



## REPORT OF THE ADJUDICATOR

<b>WASPA Member</b>	MobileNOBO
<b>Service Type</b>	Subscription service
<b>Source of Complaints</b>	WASPA Media Monitor
<b>Complaint Number</b>	7505
<b>Date lodged</b>	1 September 2009
<b>Code of Conduct version</b>	7.4

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### Complaint

The WASPA Media Monitor lodged a complaint against a patently and extensively non-compliant web-based promotion for a subscription service offered by the WASPA affiliate member. The correspondence reveals that the member has generally reacted promptly and constructively to the assertions of non-compliance and that the level of compliance of the promotion with the requirements of the WASPA Code of Conduct and Advertising Rules has increased substantially.

Notwithstanding the improvements made, there remained two areas of non-compliance alleged by the Monitor which do not appear to have been resolved on the correspondence and now fall for adjudication.

These are:

- That the sites in question do not prominently and explicitly identify the service offered as a subscription service in contravention of section 11.1.1 of the WASPA Code of Conduct. The member – which at first had not identified the subscription nature of the service other than fleetingly – inserted text in the top right hand and bottom left corners with the required wording and pricing details.
- That the sites constitute adverts for content subscription services which use a single example of the content available in contravention of section 11.1.3 of the Code. No improvement was made in this respect by the member other than that the member inserted text into the terms and conditions of service “that a subscriber has to choose

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between different true tones in our catalogue". The member also stated in the terms that a subscriber has a choice of a number of true tones a month from this catalogue.

The adjudicator visited the sites in question on 5 February 2010 and found that the cause for adjudication remained.

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### **Sections of the Code considered**

The following sections – in addition to those specified in the annexed Monitor's Report – of version 7.4 of the WASPA Code of Conduct were considered:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.3. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.

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### **Decision**

1. The Adjudicator has considered all aspects of the original complaint other than the two specifically raised in this Adjudication and is satisfied that the member has breached the provisions specified by the Monitor. The Adjudicator notes further that these breaches were recognised and remedied by the member within a period of five days of the initial complaint.
2. The Adjudicator notes that the effort to ensure compliance is required prior to the launch of services and that it seems clear from the original promotion for the subscription service that the member had neither sought nor received any guidance as to compliance the WASPA Code of Conduct.
3. The Adjudicator has considered precedent relevant to section 11.1.1 and is satisfied that the remedial action taken by the member is not sufficient to comply with the requirement that the subscription nature of the service be prominently and explicitly identified.
  - 3.1. A copy of the amended landing page for the service is annexed to this Adjudication. It is clear that the terms "subscription service" and the pricing and frequency thereof have been inserted in clear white text on a black background. What is not evident

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from the Annexure is the animated content which significantly, in the view of the Adjudicator, distracts from this information.

- 3.2. The Adjudicator accepts that the impact of compliance with the other sections of Chapter 11 of the WASPA Code of Conduct significantly softens the prejudice occasioned by the continued failure to comply with section 11.1.1 and notes the comments of the WASPA Alternative Appeals Panel in [Appeal 5558](#) with regard to the impact of such compliance on an allegation of non-compliance with section 11.1.2.
- 3.3. Nevertheless section 11.1.1 stands as an independent obligation which the member must comply with. There is no prescriptive approach to such compliance but the Adjudicator suggests that the member consider:
  - 3.3.1. Increasing the font size of the subscription service and cost of access text; and
  - 3.3.2. Positioning this text immediately above or below the input fields and where the “Get It” button is positioned.

4. As regards section 11.1.3 the Adjudicator regards the requirements of the Code as being simple and explicit – there must be at least two examples of the content clearly displayed where a member elects to use content to advertise a subscription service.

Notwithstanding the insertion of text into the terms and conditions applicable, this has not been done and the member is in breach of this section.

- 4.1. The Adjudicator noted that – in the process of converting the source .cgi file to a .pdf file for the purpose of finalising this report – a new graphic appeared in the “baby crying” advert, viz. a graphic indicating that a subscriber could choose from over 5000 tones. This does not appear in the .cgi version viewed through the latest Firefox browser.

5. The member is found to have breached the following sections of the WASPA Code of Conduct and Advertising Rules: 4.1.1, 4.1.2, 6.1.1, 6.2.4, 6.2.8, 6.5.1, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.8, 11.1.10 and 11.1.11 of the Code and 9.2.1, 9.2.2, 9.3.1 of the Advertising Rules.

