



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Cointel
Information Provider (IP) (if any)	N/A
Service Type	Competitions, Advertising
Source of Complaints	Competitor
Complaint Number	#0152

Complaint

The Complaint, lodged on 30 January 2006, concerned an Egg Mobile content booklet as distributed in the February edition of the DSTV magazine.

The Complainant raised a number of potential breaches of the WASPA Code of Conduct and the WASPA Advertising Guidelines, *viz*:

1. The access cost must be in 11 point size whereas in the booklet they are using approx 7 point size. On many pages you cannot read the price as the colour is light blue on white.
2. The code specifies that a competition must have a closing date. The 2 competitions for a Nokia 7260 and Motorola V3 Razr do not have closing dates (Section 9 of Code of conduct – Competitions).
3. On the bottom of the page where Bratz content is offered, there is a competition for "What number am I" to win an Ipod. There is no price for the number 35115 and no closing date. All advertised services must include the price.

Copies of the allegedly offending pages were provided and have been reviewed by the Adjudicator.

SP Response

The Response received was in two parts. The first consisted in an e-mail sent by the SP directly to a member of the Secretariat and the second of a more formal response to the Complaint. I have, for the purposes of this Adjudication, considered both responses insofar as they contain information not raised in the other.

In its Response the SP indicated that certain of the issues raised in the Complaint resulted from errors introduced at the printing stage. In support of this assertion a letter from the printers was appended to the response. The following excerpt from said letter refers:

"2) "Dull" Pages

During a production run we wash our blankets on the printing press every 100,000 machine copies to limit excessive ink build up on the blankets. After a wash up it does take a few hundred copies before the ink builds up to the correct strength and the print is back to the correct density. On the sample supplied to me, it does seem as if some of these copies were used in the actual job. "

The balance of the printer's letter is not relevant to the Complaint.

With regard to the failure to supply closing dates for the two competitions the SP responded that a reply message was sent to every entrant advising them of the applicable closing date.

Finally, regards the "What number am I" competition, the SP advised that:

"We have teasers all over the book regarding What number am I and have since inception, I don't think we are leading the customer."

Sections of the Code considered

The following sections of Version 3.2 of the WASPA Code of Conduct were considered:

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.

9.1.4. Promotional material must clearly state any information which is likely to affect a decision to participate, including:

- (a) the closing date;

The following sections of Version 1.6 of the WASPA Advertising Rules were considered:

6.2.2 COST OF ACCESS DISPLAY RULES

6.2.2.1 Formatting of Access Cost Text:

- The size of the text showing the cost of access must be in 11 point font size
This is 11 point Arial Font
- The access cost text must be in a non-serif font, preferably 'Arial' font.
- All access cost information must be placed horizontally.

6.2.2.2. Position of Cost Text

For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font, even if there is a uniform cost of access displayed throughout the Content booklet and/or a series of pages in a booklet allocated to one advertiser.

If multiple offers are made in the same advertisement (spread across one or more pages) and the cost differs with each offering, each offering must clearly show the individual costs, again immediately below, or above, or adjacent to the unique access number in a non-serif font.

6.2.3.2. Positioning Of T&C Text

- If the T&C associated with all access numbers in a Content booklet are generally consistent and applicable to all the Content and services within a Content booklet, then it is sufficient that these consistent T&Cs be placed in a reference page or section at the front of the booklet. However where there is any deviation from these general T&Cs, these deviations must be explicitly

indicated immediately close to the access number/s, or Content/services to which this deviation in general T&Cs is applicable.

- The cost and T&C text must not be part of a colour scheme that may obscure easy reading of complete details of the price and T&C.

6.3.5. COMPETITIONS:

Promotional material must clearly state any information which is likely to affect a decision to participate, including:

- the closing date;

Decision

Font size of access cost information

The failure to use a font size of at least 11 point Arial is not addressed in the SP's Response and cannot reasonably, on the evidence available, be attributed to printer error and the Complaint is accordingly upheld.

On review of the material I cannot find that the breach was of such a nature as to significantly disadvantage or mislead consumers considering use of the affected services.

Colour scheme used

On the evidence presented in the printer's letter I accept that the colour scheme in at least a number of the booklets was not produced as intended and I am unable to find that the SP culpably breached section 6.2.3.2 of the Advertising Rules.

