



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	TelePlay Communications
Service Type	Adult advertising
Source of Complaints	WASPA Monitor
Complaint Number	#3019 & #3021
Date received	7 December 2007
Code of Conduct version	5.3

Complaint

The WASPA Monitor filed two Complaints raising a number of possible breaches of section 4.2 of the WASPA Advertising Rules read with section 6.1.1 of the WASPA Code of Conduct. The Complaints relate to classified newspaper advertisements for services offered by the SP and alleges the following specific breaches:

- “1. Costs are not displayed with both Vodacom & MTN numbers. Pricing for the two networks differ, therefore necessary to place costs with both network's numbers. Misleading readers.
2. MTN number will be charging R5 / min. Copy reads: "R5/m" and not "R5/min" - misleading.
3. Font size of costs not 9 points - too small and difficult to read.
4. The MTN Costs copy is cut off at bottom of the ad.”

Point 4 above relates only to Complaint 3021 (the “Express Sex” advert).

Copies of the advertisements in question were provided and are annexed hereto.

SP Response

The SP provided a comprehensive and largely identical Response dealing with each of the specific complaints, from which the following germane points have been extracted:

1. The service caters for two types of end users, being
 - a. MTN users who pay R5 p/m and get a premium content service; and
 - b. Other users who pay standard VAS rates on a standard VAS Vodacom number and do not receive a premium content service.
2. This is done because only MTN allows the SP to charge users through a premium fee billing service and therefore the SP is only able to offer a premium content service through MTN.
3. The SP believes that this distinction is clearly stated in the advertisement but will in future insert the phrase "Free minutes do not apply" to bring greater clarity.
4. The SP pointed out that many of its competitors did not display the information set out in the preceding points and provided examples of competitor advertising in support thereof. [The WASPA Secretariat has initiated investigations into such advertising.]
5. The advertisement in question was designed in accordance with the requirements of the relevant newspaper.
6. The cutting off of the access cost in the advertisement was an error on the part of the newspaper. The SP provided evidence of the same advertisement placed in a different newspaper where the cost of access text was not so cut off.
7. The font size employed is greater than 9 points and the SP specifically instructed its graphic designers in this regard.
8. The SP further pointed out that its service is an IVR service and not a subscription service and that the costs of the service are clearly stated in the newspaper advertising and at the beginning of every call made to the service.

Sections of the Code considered

The following section of version 5.3 of the WASPA Code of Conduct was 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.

6.1. 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.

The following sections of the WASPA Advertising Rules were considered:

4.2.2.1 Formatting Of Access Cost Text:

- Classified Advertisements:

This applies to Classified Advertisements - ie advertisements with unique Content access code/numbers displayed in the classified portion of the body of a newspaper, or which are in classified- type format within the newspaper.

- o The size of the text showing the cost of access must be in 9 point font size

This is 9 point Arial Font

- o The access cost text must be in a non-serif font, preferably 'Arial' font.

4.2.2.2 Position Of Cost Text:

- 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, even if there is a uniform cost of access displayed throughout the newspaper and/or a series of pages allocated to one advertiser.

4.3.6 CONTACT DETAILS:

Provide web site address AND helpline number/shortcode // Contact details must be displayed as part of the T&C details.

- Advertisers must include a helpline number or a working web site address that has direct applicability and linkage to the advertiser
- If an IVR or SMS system using any premium rated or VAS rates channel provided by or through a licensed mobile operator is used for contacting the advertiser or as a helpline access, then the fact that this access number is Premium Rated or uses VAS rates must be indicated next to the access number.
 - o Eg "Helpline 08x-xxx-xxxx. VAS Rates. Free Minutes Do Not Apply.

- Note the general rule in v3.2 of the WASPA Code Of Conduct that a Premium Rated SMS number used as a contact number for the advertiser, or as a helpline, or for unsubscribing from a service may not exceed R1 in total.

o Eg : "SMS 'Help' to 31xxx. R1/SMS. Premium Rates. Free SMSs Do Not Apply."

4.3.12 PRICING: Show component, bearer and total cost //

Cannot use term Standard Rate when no free/discounted SMS/Minutes cannot be utilised.

Overview:

The display text must show the full or potential cost of access for fully obtaining the advertised Content and/or service.

Background:

Note that the term "Standard Rates Apply" as has in the past been used widely is, according to the definitions supplied by all three mobile networks, an incorrect description of IVR and PSMS, as a "Standard Rate" is only applicable to use of eg free bundled SMSs/Minutes. The original term was "VAS Standard Rates Apply" which was only applicable to IVR access, but which many over time incorrectly abbreviated to "Standard Rates" with purported applicability to for both IVR, PSMS, and Premium Rated USSD Access Channels.

Standard Rate: [see Also definition of Standard Rate in the Definition section]

A Standard Rate is a rate that is part of an in-bundle tariff which a user would ordinarily pay for domestic person to person communication pursuant to the specific terms and conditions of their service agreement with a mobile network operator. No "revenue sharing" applies. Thus, where free/bundled SMSs/Minutes cannot be utilized or where the tariff for an Access Channel differs from the in-bundle tariff for any user pursuant to the terms of conditions of the service agreement that user has with a mobile network operator, then term "Standard Rate" may not, from implementation of the Ad Rules, be used under those circumstances.

Instead, the following must be used:

For IVR Lines: "VAS Rates Apply. Free Minutes Do Not Apply"

Premium Rated SMSs: "Premium Rates Apply. Free SMSs do not apply".

Note: This notation must be used irrespective of the value of an SMS (eg 50c/OBS) if the SMSs/Minutes are not available free or in a bundle.