#### Sanction

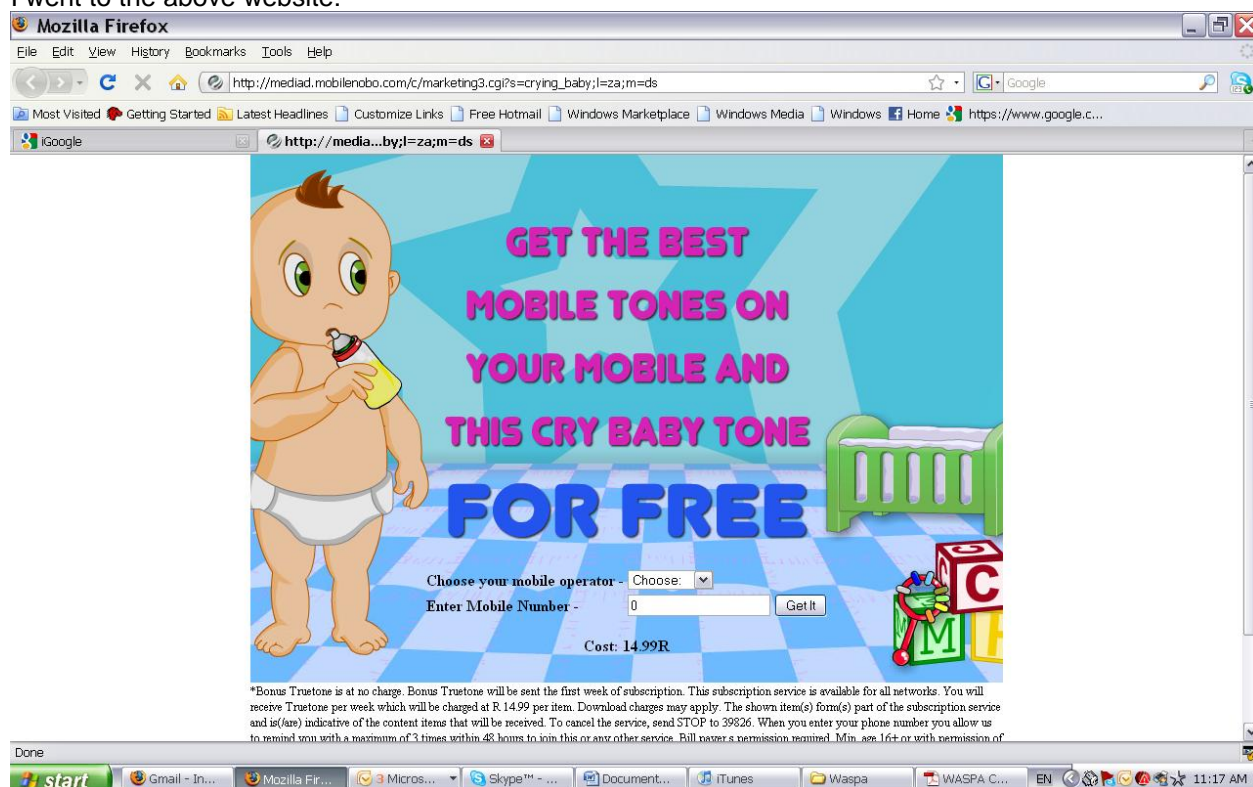
6. Offences relating to subscription services are – in terms of WASPA precedent and the directives of the WASPA Management Committee – to be treated as serious offences. It is evident to the Adjudicator that the member had not sought to take steps to ensure compliance with the Code prior to launching its services, an oversight which is not acceptable.
7. In mitigation the Adjudicator has considered:

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- 7.1. the fact that the member joined WASPA on 5 May 2009, a relatively short time before this complaint was lodged on 5 September 2009 and that this appears to be the first adverse finding against the member under the Code; and
  - 7.2. the reasonably rapid response to the complaint and the level of interaction with the Media Monitor in remedying many of the initially non-compliant aspects of the service and its promotion.
8. Taking into consideration the above the Adjudicator believes that a fine is warranted which will act as a deterrent to the member to repeat its conduct as set out in this complaint.
  9. The following sanction is imposed:
    - 9.1. The member is fined the sum of R100 000.
    - 9.2. Payment of R80 000 of this amount is suspended for a period of one (1) year, subject to the member not being found to have breached any of the provisions of sections 6 and 11 of the WASPA Code or sections 9.2 and 9.3 of the Advertising Rules during this time. The balance is payable to the WASPA Secretariat within five (5) days of date of receipt of the relevant invoice.

