

WASPA appeals panel
Complaint 7924

REPORT OF THE APPEALS PANEL

Date: 12 July 2011

Appellant and Service Provider (SP): Viamedia

Complaint Number: 7924

Applicable versions: 8.0

1. BACKGROUND TO THE APPEAL

1.1 This appeal concerns a complaint lodged on 26 October 2009, by an individual against Viamedia.

1.2 The SP is a South African company and a full member of WASPA.

1.3 The complaint relate to various aspects but for the purpose of this appeal, misleading pricing structures.

1.4 The complaint, the findings of the Adjudicator, the SP's response to and appeal against the complaint, are fully recorded in the case files provided to this appeals panel, and as these are, or will be, publicly available on the WASPA website, they will not be repeated in full in this appeal panel's report.

2. CLAUSES OF THE CODE CONSIDERED

2.1 The complaint relates to alleged breaches of the following sections of the Code, which reads:

- 2.1.1 **Section 6.2.2.** All advertisements for services must include the full retail price of that service.
- 2.1.2 **Section 6.2.3.** Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that maybe associated with downloading, browsing or receiving that content.
- 2.1.3 **Section 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.

2.2 In this appeal, the panel will be guided also, by the general provisions and purpose of the Code:

2.2.1 **Section 1.2.** The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services.

2.2.2 **Section 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.

3. FINDINGS AND DECISIONS OF THE ADJUDICATOR

3.1 Finding of the Adjudicator

The Adjudicator stated:

“I am not satisfied with the SP’s explanation for the presentation of its pricing information. I agree with the complainant that the pricing is not clear and is misleading. The SP’s statement that the network providers stipulate that the pricing for USSD services must be presented in this way is simply not true. I have noted the complainant’s suggested alternatives for presenting the pricing information and agree that the SP could easily present the information in a manner which was clearer and easier to understand for users. The SP has contravened section 6.2.2, 6.2.3 and 6.2.4 of the Code. The complaint is accordingly upheld in this regard.”

3.2 Sanctions

In giving sanctions, the Adjudicator stated the following:

“The presentation of pricing information in a clear way and which is not misleading is tantamount to ensuring that consumers are properly protected when using the services of WASPA members. The failure of the SP to provide clear pricing information is therefore viewed in a serious light.”

The following sanction is given:

1. The SP is ordered to suspend this service until such time as it has provided proof to the WASPA Secretariat that it has amended the pricing information provided to consumers in all of its promotional SMS messages and in any other promotional material.
2. The SP is fined an amount of R 75 000.

4. GROUNDS OF APPEAL

4.1 Grounds of appeal for complaint 7924:

4.2 The Appellant stated in its appeal the following:

4.2.1 “For At worst the pricing might not have been well understood by some users, but not incorrect. Even if they didn’t understand the pricing, they still had the option not to interact.

4.2.2 In our defence we indicated that we believed that the use of “unit” was an acceptable way to indicate price. This was indeed our opinion, as a results of:

4.2.2.1 The networks documentation refer to units e.g:

4.2.2.1.1 3.1.2 Unitisation of 20 seconds will be applied to this tariff – i.e. the Service User will be billed in 20 second increments. Maximum session length will be 3 minutes.

4.2.2.1.2 3.2.2 Premium-rated USSD tariff bands will follow the same time-based billing model with 20 second unitisation increments.

4.2.3 This is the way the networks bill the user for USSD. In our discussions with the networks, the use of “units” is ubiquitous, when referring to billing for USSD.

4.2.4 Acknowledging that we may have been too technical in our approach, and using “20seconds” is clearer, we feel the Adjudicator was exceptionally harsh in their sanction considering:

4.2.4.1 The use of unit is not incorrect

4.2.4.2 There was no attempt to mislead, hide or deceive

4.2.4.3 We displayed the price the end user pays in making use of the service

4.2.4.4 We have attached statistics proving that the vast majority of users use only one unit. They are therefore only charged R1.67 as advertised. They would therefore not have felt misled or misinformed.

4.2.4.5 The users session is terminated once the content has been delivered, preventing people from staying on for 3 minutes as was suggested by the complainant.

4.2.4.6 We are one of the biggest advertisers in the industry, yet we have had almost no adjudications against us, prior to this, showing that we are very compliant

4.2.5 We believe that if there is a contravention here, it is minor. There was minor, if any, negative impact and no malicious intent.”

5. FINDINGS OF APPEAL PANEL

5.1 Version of the Code

5.1.1 The complaint was made on 26 October 2009. Version 8.0 of the Code, in use from 13 October 2009 to 31 March 2010, applies.

5.2 Finding

5.2.1 This Panel has reviewed both the Adjudication and the Appeal thereto.

5.2.2 It is alleged in the decision that the pricing is misleading.

5.2.3 In reviewing this matter the Panel find it difficult to ascertain how the SP in this matter could have been found in breach of all three sections (6.2.2, 6.2.3 and 6.2.4) in question.

5.2.4 It is the Panel's view that only section 6.2.4 should be applied when alleging a breach of misleading pricing, and not sections 6.2.2 and 6.2.3.

5.2.5 However, the Panel also wants to refer the reader to section 1.2 which states the following: "The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the **pricing** associated with those services."

5.2.6 WASPA in its advertising rules and more specifically in section 9.3.18 specifically provide the reader with the following:

5.2.6.1 *For menu-driven services such as USSD, the price for the initial service must clearly be stated, along with the minimum time reasonable persons would require to access the service or Content as advertised if this minimum time is over 90 seconds. Best Practice Suggestion: **Display Text: "Initial access cost 20 cents/20 seconds. Minimum 120 seconds."***

5.2.7 This Panel is of the view that the SP did not follow best practise and in avoiding doing so, failed to satisfy the requirements of section 6.2.4.

5.2.8 Even though the Appellant alleged in paragraph 4.2.4.4 that users would not have felt misled or uninformed, the fact of the matter is that by using the term "unit" instead of a more understandable term such as the actual seconds, the Appellant has inadvertently misled its users.

5.2.9 The Appellant's further contention that networks utilise such practise, is according the opinion of this Panel, most definitely **not** common knowledge and although maybe well intended for the purpose of its own pricing structure, not well interpreted.

5.2.10 The Panel therefore finds the Appellant in breach of section 6.2.4 and agree with the Adjudicator on the said breach but overturns the Adjudicator's findings on sections 6.2.2 and 6.2.3.

- 5.2.11 With regard to the sanctions, the Panel finds it astonishing that the SP is of the opinion that 15 upheld complaints pay tribute to a good record.
- 5.2.12 It does however not justify a sanction of R 75 000-00 for the breach of section 6.2.4 especially in the absence of any prior findings on the said section.
- 5.2.13 This Panel is also satisfied that the Appellant provided enough evidence to support its statements on averages and minimum losses.
- 5.2.14 The Panel therefore **overturns the Adjudicator's sanction of R 75 000-00 and reduce the sanction to R 30 000-00 of which R 20 000-00 is suspended for 6 months.**
- 5.2.15 The cost of appeal is **non-refundable**.