The Complaint is not upheld in this respect.

Failure to provide a closing date

Section 6.3.5 of the Advertising Rule is explicit that the rationale for rules requiring upfront provision of information such as the closing date of a competition is to provide

readers with sufficient information to facilitate an informed choice as to whether to participate. Providing this information in a response message is not sufficient.

Again I cannot find anything in the Response indicating that the omission of a closing date in respect of the competition was due to printer error.

This aspect of the Complaint is accordingly upheld in respect of both competitions.

“What number am I” competition – No access cost or closing date

The SP states in the Response, as I understand it, that there are numerous teasers for this competition throughout the book and that the lack of an associated access cost and closing date directly adjacent to certain of the promotional spots for the competition is accordingly not misleading. Unfortunately I have not been provided with the full booklet so as to be able to properly assess the relevance of this assertion.

It is clear, however, that section 6.2.2 of the Advertising Rules requires that the access cost ‘be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font, even if there is a uniform cost of access displayed throughout the Content booklet and/or a series of pages in a booklet allocated to one advertiser’. (my emphasis)

As regards the failure to provide access cost details in the manner required there is again no indication that such failure is attributable to printer error. The failure accordingly constitutes a breach of Section 6.2.2 of the Advertising Rules.

It is furthermore apparent from 6.2.3.2 that, if it is accepted that specification of a closing date for a competition forms part of the terms and conditions associated with that competition, it is theoretically possible, where the closing date in respect of competitions that are carried throughout the booklet is uniform, such closing date could be specified in a reference page or section at the front of the booklet.

It is not, however, necessary to decide this point as there is no reference to a closing date in respect of the competition included on the “terms and conditions” page

(which, incidentally, is to be found towards the back of the booklet as opposed to the front as required).

This aspect of the Complaint is accordingly upheld.

Consolidated finding and sanction

It is found that the SP has committed the following breaches of the Code of Conduct and/or the Advertising Rules:

- Section 6.2.2.1 of the Advertising Rules with regard to the font size used to display access cost information. Although there are numerous examples of this breach throughout the booklet I have treated this as a single breach of the Advertising Rules.
- Section 9.1.4 of the Code read with Section 6.3.5 of the Advertising Rules in respect of the failure to provide a closing date for two competitions promoted in the booklet. I have treated these as two separate breaches of the relevant Sections.
- Section 9.1.1 of the Code read with Section 6.2.2.2 of the Advertising Rules with regard to the failure to provide access cost information as required in respect of the "What number am I" competition;
- Section 9.1.4 of the Code read with Section 6.2.3.2 of the Advertising Rules with regard to the failure to provide a closing date in connection with the "What number am I" competition. This has been treated as a single breach of the relevant sections.

In considering appropriate sanctions to be applied in this matter I have taken into account the following factors:

- The lack of any previous breaches of the relevant provisions on the part of the SP;
- The relative newness of the WASPA Advertising Guidelines given that the booklet would have been prepared for print in early January 2006 in order to be placed in the February edition of the DSTV magazine; and
- The importance of providing information to consumers, particularly as regards pricing.

The following sanctions are imposed in respect of the breaches listed above:

- Breach of Section 6.2.2.1 of the Advertising Rules: The SP is issued with a formal reprimand and fined the sum of R3 500.00, which fine is suspended for a period of twelve (12) months from date of this Report; provided that no further breaches of the Code of Conduct in the specific respects detailed in this paragraph are identified in such twelve (12) month period.
- Breach of Section 9.1.4 of the Code read with Section 6.3.5 of the Advertising Rules (two counts): The SP is fined the sum of R4 500.00 in respect of each count (i.e. a total of R9 000.00 in respect of the two counts), and issued with a formal reprimand.
- Breach of Section 9.1.1 of the Code read with Section 6.2.2.2 of the Advertising Rules: The SP is fined the sum of R3 500.00 and issued with a formal reprimand.
- Breach of Section 9.1.4 of the Code read with Section 6.2.3.2 of the Advertising Rules: The SP is fined the sum of R2 500.00 and issued with a formal reprimand.

Under Section 13.3.13 of the Code the SP is required to comply with the sanctions imposed above within five working days, alternatively it is required to notify the WASPA Secretariat that it wishes to appeal against the decision of the Adjudicator.