## ANNEXURE – MONITOR'S REPORT

DATE: 28 AUGUST  
PHONE NUMBER: 0822989211  
STARTING BALANCE: R94.76  
SERVICE PROVIDER: Tanla Mobile Solutions  
I.P: Blinck  
WEBSITE:  
[http://mediad.mobilenobo.com/c/marketing3.cgi?s=crying\\_baby;l=za;m=ds](http://mediad.mobilenobo.com/c/marketing3.cgi?s=crying_baby;l=za;m=ds)

I went to the above website:

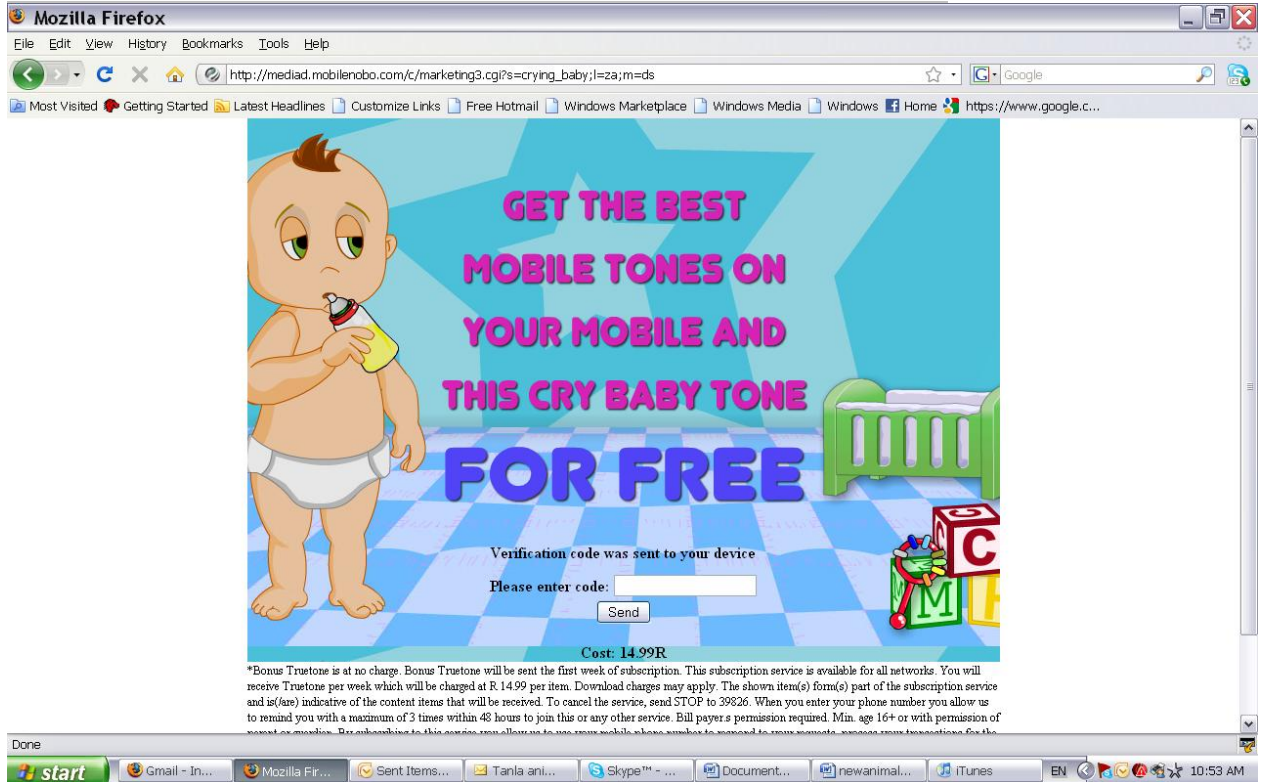


I then entered my cell phone number and carrier as prompted in order to receive the "FREE" tones as advertised.

