SERVICE  
R10/week per service. Network + WAP charges extra. Free content.  
SMS STOP ME to 3 73 95(50c/SMS). Ecos Billid. Exact Mobile (Pty).  
Help: 0822 302 222 (VAS). T & C at www.exactmobile.co.za

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### Sections of the Code considered

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

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### Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the complaint and the SP's response.

The Adjudicator has also reviewed Adjudication 3319 as referred to by the SP:

“In adjudicating whether there were any misleading costs the Adjudicator took note of the response after reviewing the clip. The display of the terms and conditions, its content, the costs and its placement are very clear and definitive. It seems clear from reviewing this that the content delivered will be made available for free, although a user would still be liable for costs of subscription, WAP etc. It is also indicative by listening to the voice over that the services offered for free are the true tones and therefore not the subscription service costs. Any reasonable user would in the opinion of the Adjudicator be able to distinguish between aspects of the services that are for free and those that aren't. In the top right hand corner mention is also made that the “content” is free, although clear cost displays are added to the subscription and per sms billing. The Adjudicator is therefore of the opinion that the costs are not misleading and that all the costs were displayed.”

The Adjudicator after reviewing this particular complaint and its comparison to 3319 has no alternative but to concur with the SP in this matter. Both complaints were in essence the same and once again, apart from the display of the “content” that is free underneath the visual display, everything else reflects the same.

The Adjudicator is therefore of the opinion that the costs are not misleading and that all the costs were displayed.

The complaint is dismissed.

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