



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP):** Clickatell (Pty) Ltd

**Information Provider (IP):** Opera Telecom (Pty) Ltd  
(if applicable)

**Service Type:** Reverse auction service

**Complainant:** iTouch (Pty) Ltd

**Complaint Number:** 0105

**Adjudicator:** Kerron Edmunson

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### Complaint

The complainant submitted a complaint by email on 22 December 2005, regarding an advertisement published in the Sunday Times magazine on 21 December 2005 for a service called Fonepunk.

Specifically the complaint referred to a service called “reverse auction” advertised in the bottom right hand corner which failed to display the pricing for entering into the competition or submitting a bid. In addition, the complainant notes that the cost of the premium rated short code for the auction is R15 which is “in our view, very high for a competition or campaign that encourages consumers to enter more than once. Further R15 per entry to win an arguably small prize is also disproportionate.” Finally the complainant notes that “the pricing, as contained in the terms and conditions is also not clear, possibly a typographical error, nonetheless confusing.”

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### SP Response

The SP noted in its response that the same advertisement was also published in the January edition of FHM, as they had been advised of this by the IP who wished to apologise for the 2 errors but was unable to stop the publication of the second advertisement because of print deadlines.

The service Fonepunk is managed by the SP’s client, the IP. The IP’s response was relied on by the SP and submitted to WASPA.

The IP stated:

- The errors complained of are due to printing errors and because of tight deadlines the usual proof reading process was curtailed
- It was an obvious mistake that no cost of entry was mentioned for the reverse auction [and] we apologise [and] will rectify in future ads with immediate effect

#0105

- We accept the argument that the reverse auction was perhaps priced wrongly and maybe disproportionate to the prize value for the SA market. We priced the competition at similar levels to other countries in which we operate, so we did have a precedent. However the results from the auction show SA consumers did not participate at similar levels and showed considerable resistance to our pricing.
- The terms and conditions paragraph contains a significant typing error and does cause confusion. It should have read "a premium SMS rate of R5 is charged per item ordered, EXCEPT FOR MOBILE GAMES AND AUCTION BIDS WHICH ARE charged at R15 each"
- I assure you there was no malicious intent here just an honest mistake. In mitigation I would say the costs of the content were also clearly stated in other parts of the ad (with the exception of the auction). Nevertheless of course this will be rectified in future advertising.

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### Consideration of the WASPA Code

Obviously section 6.2 of the Code (Pricing of services) is relevant:

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

**Section 6.2.3:** pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

**Section 6.2.4:** pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

**Section 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.

Section 9 (competitions) and particularly section 9.1 is also relevant:

**Section 9.1.1:** any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

**Section 9.1.2:** any promotional material for a competition service must include details of how the competition operates.

**Section 9.1.3:** interactive competition services with an ongoing incremental cost, must at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

**Section 9.1.4:** promotional material must clearly state any information which is likely to affect a decision to participate, including: (a) the closing date; (b) any significant terms and conditions, including any restriction on the number of entries or prizes which may be won....

**Section 9.1.5:** the following additional information must also be made readily available on request, if not contained in the original promotional material: (a) how and when prize winners will be informed (b) the manner in which prizes will be awarded; (c) when the prizes will be awarded....

**Decision**

I note the IP's explanation of the circumstances surrounding the publication of the advertisement and the IP's apology. I also note the IP's wish to treat the advertisement as a printing error. Unfortunately, error or not, the fact of the matter is that the advertisement did not comply with the WASPA Code in several material respects:

- Pricing (section 6.2)
- Competitions (section 9.1)

In making my decision I have not taken the actual price to enter the competition (price of the premium rate SMS) into account. In my view, the market will decide whether a price is too high by either entering or not – as in this case. The IP itself recognises that the price may have been incorrect. However the purpose of the Code is not to regulate price since customers will themselves put pressure on SPs and IPs by their response, but rather to regulate the way in which and the terms on which a service is provided, other than price. Section 1.2 of the Code (Objectives) states that “the primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services.”

The incorrect and inadequate terms and conditions of the service, the omission of pricing information and the description of the competition are relevant to this enquiry, not the price. The advertisement does not explain what a “reverse auction” is, or the terms of entry, or the cost, or the closing date. The advertisement does not display the price and the terms and conditions are misleading.

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**Sanction**

Even taking into account the IP's explanation of the series of errors that took place, I find nonetheless that there have been several breaches of the Code, as set out above, and make the following finding:

- In relation to the breaches of section 6.2, the SP shall pay a fine of R2,500 to WASPA within 5 days of the publication of this adjudication;
- In relation to the breaches of section 9.1, the SP shall pay a fine of R1,500 to WASPA within 5 days of the publication of this adjudication.

The SP and IP, as a member of WASPA, are required to take note of the requirements of the Code in relation to future advertisements so as to comply in every detail, and to structure print deadlines accordingly.