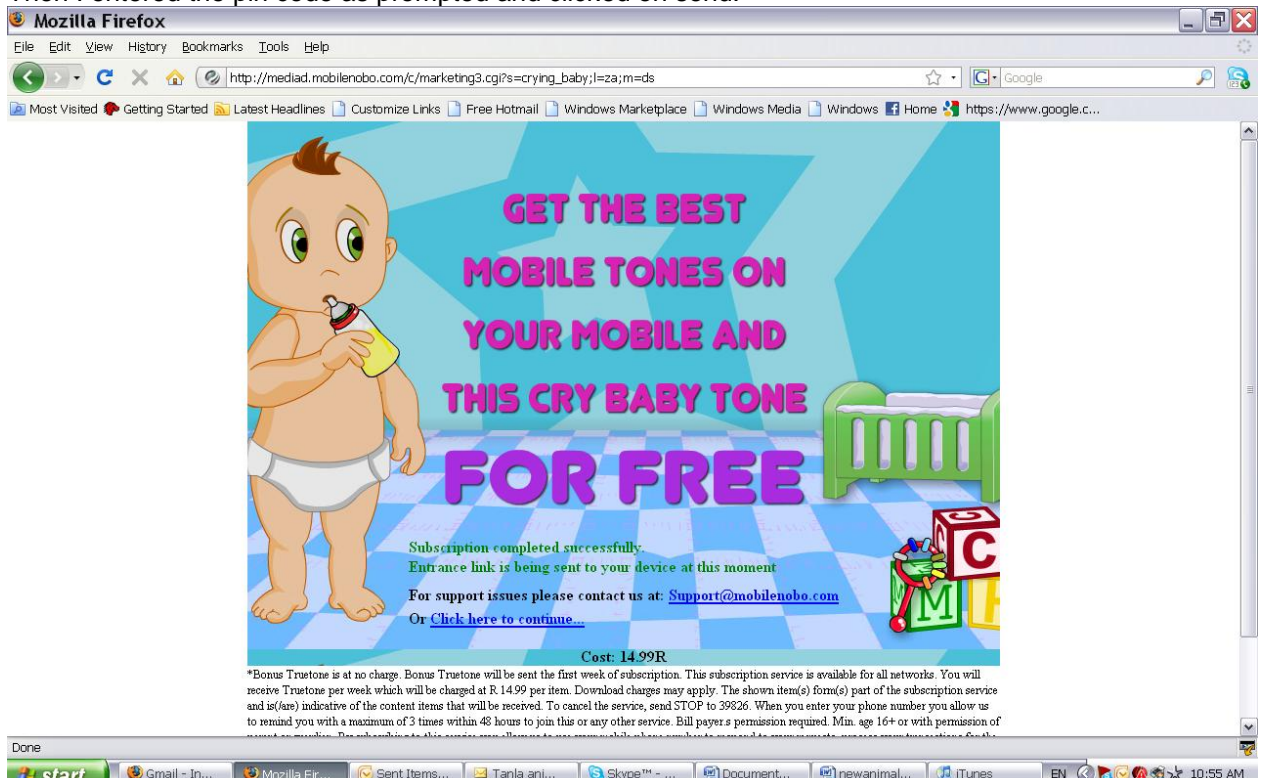
Please note the incorrect format of cost: 14.99R

Then I received a sms:

**Your code: NP 101. Please keep it for future purposes**



Then I entered the pin code as prompted and clicked on send:



I noticed the screen said very unclearly in green: **"Subscription completed successfully. Entrance link is being sent to your device at this moment"** My intention was never to join a service at all.

Then I received two smses:

**Welcome. You have access to 5 new Realtones @ R14.99/. Unsubscribe SMS 'stop realtones' to 39826. Help:0=800-982-166**

**Your realtones package**

<http://wapimo.com/?p=tokens&u=27822989211&c=np101&aff=mediad>

No money had been deducted, yet.

**The zoomed in Terms and Conditons:**

\*Bonus Truetone is at no charge. Bonus Truetone will be sent the first week of subscription. This subscription service is available for all networks. You will receive Truetone per week which will be charged at R 14.99 per item. Download charges may apply. The shown item(s) form(s) part of the subscription service and is(/are) indicative of the content items that will be received. To cancel the service, send STOP to 39826. When you enter your phone number you allow us to remind you with a maximum of 3 times within 48 hours to join this or any other service. Bill payer.s permission required. Min. age 16+ or with permission of parent or guardian. By subscribing to this service you allow us to use your mobile phone number to respond to your requests, process your transactions for the service, and send you information about service benefits, improvements and promotions via text messaging and calls. Information and promotions may continue to be sent after de-registration. MobileNobo operates according to the South African Wireless Application Service Providers. Association Code of Conduct. MobileNobo offers innovative information and entertainment for your mobile, such as ringtones, Javagames and Truetone. MobileNobo offers original, unique services with the highest standards. IP: Blinck. Helpdesk: 0800 980 963.

