

<b>Case Reference</b>	R/E/I/064
<b>Title</b>	Sybase's Failure to Ensure its SMS Advertisement Messages Comply with the Premium Rate Services Code
<b>Case Opened</b>	27 December 2007
<b>Case Closed</b>	14 April 2008
<b>Complainant</b>	IDA initiated enforcement proceeding
<b>Respondent</b>	Sybase365 Pte Ltd (" <b>Sybase</b> ")
<b>Case Summary</b>	<p>Sybase provides multiple subscription-based content download services (the "<b>Download Services</b>") via its shortcode 75151. These Download Services are all provided on the same prices, terms and conditions, and differ only in terms of the content offered to end users.</p> <p>On 27 December 2007, IDA received a complaint from an end user that Sybase's SMS advertisements for its Download Services did not contain any prices, terms and conditions.</p> <p>IDA's subsequent investigations revealed that when an end user who had already subscribed to a particular Download Service "A" via shortcode 75141, sent an SMS message containing the subscription keyword for Download Service "A" to the same shortcode, such end user would receive an SMS message from Sybase (the "<b>Notification Message</b>"). The Notification Message informed the end user that he was already subscribed to Download Service "A" and provided him with instructions on how to unsubscribe from Download Service "A". In addition, the Notification Message also contained <u>instructions on how to subscribe for Download Service "B"</u> as well as a description of Download Service "B", without providing any further information.</p>
<b>IDA's Determination</b>	<p>Section 2.2.1 of the Premium Rate Services ("<b>PRS</b>") Code (Duty relating to advertisements) provides that: "[a] <i>premium rate service provider shall, in disclosing the prices, terms and conditions required under section 2.1, and in relation to all advertisements relating to its premium rate service, comply with the following requirements –</i></p> <p>(a) <i>no disclosure or advertisement shall be presented in a manner that is reasonably likely to confuse or mislead in any way, whether by inaccuracy, ambiguity, exaggeration, omission or otherwise;</i></p> <p>(b) <i>every disclosure and advertisement must state –</i></p> <p>(i) <i>the description of the premium rate service offered;</i></p> <p>(ii) <i>the name of the premium rate service provider as registered with the Accounting and Corporate Regulatory Authority;</i></p>

*and*

*(iii) the local customer service hotline for the premium rate service;*

*(c) every disclosure and advertisement must fully and completely state all prices, terms and conditions of the premium rate service that have a bearing on the charges payable by end users in a manner that is clear, straightforward and easy to understand; and*

*(d) where a disclosure or advertisement relates to or promotes –*

*(i) a subscription-based premium rate service in which the subscription is automatically renewed at the end of every subscription period unless the end user takes action to unsubscribe from the service; or*

*(ii) any other type of subscription-based premium rate service in which the end user is provided content or facilities on an ongoing basis until such time that the end user takes action to unsubscribe from the service,*

*the disclosure or advertisement must –*

*(A) state that the service is subscription-based and the period of the subscription;*

*(B) contain a clear notice that the onus is on end users of the service to unsubscribe from the service if they wish to discontinue their use of the service; and*

*(C) set out clear instructions on how end users can unsubscribe from the service (including the unsubscription keyword command if applicable)".*

The Notification Messages clearly constituted an advertisement for Download Service "B" as it contained an invitation to end users to subscribe for the service by following the instructions provided. However, the Notification Messages failed to meet the requirements in relation to advertisements under Section 2.2.1 of the PRS Code. Specifically, they did not state:

*(a) Sybase's company name and hotline;*

*(b) The prices, terms and conditions of Download Service "B" which have a bearing on the charges payable by end users;*

*(c) Information that Download Service "B" is a subscription based service where end users are charged continuously until they take action to unsubscribe from the service; and*

*(d) Unsubscription instructions for Download Service "B".*

	<p>Therefore IDA found that Sybase was in breach of Section 2.2.1 of the PRS Code. However, in consideration that Sybase had taken prompt steps to stop advertising for its Download Services through the Notification Messages, IDA decided to <b><u>issue a warning</u></b> to Sybase for its contravention on this occasion. IDA also reminded Sybase that more severe enforcement measures would be taken against it should the contravention be repeated in future.</p>
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