



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Integrat (Pty) Ltd
<b>Information Provider (IP)</b>	Gozomo (Pty) Ltd
<b>Service Type</b>	Subscription
<b>Source of Complaints</b>	Competitor
<b>Complaint Numbers</b>	#0310 (Part 2)

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### Complaint

A complaint was received in respect of the service offered by the IP through the SP.

Complaint #0310 deals with two televisions advertisements for the IP's subscription service, broadcast sequentially. The first of these advertisements is substantially similar to the advertisements in complaints #0272, #0277, #0278 and #0290, namely for the "phone fairy" subscription service. The second of these is for the "Yo Mama" joke subscription service.

The Adjudicator notes that complaints #0272, #0277, #0278 and #0290 as well as part 1 of the instant complaint have been submitted in respect of the "phone fairy" subscription service provided by the IP, through the SP (and submitted by the same complainant). The IP has requested that these advertisements be dealt with collectively. The Adjudicator has elected to separate this complaint into two parts and to consider the first together with complaints #0272, #0277, #0278 and #0290. This second part of complaint #0310 is considered separately, as it is distinguishable from the other unadjudicated complaints in respect of the portion of the WASPA Code of Conduct alleged to have been breached, the content being advertised and the nature of the advertisement.

The complainant specifically states:

Section 6 relates to pricing. At the end of the fairy ad, the ad automatically leads into a second ad promoting YoMama Jokes. The ad is totally different with the only association being a common number. This ad therefore cannot be seen to be part of the first part of the ad. There is no pricing and no mention that this is a subscription service. The user is prompted to SMS MAMAJOKE to 31996.

Section 6.2.6 The name of the WASP or information provider must appear in the ad. The name is not mentioned in the ad.

The following clauses of the WASPA Code of Conduct were considered:

## **6. Advertising and pricing**

### **6.1. WASPA advertising rules**

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

6.1.2. The latest version of the *WASPA Advertising Rules* will always be available on the WASPA web site.

### **6.2. Pricing of services**

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

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.

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

6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

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## **SP response**

The Secretariat received a response from the SP in its own regard as well as from the IP. These are set out below, with minor editing of spelling and typographical errors and contact details removed.

The SP indicated:

Integrat was merely a connectivity aggregator, and had no involvement in the production, development, presenting or placement of the advertising material in question, nor were we involved in the formatting or initiation of the delivery of any content. We also do not select the subscriber's delivery address, nor change or modify the information sent to the subscriber. We are only the medium carrying the information to the user, as do the Mobile Networks. We are therefore not in a position to comment or reply to the above mentioned complaint, with the required knowledge or insight.

According to our contracts with our clients, our clients need to adhere to the WASPA code, and network rules, and any sanctions or fines imposed, will be carried over to our clients.

We reserve the right to review the sanctions imposed and will take the necessary action, in accordance with fair business practice, and South African Laws.

The IP indicated:

We accept that there has been a breach of Section 6 of the Code in respect of the Yo Mama advertisement. This advertisement was intended to be flighted as a separate but follow on advertisement and was designed to be fully compliant with the WASPA code. Due to an unfortunate error by our outsourced editing and media consultants the advertisement was inadvertently altered during the final rendering process by the omission of the layers that contained the pricing and terms and conditions, after it was approved for airing by us with pricing and terms & conditions. We attach letters from our consultants in this regard confirming that that was the case.

These letters also confirm that the advertisement was only flighted 3 times before the error was noted and the advertisement discontinued. Although we were not directly responsible for the error we accept that it is our ultimate responsibility to ensure that advertisements are fully compliant with the WASPA code. As a result of the error we have taken steps to deactivate all key words mentioned in the advertisement and unsubscribed all subscribers from these keywords. We have now amended our internal procedures to ensure that no errors can be made after our approval.

We trust that WASPA will take note of the background to this breach of the Code, the fact that it was inadvertent and the fact that we took action to correct the mistake. In addition we have taken steps to prevent a repeat of this unusual occurrence.

In the circumstances we would request that adjudicator to reflect the circumstances in his approach to any possible sanctions. We submit that a fine would not serve any beneficial purpose in the circumstances.

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## Decision

The Adjudicator appreciated the IP's openness and honesty in dealing with this complaint. In the light of the glaring errors in the advertisement, it could be argued that the IP had no alternative, however the Adjudicator accepts the IP's *bona fides* in this regard. However the Adjudicator noted certain additional comments submitted by the IP, particularly:

Following this amendment, we received a further complaint (#0310) again submitted by the same complainant. This complaint claimed that only half of the advert was compliant and the second product we offered was a single true tone automatically subscribing a customer. It is beyond reason that we would amend an advert that offers two subscription services, and make it only compliant on one of the subscriptions offered....

The second part of the complaint refers to a totally separate advert that ran right after our initial advert, giving the impression that it was all a single advert. In this unfortunate incident we have provided proof that there was an error made by our editing studio with a letter that is herewith attached ...

Please note that as soon as we discovered that there was an error with the advert, we immediately contacted the TV station and ensured that they withdrew the advert and it was never aired again. We also unsubscribed all users from this service.

The Adjudicator notes his approval of the measures taken by the IP in dealing with this matter.

The Adjudicator had regard to his finding in respect of complaint #0047. In that complaint the SP and the IP went a step further than the IP in this matter and disclosed the number of content downloads that had been initiated through the erroneous advertisement (in that complaint, an Internet web site with no ancillary promotion). In that complaint the sanction imposed was a reprimand, an order to refund customers and a fine of R1 000.

The Adjudicator considered a similar sanction to be appropriate, however noted that television is a medium with far greater appeal and impact, which is a factor that must be considered. Furthermore, the infringement in complaint #0047 took place prior to the introduction of the WASPA Advertising Rules.

The Adjudicator noted further the IP's submission that a fine would not serve any beneficial purpose. The Adjudicator does not agree with this submission. A sanction in a complaint of this nature is not required for its punitive effect, the offender has admitted its wrongdoing and provided a believable undertaking that this will not re-occur, rather a sanction is imposed as a deterrent to other WASPA members. However the admitted *bona fide* error of the IP must be regarded as a significant mitigating factor in determining such sanction.

The Adjudicator accordingly imposed the following sanction:

- The SP is reprimanded for the breach of the WASPA Code of Conduct by the IP;
- The SP is ordered to refund those customers who subscribed to the IP's "Yo Mama" subscription service, irrespective of whether such customers received content or not and to provide the Secretariat with proof thereof; and
- The SP is ordered to pay a fine of R5 000 to WASPA. This fine is higher than that imposed in respect of complaint #0047 due to the different advertising medium employed and the introduction of the WASPA Advertising Rules, however is several factors lower than a fine that would imposed had the breach not been as the result of a genuine third party error.