



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	MiraNetworks
Information Provider (IP) (if any)	2waytraffic
Service Type	Contact – Television Advertising
Source of Complaints	Competitor
Complaint Number	1003
Date received	7 February 2007
Code of Conduct version	4.7

Complaint

The Complainant, who requested to remain anonymous, alleges breaches of Version 1.6 of WASPA's Advertising Rules in respect of a television advertisement for a service provided by the IP through the SP.

The detailed description of the Complaint states:

“Seemingly intentional hiding of price information in TV ad. Does not conform to pricing guidelines, and text is small, blurred and unreadable at the bottom of the screen.”

The Complainant provided a recording of the advertisement as well as a still sourced from this recording.

SP Response

The SP provided a full response as follows:

“Pricing guidelines:

- We specifically communicate that the price is 8 rand per received message (incl. vat).
- The pricing information is stated in the legal statement below in the commercial (as required concerning the WASPA guidelines).

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- The advertisement includes all necessary information in the disclaimer/ legal statement, such as: unsubscribe information, pricing information (per received message), providers name, contact information (telephone number and internet site) and that people need to be 18 years or older to join to our service.
 - Besides this, when people join our chat service on short code 31304, they also receive a welcome message with all the required information, such as: unsubscribe information, pricing per sms, contact information.
 - On top of this we specify all the above on our internet site.
 - This service is a MO/ MT service, this means that when people want to chat they can send in a message to our short code, only then he or she will get a message back to their mobile phone. The person who joins our service is responsible for the amount of messages he or she chats.
 - We therefore can not say what the total cost are, because a person can chat 2 messages or 20. This depends on the person itself.
 - I want to express the fact that we specify in all our communications that the pricing is **per** sms and that we are not hiding any price information.

Font size legal statement:

- The font size, is the font size which is required by the WASPA guidelines.
- As you can see in the attached file (same quality as our television commercial), the legal statement is not unclear and is perfectly readable. “

The SP provided a still from the advertisement in question.

Sections of the Code & Advertising Rules considered

Code

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

6.2.5. 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.

Advertising Rules

2.2.2 COST OF ACCESS TEXT DISPLAY RULES

Trigger:

At any display of, or mention by a voice-over, of a unique access number

Display Length:

100% of the length of the advertisement

Display Text Font:

'Zurich' font

Display Text Font Size:

18 points MINIMUM

Display Text Font Position:

In a visible block or triangle in a top corner of the screen in the Title Safe Area (see diagrams)

Display Text Font Colour:

Contrasted colour superimposed on the block/triangle

Block/Triangle Colour

Contrasted colour, behind the display text

Display Text Type:

- Text must be static
 - No Caps (except for the first letter of the first word) or italics may be used as the display font for the word subscription.
 - No italics may be used as the display font for the price text.
 - No text must be placed around the access cost text that may obscure clear reading
 - The access cost text must not be positioned or formatted in a manner where it may be obscured by other text or visual information that may be displayed as part of the ad
 - The access cost must not be part of a colour scheme that may obscure easy reading of complete details of the access cost
 - The access cost text must not be obscured by any background flashing or other visual animations that practically and objectively obscures easy reading of complete details of the cost.
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Decision

The quality of the recording and still provided by the Complainant is not such that any decision can be made as to the size or font of the type or with regard to the allegation that the “text is small, blurred and unreadable at the bottom of the screen”. It appears that the footage was taken by a camera at a distance from the television screen and there is significant shine and interference. The still, sourced from this footage, suffers from the same deficiency of quality.

Accordingly this element of the Complaint is dismissed.

The poor quality of the footage does not, however, obscure the fact that there is a breach of section 2.2.2 of the Advertising Rules in that:

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- Despite the mention in the voice-over and display on screen of an access number the cost of access text is not displayed on screen for 100% of the length of the advertisement
 - The cost of access text is not displayed In a visible block or triangle in a top corner of the screen in the Title Safe Area

Furthermore it cannot be reasonably concluded that the access cost text is “easily and clearly visible” as required by section 6.2.5 of the Code of Conduct.

Insofar as the IP states that “[T]he pricing information is stated in the legal statement below in the commercial (as required concerning the WASPA guidelines)” it appears to have grasped the content of what needs to be communicated but not the manner in which this content is to be displayed.

In determining a suitable sanction the Adjudicator has had recourse to the decisions reached in respect of Complaints

- #280 where the SP was, amongst other sanctions, fined R7 500 for an IP infringement under mitigating circumstances where the error of a third party contributed to the breach of section 2.2.2
- #191 where the SP was fined R20 000 (with R14 000 suspended for 12 months) for using a colour scheme that did not making pricing easily visible
- #189 where the SP was fined in the amount of R10 000 (with R5 000 suspended for 12 months) where the SP admitted to not having used the correct minimum font size for the access cost text

The breach in this matter is of a more fundamental and serious nature as there has been no attempt to comply with the cost of access text display rules which even a cursory glance at the Advertising Rules (not “guidelines”) would have revealed.

In the circumstances the following order is made:

- The Complaint is upheld in respect of the breach of section 6.2.5 of Version 4.7 of the Code of Conduct and section 2.2.2 of Version 1.6 of the Advertising Rules
- The SP is issued with a formal reprimand flowing from the nature of the breach

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- The SP is ordered to ensure that advertising in respect of services provided through it comply with section 2.2.2 of the Advertising Rules and to terminate any advertising which is not so compliant
 - The SP is ordered to pay a fine of R40 000, of which payment of the sum of R25 000 is suspended subject to the SP not breaching section 6.2.5 of the Code of Conduct or section 2.2.2 of the Advertising Rules within the next six (6) months. The balance is payable to the WASPA Secretariat within five (5) days of notification of this Adjudication.