



**Wireless Application Service Providers' Association**

## Adjudicator's Report

Complaint number	31747 and 31757
Cited WASPA members	Viamedia (Pty) Ltd (0043)
Notifiable WASPA members	
Source of the complaint	Media monitor
Complaint short description	Pricing on television advertising
Date complaint lodged	4 October 2016
Date of alleged breach	
Applicable version of the Code	14.5
Clauses of the Code cited	4.2, 5.5, 8.9, 9.1, 9.2
Related complaints considered	
Fines imposed	

Is this report notable?	<i>Not notable</i>
Summary of notability	

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## Initial complaint

In matter 31747, the Media Monitor submitted:

The Via media television commercials (3 attached) are potentially in breach of the WASPA COC.

Via media television commercials are animated and busy. Fast moving images run across the screen throughout the commercial. Pricing being “prominent and clear” as required by the COC, means that pricing should be particularly noticeable, stand out, and not blend into what appears as a footnote at the bottom of the screen. (Where T&C's are placed). Pricing therefore needs to "fight" with all other images onscreen. Their pricing is obscured by other information. The pricing is not immediately adjacent to the CTA button. Pricing is not independent of other text. It is almost impossible for an average viewer to take in all that information, and still notice pricing. It is quite possible an average viewer will overlook the pricing completely.

There were 3 commercials attached to the complaint in 31747.

Complaint 31757 essentially introduced a further 3 commercials to the same complaint (3 were repeats).

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## Member's response

The Member submitted a detailed response, addressing each clause and explaining that there is a double opt in subscription service.

The Member also attached high resolution copies of some of the material.

## Clauses

*4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.*

*5.5. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.*

*8.9. A “call-to-action” is any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service.*

*9.1. For any television or cinema advert, pricing information does not need to be displayed for services which are free, or which are billed at standard rates. For all other services, pricing information for the service must be shown on the screen for the entire duration of the advert. Pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action.*

*9.2. There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated.*

## **Decision**

The first issue that I wish to comment on is the quality of the commercials. The commercials supplied by the Monitor were certainly completely illegible in terms of the pricing information, and if it is this version that the Monitor saw, I can understand their immediate concern about the pricing information.

I was, however, provided with three high resolution copies of the commercials. I am making the assumption that the other three were of the same or similar quality.

I accept that it is the high resolution version of the commercial that would appear on screen and be seen by consumers, and it is these that I consider below.

My next observation is that the clauses which go to the heart of this complaint – clauses 9.1 and 9.2 – are confusingly drafted in that they reference a “call to action”. A “call to action” is defined in clause 8.9 as “*any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service*”. In other words, the call to action is an interactive step that begins the subscription process. A television commercial does not have a call to action, as defined and as typically used within the

industry. The closest to a call-to-action is the instruction to “SMS Lotto to . . .” and “SMS Power to. . .”, although this is a generous interpretation of the narrowly defined words.

It is my opinion that Clause 9.1 and 9.2 must be considered in terms of the specific requirements set out, given that the drafting of the Code does set out specific requirements for this medium. I also consider that these requirements must be seen through the lenses of equity – the core question of whether the consumer should reasonably have seen the pricing.

In the commercials before me, following the requirements of the clauses, I note:

- The pricing information is on-screen the entire duration;
- The font is clear;
- The display is prominent in that it is legible and is the first piece of information in the terms that remain on-screen for the entire duration;
- In so far as there is a call to action, which I dispute, the price is always the next readable piece of information after the SMS number;
- There is similarly no intervening visual between the so-called call to action and the price;
- The price is legible;
- The price is horizontal;
- The price does not require closer inspection;
- The price is not obscured;
- The price is not animated.

While the commercials are “busy” they are not excessively so, and they are conveying one simple piece of information, not multiple pieces of information. I also note that the voice overs state “To get winning power ball numbers / lotto and lotto plus numbers”. This indicates that you will repeatedly get numbers, rather than just “the” winning number “this week”, and that the service must therefore be of a subscription nature. In some of the commercials (including the “first” one in matter 31747, which I note is also the clearest visually and the most overtly compliant), it also states, “Get Lotto and Lotto Plus results after every draw” on the top of the screen for the entire duration.

The commercials are also sufficiently long that the reasonably literate consumer has time to take in the main message, and consider the pricing at the bottom.

While not a defence in itself, and certainly not a defence in the face of a breach of specific requirements, it is nonetheless relevant that the commercial triggers a double opt in process. I myself tested this process and received a message stating. "Confirm your request for Xcite Mobile Lottopusha @R3,00 per charge, max 5 charges per day. Reply "Yes" to confirm/ "No" to cancel. Free SMS".

This raises a major concern as it would appear that the pricing on the television commercial is therefore incorrect – my message (dated 29 November 2016) indicates that I may be charged up to R 15 a day. While I am most disturbed by this development, it is not the question before me. **I request that the Monitor conduct an immediate and urgent investigation into the whole subscription process based on this concern.**

However, it is true that there is a further opt in step, and that the pricing is communicated with that step.

Turning back to the question of whether the commercials breach the clauses before me, I also note that one cannot confuse a perfectly executed commercial with the only acceptable commercial. The commercials before me could be clearer, they could comply with the Code better, and they are not examples of the pinnacle of clarity. However, that does not automatically mean that they are non-compliant. It is my opinion that they meet the requirements set down by the Code.

**Working on the assumption that the price of R3/day is correct, which was the case ex facie the facts presented to me, the commercials are not in breach of Clauses 9.1 and 9.2 for the reasons given above. They are therefore also not in breach of Clauses 4.4 and 5.5, and clause 8.9 is a definition and cannot be breached.**