



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	<b>Cointel</b>
<b>Information Provider (IP): (if applicable)</b>	<b>Unknown</b>
<b>Service Type:</b>	<b>Pricing</b>
<b>Complainant:</b>	<b>WASPA Monitor</b>
<b>Complaint Number:</b>	<b>5317</b>
<b>Code version:</b>	<b>Code v6.2 and Ad Rules v2.3</b>
<b>Date of Report:</b>	<b>11 May 2009</b>

---

### Complaint

1. On the 1<sup>st</sup> of December 2008 the WASPA Monitor lodged the following complaint:

Date of breach: 1/12/08

WASP or service: Cointel - 34583

Clauses breached: 1.2.2

Description of complaint:

Mobigo is a weekly show that is designed to exploit mobile connectivity via mxit and video blogging software. Viewers can participate in the live chats and polls while seeing celebrity video blogs.

The programme viewed on 13/11/08, at 19h30 and is aired for an half hour.

A presenter requests viewers to answer the Poll question, which in this case was: "\"Have you driven a fast car?\"". When viewers sms there answers to 34583, their answers are displayed on the TV screen, scrolling at the bottom whilst the show continues.

The sms code reveals that these sms's are charged at R2-00 each.

During the half hour show, there was absolutely no mention of the costs to viewers.

This provider is requested to include the costs in the programme with immediate effect.

Urgent complaint: The Monitor considers this to be an urgent complaint and requests that the Secretariat expedite it.

2. As the alleged infringement took place on the 13<sup>th</sup> of November 2008, version 6.2 of the WASPA Code of Conduct applies here.
  3. The Member was notified of the complaint on the 1st of December. The WASPA Secretariat sent the Member a reminder to respond on the 9th of December, to which it responded on the 10th advising that it would enter a response before close of business on that day. No response was entered however.
- 

### **Portion of the Code Considered**

4. The Complaint cites clause 1.2.2 as having been infringed; there is however no such clause of the Code of Conduct. Presumably the Monitor was referring to clause 1.2.2 of the Advertising Rules.
5. The following clauses of the WASPA Code of Conduct are relevant to this complaint:
  6. Advertising and pricing
    - 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.
      - ...
      - 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.
6. Clause 1.2.2 of the Advertising Rules, incorporated by reference into the Code of Conduct by clause 6.1.1 thereof, reads as follows:

#### **MANDATORY COST OF ACCESS TEXT DISPLAY RULES**

For an example, see <http://www.youtube.com/watch?v=NrCINj1ifAU> as well as Figure 1 or 2

#### **Cost of Access Information:**

Provide full & total potential base subscription and/or per-access cost(s) based on minimum billing period within price box.

#### **Position of Cost of Access "Price Box"**

The box must be placed in the top right hand corner of the screen, within the Title Safe Area (see diagrams). The edges of the text must not touch any side of box.

**Cost of Access Text Display Trigger:**

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

**Cost of Access Text Display Time:**

Minimum 5 seconds simultaneous per each and every mention and/or display of the access number

**Cost of Access Text Font:**

'Zurich' font

**Cost of Access Text Font Size:**

20 points MINIMUM

**Cost of Access Text Font Colour:**

Pure Black

**Cost of Access Text Font Position:**

Text access cost text must be placed in a visible "Price Box" and centered within that box

**Colour Of Cost of Access "Price Box"**

- Solid white, with a solid black border around the entire box.
- No transparency in the solid white box is allowed.

7. There are further rules dealing with the "price box" that I do not cite as I have received no information on what the screen display in question actually looked like. The Member is however advised to peruse this section.
- 

**Decision**

8. As WASPA adjudications are made on the documents provided by the parties, and as the Member has not responded to the complaint, I have only the Complainant's version to refer to in this adjudication. I must accept the facts as set out by the Complainant, because they are the only version before me. These facts are briefly that there was no pricing information given during the television programme in question, either verbally or in a "price box" or similar method on the screen. Moreover, the R2.00 cost of sending an SMS to the listed number, while not exorbitant, was certainly higher than one would normally expect to pay for sending an SMS.

9. I have no information on who the Information Provider in this case was. The Member would no doubt have given this information had it responded to the complaint. Presumably the Member was providing the wherewithal to the producer / broadcaster of the television programme to allow for interaction via SMS to take place. However in providing this facility, the Member should have seen to it that the programme itself complied with the WASPA Code of Conduct. As no pricing information was given at all, this it clearly did not do. I accordingly find that the Member has infringed clause 1.2.2 of the Advertising Rules, read with clause 6.1.1 of the WASPA Code of Conduct.
10. Given that viewers of the television programme were told to SMS their contributions to the member's short code, and as we know that no pricing information was given, it follows that the Member has also infringed clause 6.2.5 of the Code of Conduct in that its short code appeared without a corresponding price. As this infringement goes hand-in-glove with the infringement of clause 1.2.2 of the Advertising Rules, however, I will not impose a sanction for both separately but treat the two as one infringement.

---

### Sanction

11. I took the following as aggravating factors in this adjudication:
- 11.1. The potential for prejudice in listing a shortcode without associated pricing, and
  - 11.2. The fact that the television programme in question was flighted at 19h30, during prime time, increasing the potential for prejudice.
12. I accordingly impose the following sanctions:
- 12.1. The Member is to ensure that the correct pricing information is given during all broadcasts of the "Mobigo" television programme from the publication of this report. Should it not be possible for the unknown producer / broadcaster of the programme to provide this information on short notice, the Member shall not provide WASP services for the "Mobigo" programme until the information *can* be provided on the programme.
  - 12.2. Should the producer / broadcaster opt to use another WASP for this purpose without making the required changes, the WASPA Secretariat shall issue a notice in terms of clause 13.5 of the WASPA Code of Conduct in respect of the producer / broadcaster. The member shall advise the WASPA Secretariat immediately should it become aware that the producer / broadcaster is attempting to circumvent this ruling in this way.
  - 12.3. A fine of R 10 000 is levied on the Member, payable to the WASPA Secretariat within 5 days of the publication of this report.

-----0000000000-----