



ADJUDICATOR'S REPORT

WASPA Member (SP):	Exact Mobile
Information Provider (IP):	
Service Type:	Unknown
Source of Complaints:	WASPA Monitor
Complaint Number:	5288
Code of Conduct version:	6.2

Complaint

A complaint was submitted by the WASPA Monitor regarding a television advertisement promising that a consumer would receive a call back if the consumer sent a message containing the word "Velocity" to the short code 34110. The complainant alleged that no pricing information was displayed in the advertisement and alleged that R2 was debited from the complainant's airtime balance after sending the required SMS on 11 November 2008. The complainant alleged further that a reply SMS was received on 11 November 2008 which read as follows:

"Thank you, your request is being processed. We take pride in our after sales service".

Notwithstanding the reply SMS, the complainant alleged that no further communication was received from the advertiser by 26 November 2008. The complainant alleged that the member had breached section 3.3.1 of the Code (which stipulates that members must not offer or promise services which they are unable to provide), section 3.3.2 of the Code (which stipulates that services must not be unreasonably prolonged or delayed) and section 6.2.1 of the Code (which stipulates that all advertisements for services must include the full retail price of the services).

Response of SP

The SP failed to submit any response to the complaint, neither after the initial complaint has been forwarded to it by the WASPA Secretariat, nor following an additional reminder email sent to the SP by the Secretariat.

Decision

In the absence of any dispute as to the allegations made by the complainant, the complaint is upheld.

Sanction

Advertising services that one is not able to provide and failing to display pricing information in a television advertisement relating to premium rated SMS are serious breaches of the Code.

Had other consumers complained about the advertisement in question, a substantial fine and some degree of compensation to consumers may have been appropriate. Given that the complaint was submitted by the WASPA monitor and given the very small amount of money debited from the complainant's airtime (R2.00), I do not consider that any refund is appropriate. However, in light of the fact that the advertisement was broadcast on television, the possibility for unfairness to a large number of consumers must have been present.

I have not received any information from the SP which can be taken into account in mitigation of any sanction to be applied.

The SP is directed to pay a fine to WASPA of R65 000.

The SP is also directed not to flight the advertisement in question unless it contains the necessary pricing information and unless it is able to provide the advertised service within a reasonable time period.