



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Buongiorno UK! Vodacom
Telephone Network(s)	MTN Cell C
Information Provider (IP) (if applicable)	
Service Type	Ring tone / Wallpaper download
Source of Complaints	Competitor
Complaint Number	#0003

Complaint

A complaint was received from a competitor of the SP, concerning an advertisement placed by the SP in Heat Magazine 3 – 9 September 2005, under the brand name “Dirty Hippo”. The Complaint in particular concerns the pricing information provided in respect of the service as “2 x SMS per Wallpaper or Poly download (R3/SMS)” with the phrase “(R3/SMS)” in a larger font than the balance of the pricing information.

The following breaches of the WASPA Code of Conduct were raised:

6.2. Pricing of services

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

The Secretariat investigated the Complaint and determined that there may be additional breaches of the WASPA Code of Conduct:

6.2. Pricing of services

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 may be associated with downloading, browsing or receiving that content.

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.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price should appear with all instances of the premium number display.

4.1. Provision of information to customers

4.1.1. Members are committed to 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.

9. Competitions

9.1. Provision of information

9.1.1. Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

9.1.2. Any promotional material for a competition service must include details of how the competition operates.

9.1.3. Interactive competition services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

9.1.4. Promotional material must clearly state any information which is likely to affect a decision to participate, including:

- (a) the closing date;
- (b) any significant terms and conditions, including any restriction on the number of entries or prizes which may be won;
- (c) an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes;
- (d) any significant age, geographic or other eligibility restrictions;
- (e) any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item.

9.1.5. The following additional information must also be made readily available on request, if not contained in the original promotional material:

- (a) how and when prize-winners will be informed;
- (b) the manner in which the prizes will be awarded;
- (c) when the prizes will be awarded;
- (d) how prize-winner information may be obtained;
- (e) any criteria for judging entries;
- (f) any alternative prize that is available;
- (g) the details of any intended post-event publicity;
- (h) any supplementary rules which may apply;
- (i) the identity of the party running the competition and responsible for the prizes.

10. Contact and dating services

10.1. Provision of information

10.1.1. Contact and dating services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs,

and must require the customer to actively confirm their continued participation.

10.1.2. Providers of contact and dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.

10.1.3. Providers of contact and dating services must ensure that customers' contact information is duly protected and not publicly available.

10.1.4. Providers of contact and dating services must obtain explicit consent from a customer prior to making his or her contact information available to third parties.

10.1.5. Promotional material for contact and dating services must make clear any restrictions on the location, gender and age range of callers to the service.

These additional possible breaches of the WASPA Code of Conduct were not put to the SP.

Investigation

The Secretariat received a response from the SP, indicating:

6.2. Pricing of services

6.2.2

The SP has received complaints concerning misleading price information in its advertising, prior to the coming into effect of the WASPA Code of Conduct. It indicated it had taken steps to remedy these complaints by referring to the number of SMSs required for a content download and the cost per SMS rather than a total cost per content download.

The SP indicates it "overlooked" the requirements of the WASPA Code of Conduct and that it has now taken steps to remedy this omission on its part and tendered its apology.

6.2.4

The SP indicates that it displayed the cost per communication and the number of communications required. The SP does not deal with the question of the significant difference in font size between the cost per SMS and the indication that two communications are required. It also gave no indication that the pricing information was sufficiently clear so as to prevent confusion.

While the possible breaches of clauses 4.1.1, 4.1.2, 6.2.3, 6.2.4 and 6.2.5 of the WASPA Code of Conduct were not specifically put to the SP, the nature of the Complaint and the SP's response thereto are sufficiently general to allow a consideration of these issues. As the possible breaches of clauses 9.1 and 10.1 of the WASPA Code of Conduct were not put to the SP, no response was received in respect thereof.

Decision

The Adjudicator upheld the Complaint in respect of clause 6.2.2 of the WASPA Code of Conduct. The Adjudicator further upheld the Complaint in respect of Clauses 4.1, 6.2.4 and 6.2.5 of the WASPA Code of Conduct. The Adjudicator did not uphold the Complaint in respect of clause 6.2.3 of the WASPA Code of Conduct.

No finding was made in respect of clauses 9.1 and 10.1 of the WASPA Code of Conduct.

The Adjudicator has imposed the following sanction:

- The SP is required to remedy its breach of clauses 6.2.2, 6.2.4 and 6.2.5 of the WASPA Code of Conduct;
- The SP is formally reprimanded for its failure to comply with the WASPA Code of Conduct; and
- The SP is ordered to pay a fine totalling R15 000 in respect of its breach of clauses 6.2.2, 6.2.4 and 6.2.5 of the WASPA Code of Conduct.

The Adjudicator has further determined that the fine be suspended for a period of twelve (12) months from date of this Report; provided that no further breaches of the Code of Conduct in the specific respects detailed in this Report are identified in such twelve (12) month period. The reasons for such suspension include the proximity of the date of publication of the advertisement and the introduction of the Code of Conduct and the fact that the WASPA Advertising Guidelines have (at date of this Report) not been finalised.

The SP indicated in its response to the complaint that it would comply with the WASPA Code of Conduct from 1 September 2005 and as such, material submitted for publication after 1 September 2005 will be considered for the purposes of the suspension of the fine, but not material submitted for publication prior to this date.

Regarding the possible contravention of clauses 9.1 and 10.1 of the WASPA Code of Conduct, there is a *prima facie* breach of the WASPA Code of Conduct, but as the SP was not given an opportunity to respond thereto in accordance with the principle of *audi alteram partem*, the Adjudicator makes no finding and imposes no sanction in respect thereof. However the SP is warned that compliance with these clauses of the WASPA Code of Conduct is mandatory and a failure to comply therewith may result in a complaint being brought against the SP by a competitor, the public, or the WASPA itself.