

Case Reference	R/E/I/071
Title	Sybase 365's Failure to Ensure Television Advertisement Complies with the Premium Rate Services Code
Case Opened	28 April 2008
Case Closed	4 November 2008
Complainant	IDA initiated enforcement proceeding
Respondent	Sybase 365 Pte Ltd (" Sybase ")
Case Summary	<p>Sybase provides a subscription-based content download service (the "Service") via its shortcode 75141. End users subscribing to the Service will receive three chargeable SMS messages per week at \$3 per SMS message and end users would continue to be charged for the Service until they took action to unsubscribe from the service.</p> <p>In April 2008, IDA discovered that a TV advertisement for the Service failed to state that:</p> <p>(a) the Service was an ongoing subscription service; and</p> <p>(b) end users would continue to be charged for the Service until they took action to unsubscribe from it.</p>
IDA's Determination	<p>Section 2.2.1 (Duty relating to advertisements) of the Premium Rate Services ("PRS") Code provides that: "[a] 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 ...</p> <p>(d) where a disclosure or advertisement relates to or promotes –</p> <p>(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,</p> <p>the disclosure or advertisement must –</p> <p>(A) <u>state that the service is subscription-based and the period of the subscription;</u></p> <p>(B) <u>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</u>".</p> <p>As Sybase had advertised the Service without indicating</p>

that the Service is subscription-based and that end users would continue to be charged until they unsubscribed from it, IDA found Sybase to be in contravention of Sections 2.2.1(d)(ii)(A) and 2.21(d)(ii)(B) of the PRS Code.

When determining the appropriate enforcement action to take against Sybase, IDA took into account the following aggravating factors:

- (a) Sybase had provided IDA with inaccurate information during the course of IDA's investigations, by forwarding a version of the TV advertisement which was compliant with the PRS Code, instead of the non-compliant version which was under investigation;
- (b) This is a repeat contravention by Sybase. On 14 April 2008, Sybase was issued a warning for its contravention of Section 2.2.1 of the PRS Code, including also breaches of Sections 2.2.1(d)(ii)(A) and 2.2.1(d)(ii)(B), for the same Service; and
- (c) IDA had previously already granted Sybase an extension of time, until 14 March 2008, to ensure that advertisements for the Service were compliant with the PRS Code. However, Sybase had failed to ensure that its TV advertisements were fully compliant by the extension deadline.

However, IDA also considered that Sybase had taken immediate action to remove the offending advertisement after being informed of the potential contravention by IDA, and that IDA only received one complaint about this service.

IDA imposed a financial penalty of S\$3,000 on Sybase for its contravention of Sections 2.2.1(d)(i)(A) and 2.2.1(d)(i)(B) of the PRS Code.