



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Cointel

Information Provider (IP): Supersport zone
(if applicable)

Service Type: Pricing of premium-rated services

Complainant: MyBeat (competitor)

Complaint Number: 0331.2

Adjudicator: Kerron Edmunson

Code version: Code v4.3, Ad Rules v1.6

Introduction

In my previous adjudication on 2 September 2006 my decision was the following: "This is a clear case of "he said she said". The complainant has substantially complied with section 13.1.3 of the Code in submitting the complaint. Where complaints are received, the SP may be required to provide additional information to substantiate its response in terms of section 13.3.8 of the Code. In this case I am unable to make a finding until such time as I have had an opportunity to view the item complained of. Neither the SP nor the IP have denied that such an item exists and it is clearly within the SP alternatively the IP's control and/or possession. The SP is therefore requested to provide the item complained of within 5 days of publication of this finding to enable me to consider the matter further. If the SP or IP considers it to be helpful to provide me with copies of all the items it refers to in its response, I will be happy to view these as well."

The SP responded to this by sending a copy of an advertisement flighted on DStv for review, but did not explain itself or respond to the balance of the adjudication in any other way despite repeated requests from WASPA.

I have therefore viewed the advertisement and on the facts before me, come to the conclusion set out below.

Complaint

The complainant has submitted a complaint relating to a breach of the Code by the SP "by virtue of 42500 number being advertised on DStv without informing viewers of the rate of the SMS anywhere throughout the TV ad or call to action. The ad was aired on Friday 9th June 2006 at around 20h00. This is a R30 number being allocated to a World Cup competition and it is highly unprofessional of both Cointel

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and DStv and unfair to consumers who are simply responding to the World Cup hype, only to find out weeks later they are getting billed R30 each time!”

SP Response

The IP was requested to respond by the SP. The SP stated that “our subscription promo is advertising the 42500 number and you are specifically told what the service entail as well as the cost of it (which is R30 per SMS). The competition promos (there are more than one) advertises the numbers 34211 and 34215. Both comps specify the cost at R2 per SMS. Our Vodacom predict-the-finalists competition is running on 34211 and our JNC play-of-the-day competition is running on 34215. Unfortunately I think [complainant] got confused between our subscription number and the competition numbers. I can assure you that all our promos include the pricing per SMS clearly.”

Consideration of the WASPA Code

The complainant has not referred to a specific provision within the Code but it is clear from the complaint and the SP response that the pricing provisions are relevant. Sections 4 (customer relations) and 6 of the Code (advertising and pricing) provide that:

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.

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

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

The Ad Rules also provide for pricing provisions in relation to television at section 1 (I have referred to the summary published by WASPA for convenience):

Interactive television programmes, promotional competitions and television infomercials: “whenever a unique access number is displayed onscreen or is mentioned by an announcer, this event must be accompanied by a display of on-screen text that clearly and simultaneously shows both the: (a) full access cost, for a minimum of 5 seconds, at each mention by an announcer or display on a screen of an access number in 18 point Zurich font and placed in a special box or triangle in any top corner of the screen, (b) t&c which must be displayed horizontally in 15 point (MINIMUM) Zurich font for a minimum of 5 seconds per mention by an announcer or the display on the screen of an access number, and in a Title Safe Area. No scrolling of text containing any t&cs are permitted. No CAPS-only or Italics-only text is permitted for the t&c font.”

Television advertisements and cinema advertisements: “whenever a unique access number is displayed onscreen or is mentioned by an announcer, this event must be accompanied by a display of on-screen text that clearly and simultaneously shows both the: (a) full screen cost for 100% of the entire ad time in 18 point Zurich font and placed in a special box or triangle on a top corner of the screen, (b) t&cs which must be displayed horizontally in 15 points (MINIMUM) Zurich font for a

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minimum of 10 seconds per mention by an announcer or the display on the screen of an access number and in a Title Safe Area.”

Without having seen the subject matter of the complaint it was initially difficult to know in what respect objectively, the item may have complied or failed to comply with the requirements of the Code and Ad Rules. However, I have now seen a clip of an advertisement flighted on DStv. This clip contains footage of football scenes and in between these, of Gary Bailey and then intermittently, the words “mobile” with the Supersport logo, and the number 42500 with an invitation to sms “Sub SWC”. At the bottom of the invitation screen in italics is a note “More info on www.....”.

Decision

In no way does the clip I have been provided with bear out the response of the SP, or comply with the requirements of the Code or the Ad Rules as outlined above. Because the SP has not submitted any further explanation with its additional response, as it was invited to do, I am not able to see how this particular clip could be defended or explained.

I therefore uphold the complaint and find the SP in breach of sections 4.1.1, 6.2.2 and 6.2.5 of the Code, and section 1 of the Ad Rules in relation to television infomercials, television promotional competitions and television advertisements.

Sanction

I consider the breach to be serious and material both in light of the sections referred to, and the high cost of the sms. The SP has not availed itself of the opportunity to supplement its response to the complaint and the clip provided substantiates the complaint, not the response.

Accordingly, the SP is directed to do the following within 10 days of the date of publication of this adjudication:

1. provide a list to WASPA, setting out the number of complaints it received directly from the public in relation to the short codes and competitions outlined by it in its response (42500, 34211 and 34215), and steps taken, if any, to respond to these complaints;
2. if no steps have been taken in relation to any complaint, the SP is directed to refund all monies to the complainants and to provide proof to WASPA’s satisfaction that this has been done, together with a reconciliation of payments;
3. pay a fine in the amount of R500 per complaint including the one which is the subject of this adjudication, to WASPA in relation to the breach of clause 4.1.1 of the Code;
4. pay a fine in the amount of R3,000 to WASPA in relation to the breach of section 6.2.2 of the Code;
5. pay a fine in the amount of R5,000 to WASPA in relation to the breach of section 6.2.5 of the Code;
6. pay a fine in the amount of R5,000 to WASPA in relation to the breach of section 1 of the Ad Rules.