[Affiliate Support E-mail](#)

**Conclusion:**

Right from the beginning the customer is attracted by the advertised: **“GET THE BEST MOBILE TONES ON YOUR MOBILE AND THIS CRY BABY TONE FOR FREE”** The customer is especially drawn to the flashing word **free**. Although it does show: **“Cost:14.99R”** this is in breach of the code and any Service Provider would know that this format is completely unacceptable. Also nowhere whatsoever besides in the Terms and Conditions, which are way too small, and in complete breach of the Advertising Rules does it say that this is in fact a subscription service. Any promotional material for a subscription service is meant to explicitly identify it as a subscription service.

The T&Cs also show that you will receive your bonus ringtone the first week so therefore for seven days no charge is taken off of your cell phone, only from the following week will the R14 weekly deduction start. I feel that this is extremely devious and that the Service Provider has done this so that the customer who was interested in getting a free ringtone (and got it) wouldn't realize at all a week later that R14 deductions were happening each week after the first free week.

The pin code sms is missing all valid information telling you that it is a subscription service, this is once again another way the S.P. tricks the customer into subscribing to their service. It is completely clear from the above screenshots and information that the Service Providers intention is to lure customers into being subscribed into their service.

**Breches of the Code:**

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

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.

6.2.8. Pricing on any promotional material must use one of the following generally accepted formats for prices in Rands: "Rx" or "Rx.xx".

6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

11.1.3. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.

11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.5. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.8. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

11.1.10. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing].  
(Incorrect formats were used in their sms's).



11.1.11. If a subscription service can be initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.

### **Breaches of the Advertising Rules:**

## **9.2 DISPLAY RULES FOR COST AND T&C INFORMATION**

### **9.2.1 Cost OF ACCESS DISPLAY**

#### **9.2.1.1 Formatting Of Access Cost Text:**

\_ Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif font

- The pricing text must be clearly shown being independent of any other text or image, and not

be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.

- The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.

- All access cost information must be placed horizontally

#### **9.2.1.2 Position of Access Cost Text**

- For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font.

- If the ad and/or offer is on a third party web site as a graphic or display text, then the display text with pricing and contact info must be displayed on immediately below, above or to the side of the access number to show the FULL cost to consumer. This includes for example, textbased

ads placed on Google-based (or similar) advertisements.

- The T&C text must be placed close as possible to the unique access number.

- T&C information must be placed horizontally.

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- If multiple offers are made on the same advertisement and the cost and T&C differ with each offering, each offering must show the cost & T&C separately and clearly.

- While cost information associated with an access number may be displayed elsewhere on a web site (for example cost information also placed in the T&C page of a web site), this must be

done as part of a duplication of the pricing. Hence, cost information cannot solely be placed on,

for example only the T&C page where accessing the T&C page requires that the user click away

from the initial page that displayed the access number.

- The consumer should thus not have to scroll down significantly on that same page or follow any links to other pages to be made aware of the full pricing and T&C associated with a unique

access number.

- No cost and/or T&C information may be placed on in-vue type pages.

- No cost and T&C information may be placed on any Internet web page requiring a particular add-on component or facility that is not generally available to all users on the Internet. This prohibition extends to placement on pop-up and in-vue pages.