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(d) IVR:

- Any IVR system using a VAS rated Access Channel provided by or through a licensed mobile operator for access to any services or Content must be identified as such, along with a notice that free minutes will not apply.

Decision

A quick glance through the classifieds sections of most newspapers indicates that there is a definite need for advertisements for WASP services situated in these sections to be assessed against the provisions of the WASPA Code of Conduct and Advertising Rules.

The adverts under consideration in this Report are illustrative examples of advertising which is non-compliant in several respects.

As regards the pricing information set out in the advertisements the Adjudicator concurs with the view of the Monitor that the pricing is potentially misleading in that the distinction between MTN and Vodacom pricing is not clear, even given the difference in the service provided through the respective networks. This is particularly so with regard to the "Date Me" ad (Complaint 3019) where the Vodacom number is absent and the pricing information appears illogical.

The potential for confusion flows from the fact that the adverts are not in compliance with clause 4.2.2 of the Advertising Rules in that the respective pricing for Vodacom and MTN is not placed "immediately below, or above, or adjacent to the unique access number".

This is exacerbated by the finding with regard to the font size employed as set out below.

As acknowledged by the SP the advertisements are both in breach of section 4.3.12 of the Advertising Rules in that neither state that free minutes do not apply. The assurance of the SP that it will insert such obligatory text in future is noted.

It must also be pointed out that the use by the SP of the phrase "Calls@STD. VAS rates" is also not strictly in compliance and the SP is encouraged to engage properly with the Advertising Rules in this regard.

Turning to the font size employed: in responding to a request from the Adjudicator for more information on the basis on which the font size was assessed, the WASPA Monitor advised that:

"Newspapers standard font sizes are as follows:

Editorial: 8/9 points (this is actually being revised to 10 points now)

Classified section: 5 points (source: editorial and retail staff at Independent Newspapers)

Our advertisers use various font sizes, dependent on the size of their ads. So, in comparing our advertisers' ad font sizes to that of the standard newspaper font sizes, I can tell whether they're bigger or smaller."

The WASPA Monitor added that complaints were only lodged against advertisers using extremely small font sizes which are below the standard classified 5 point font size, notwithstanding the requirement that it should be at least 9 points. The result is that this copy, often the cost of access text, is unreadable and accordingly neither within the spirit or letter of the provisions of the Code and Advertising Rules.

The Adjudicator accepts this basis and accordingly rejects the version of the SP and finds that the SP has accordingly breached section 4.2.2.1 of the Advertising Rules. The SP, its alleged instruction to its designers notwithstanding, remains responsible for ensuring compliance.

As regards the use of the abbreviation "R5 p/m" as opposed to "R5 p/min" the Adjudicator finds such use to be potentially misleading given the context within which it appears and the failure of the SP to comply with section 4.2.2 of the Advertising Rules.

The version of the SP with regard to the inadvertent cutting-off of the bottom of the advertisements is accepted.

As regards an appropriate sanction the Adjudicator does not believe that, given the widespread non-compliance as regards classifieds advertising in general and the relatively clean recent record of the SP, a punitive sanction is appropriate but rather that the SP should be given an opportunity to remedy the identified breaches and ensure that its advertising in the classifieds sections is in future of the same high standard which the SP holds its services out as.

In aggravation, however, consideration must be given to the Adjudicator's Report in Complaint 113¹ which found the following breaches by the same SP:

"The advertisements also breach the pricing provisions of the Ad Rules and the rules applying to Adult Content:

1. The statement "Std VAS rates" closely situated with the "Free" wording is likely to cause confusion.
2. The reference to "Std VAS rates" is similarly confusing. These services are not provided on rates which can be said to be "standard" as VAS rates are specific to networks and services. The Ad Rules provide specifically that the term "Standard Rate" may not, from 1 January 2006 be used where free/bundled SMSs/Minutes cannot be utilised or where the tariff for an Access Channel differs from the in-bundle tariff for any user under the terms and conditions of that user's agreement with a mobile network operator. The wording "Premium rates apply. Free SMSs do not apply" or "VAS Rates apply. Free Minutes do not apply" should be used.
3. All information regarding the rates applicable to the service should be disclosed in the advertisement.
4. Price should be disclosed with the premium rate number."

The SP in response to the above complaint gave an assurance that the breaches would be remedied and not repeated and was fined the sum of R10 000 with a further R10 000 suspended for a period of one year (the period of suspension elapsed on 11 January 2007).

¹ <http://www.waspa.org.za/code/download/0113.pdf>

In the circumstances the following sanction is considered to be appropriate:

- The SP is issued with a formal reprimand in respect of the breaches identified above;
 - The SP is required to take positive steps to ensure that its future advertising in the classifieds section is compliant with the provisions of the WASPA Code of Conduct and Advertising Rules, especially those set out in this Adjudication, and to immediately withdraw any advertising not compliant as set out in this Adjudication. This sanction shall not, in terms of section 13.4.2 of the Code of Conduct, be suspended by the lodging of an appeal against this Report by the SP; and
 - The SP is fined the sum of R20 000,00 (twenty thousand Rand) in respect of breaches of section 4.1.1 of the WASPA Code of Conduct as also sections 4.2 and 4.3.12 of the WASPA Advertising Rules, payment of such sum to be suspended for a period of 12 months from date of notification of the SP of this Report subject to the SP not being found to be in breach of section 4.1.1 of the Code or Chapter 4 of the Advertising Rules during that period.
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Advertisement in Complaint 0319



Advertisement in Complaint 0321