



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exactmobile
Information Provider (IP) (if any)	N/A
Service Type	Content download, Pricing
Source of Complaints	Public
Complaint Number	#0179

Complaint

The Complaint was lodged via e-mail on 19 February 2006. The Complainant raised a failure by the SP to provide access cost information in respect of the 32227 short code which was used in instructions given on a web page for the download of an application.

The Complainant cited the web page <http://www.mxit.co.za/stepthree.html> on which the following instructions were set out

“SMS (SA only):

1. on your mobile, type the word MG4823 into a SMS
2. send the SMS to 32227
3. you will receive a service SMS with bookmark MXit M
4. select Retrieve or Connect to connect via GPRS/3G
5. if WAP-site is successfully retrieved, you should see : Welcome to the MXit WAP portal... etc
6. from the list, select your manufacturer (e.g. Nokia)
7. select your model (e.g. 3510i)
8. download

Once you have downloaded MXit, it can be found in Applications.”

SP Response

The SP responded as follows:

“Exactmobile provides a cheap simple way for users to download this application if they do not wish to type in the URL. On the Mixit web site they give the users the option of typing in the URL OR sending a SMS to 32227.

On the page the pricing for the number 32227 was left out. This was corrected the same day we were advised of the situation. The number 32227 is a R1.00 number. Exactmobile strives to ensure that all its partners comply with the WASPA code of conduct and makes the partners sign a document where they agree to comply.

This was an oversight on the part of this company. As the SMS is only R1.00 it was overlooked.”

Sections of the Code considered

The following sections of Version 3.2 of the WASPA Code of Conduct were considered:

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.

6.2. Pricing of services

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

The following sections of Version 1.6 of the WASPA Advertising Rule were considered:

9.2.2.2 Position of Access Cost Text

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- 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.
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Decision

The Response from the SP, constituting an admission of a breach of the sections of the Code and Advertising Rules set out above, is accepted.

It has been established in a number of previous adjudications¹ that SPs, as members of WASPA, are obliged to take reasonable steps to ensure that their customers, and the customers of their customers, comply with applicable provisions of the Code. The responsibility of ensuring compliance ultimately falls to the WASPA member. In this regard the SP states that it requires its partners to enter into an agreement in terms of which they undertake to comply with the Code. No doubt such agreement also contains provisions through which the SP can pass on sanctions imposed by WASPA which are attributable to the negligence of the IP to the IP.

While I can accept that the breach as aforementioned was due to an oversight on the part of the SP's client it is nevertheless a clear breach of an explicit provision and the negligence of the SP's client cannot fully excuse the breach.

The Complaint is accordingly upheld and it is found that Sections 4.1.1 and 6.2.2 of the Code read with Section 9.2.2.2 of the Advertising Rules have been breached.

In considering an appropriate sanction I have taken into account the honesty of the SP in its response as also the prompt and direct corrective action taken.

The SP is issued with a reprimand in respect of the breach of the Code outlined in this Report. The SP is requested to make it clear to its partners that oversights of this nature, which can lead to potentially serious breaches of the Code, are not acceptable.

¹ See for example <http://www.waspa.org.za/code/download/0045.pdf>