### **9.2.2 T&C DISPLAY RULES**

#### **9.2.2.1 Formatting & Font Criteria For T&C Text**

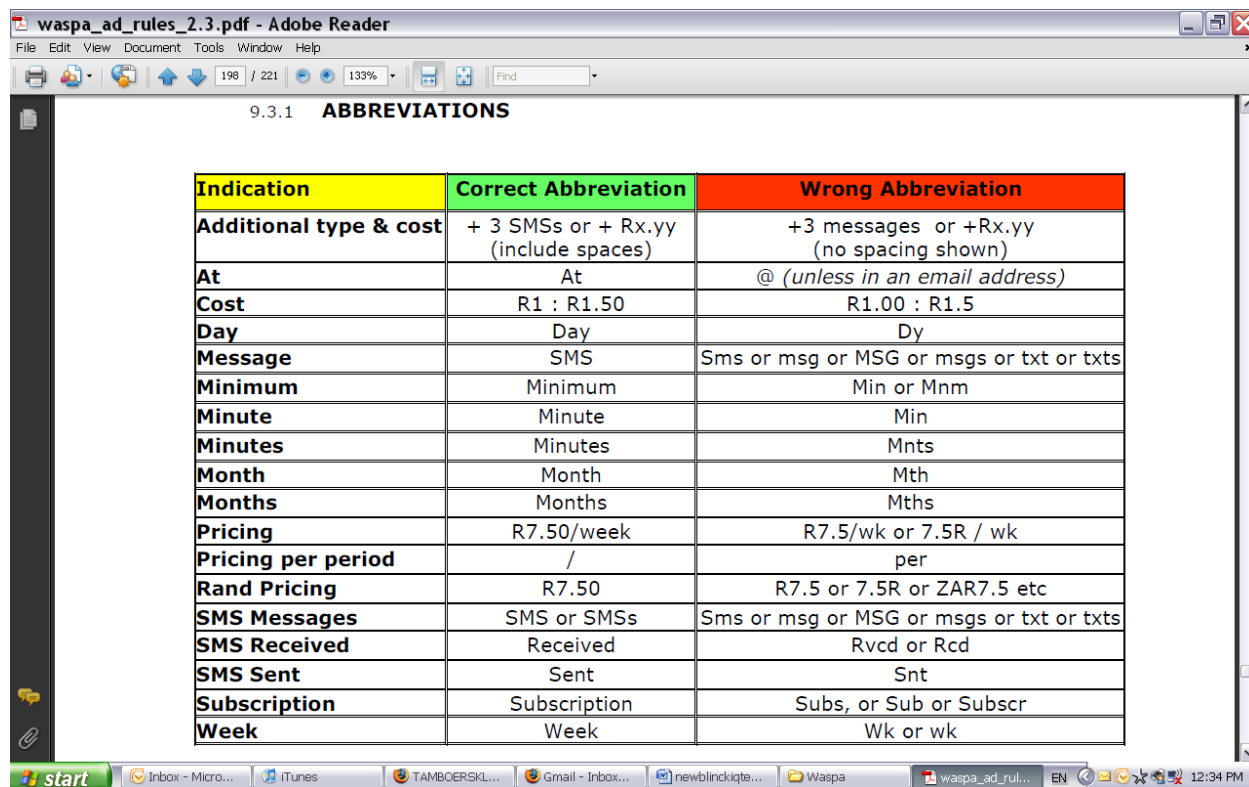
- The T&C text must be in 12 point font size, or 50% of the largest access number on a Web page, whichever is the greater. The T&C must be in a non-serif font

- All T&C information must be placed horizontally

## 9.2.2.2 Position of T&amp;C display text

- For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number in a non-serif font.
  - This T&C text must be placed close as possible to the unique access number.
- If multiple offers are made on the same advertisement and the cost and T&C differ with each offering, each offering must show the cost & T&C separately and clearly.

## 9.3.1 ABBREVIATIONS



Indication	Correct Abbreviation	Wrong Abbreviation
<b>Additional type &amp; cost</b>	+ 3 SMSs or + Rx.yy (include spaces)	+3 messages or +Rx.yy (no spacing shown)
<b>At</b>	At	@ (unless in an email address)
<b>Cost</b>	R1 : R1.50	R1.00 : R1.5
<b>Day</b>	Day	Dy
<b>Message</b>	SMS	Sms or msg or MSG or msgs or txt or txts
<b>Minimum</b>	Minimum	Min or Mnm
<b>Minute</b>	Minute	Min
<b>Minutes</b>	Minutes	Mnts
<b>Month</b>	Month	Mth
<b>Months</b>	Months	Mths
<b>Pricing</b>	R7.50/week	R7.5/wk or 7.5R / wk
<b>Pricing per period</b>	/	per
<b>Rand Pricing</b>	R7.50	R7.5 or 7.5R or ZAR7.5 etc
<b>SMS Messages</b>	SMS or SMSs	Sms or msg or MSG or msgs or txt or txts
<b>SMS Received</b>	Received	Rvcd or Rcd
<b>SMS Sent</b>	Sent	Snt
<b>Subscription</b>	Subscription	Subs, or Sub or Subscr
<b>Week</b>	Week	Wk or wk



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