



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Exactmobile
<b>Information Provider (IP)</b> (if any)	N/A
<b>Service Type</b>	Advertising
<b>Source of Complaints</b>	Competitor
<b>Complaint Number</b>	#0306 & #307
<b>Version of Code</b>	4.3

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### Complaint

The Complaints received under reference numbers 306 and 307 are identical with respect to the Complainant, the SP and the subject matter of the Complaint. The following Adjudication disposes of both matters.

The Complaints were initiated by a WASPA member on 16 May 2006 and relate to certain advertisements contained in one of the SP's directories. The Complainant alleged a breach of Sections 6.1.1, 6.2.2 and 6.2.3 of Version 4.3 of the WASPA Code of Conduct as also of Section 6.2.1 of Version 1.6 of the WASPA Advertising Rules.

[Adjudicator's note: The reference in the Complaint to section 6.2.1 of the Advertising Rules has, on the basis of the text provided in the Complaint, been taken to be a reference to section 6.2.2.2]

A copy of the allegedly offending material, found on pages 19 and 20 of Exactmobile Directory #30 was provided.

The detailed Complaint #306 reads as follows:

"There is no price displayed on page 20.

At 5:09pm on 16-05-06, I sent a sms with the code 571443 to 33333 as per the instructions on page 20 of the Exactmobile Directory #30. At 5:16PM I received a GPRS link with the content and R5 was deducted. There is no price displayed on the page in the booklet where the content is advertised and the unique access number and content access code is displayed.”

The detailed Complaint #307 reads as follows:

“At 7:08pm on 16-05-06, I sent a sms with the code 10162 to 32227 as per the instructions on page 19 of the Exactmobile Directory #30. At 7:12PM I received a sms “Thank you for voting for Carmen Pretorius (10162). Check out [www.exactmobile.com](http://www.exactmobile.com) for the latest results. R1 was deducted. There is no price displayed on the page in the booklet where this service is advertised and the unique access number and content access code is displayed. The public is misled into thinking this service is free, where in fact network charges apply and they are getting charged.”

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### **SP Response**

The SP, in a Response submitted in respect of both complaints on 7 June 2006, admits to the breaches but submits that they were due to a “simple clerical error” and that the SP did not intentionally mislead consumers.

“When the directory was created and checked the pricing was displayed below the number. It has always been Exactmobile's policy to ensure that pricing is clearly displayed. We have always done this, years before WASPA and the Code were even set up. In this case, after everything was checked, the pages were copied page by page to ensure the formatting was correct as required by the printers. During this process, the pricing was not copied over. Our staff working with the printers on the actual job identified most of the missing prices (and put them back in) but in two places, this was missed.

Therefore this was a simple clerical error.

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The number 33333 is however used on the outside front cover with clear pricing below the number. The same short code with clear pricing is used again on pages 2, 5, 6, 9, 11, 13, 15 and 17. Therefore although there was a legitimate error on this specific page, the user would have seen the number 9 times before getting to this page and would therefore be familiar with the pricing. The same number is used prominently on TV with clear pricing.

If it was Exactmobile's intention to mislead the consumer, the pricing would have been left out of the whole directory. The fact that the number and pricing is clear on every other page shows that this error was not intentional.”

Exactmobile will take extra precautions to ensure that this error does not reoccur.”

The response in respect of complaint 307 regarding the short code 32227 on page 19 of the Directory was identical but for the substitution of “32227” for “33333” where it appears in the third paragraph.

A copy of the full Exactmobile Directory #30 was requested by the Independent Adjudicator and provided by the SP.

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### **Sections of the Code and Advertising Rules considered**

The following sections of Version 4.3 of the WASPA Code of Conduct were considered:

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.

The following provision of Version 1.6 of the WASPA Advertising Rules was considered:

#### **6.2.2.2 Position of 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, even if there is a uniform cost of access displayed throughout the Content booklet and/or a series of pages in a booklet allocated to one advertiser.

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## **Decision**

The Response provided by the SP admitting the breach and ascribing it to a “simple clerical error” is accepted. The Adjudicator has further reviewed the entire booklet and confirms that access costs in respect of the 33333 and 32227 short codes are correctly provided on the balance of pages. On comparison of pages on which the access price is correctly displayed with the offending pages, it is clear that the design layout on page 20 caters for the wording “R5 per item” in the same manner as is done on the correct pages. The same applies, with the necessary changes, to page 19.

Moreover there is an explicit guide to the use of the service and to the access costs associated with the short codes on the outside cover of the booklet.

The Adjudicator can find no evidence whatsoever of an intention to mislead consumers through the omission of pricing on pages 19 or 20 and finds further that the quality control measures employed by the SP were reasonable and adequate in the circumstances.

It is perhaps possible to go further and state that the Complaint in each of these matters is at best mischievous and that the Complaints approach an abuse of the WASPA complaints procedure. A complaint of this nature emanating from a consumer might be understandable but surely it would be obvious to a competitor, in the process of checking a fellow WASPs marketing material, that the failure to provide costing in two instances out of many was an oversight and not an intentional (and wholly irrational) act?

Notwithstanding the above the Code has been breached in respect of both Complaints.

In considering an appropriate sanction, consideration has been given to

- The finding that the error was due to an oversight and was not intentional
- The finding that the quality control measures implemented by the SP were adequate and reasonable in the circumstances
- The impression gained by the Adjudicator, on reviewing the booklet in its entirety, that a consumer paging through the booklet would quickly develop a clear association between the short code "33333" and the access price "R5" or between "32227" and the access price "R1".

It is accordingly found that the SP was acting neither intentionally nor negligently in omitting the access costs.

In the circumstances no order is made as to any sanction and the fact of the breach under the respective Complaints should not be regarded as an adverse finding against the SP for the purposes of determining any sanction in any future matter involving the SP as Respondent.