

REPORT OF THE ADJUDICATOR

WASPA Member (SP): iTouch

Information Provider (IP):
(if applicable)

Service Type: Advertising

Complainant: Competitor

Complaint Number: 0582

Code version: Code v4.6 and Ad Rules v1.6

Complaint

This complaint relates to a series of advertisements placed in the print media ("Heat" magazine) by the Member, under the brand "35050". The advertisements appear to have taken up one full page of the magazine, which appeared in October 2006. There were a plethora of items advertised on the page, the three complained of being the following:

Complaint #1

At the top left of the page was an advertisement for a competition entitled "The Devil Wears Prada" (the "Prada" advertisement). The title is a reference to a motion picture of the same name which was being widely screened at cinemas at the time the advertisement was printed. Members of the public were enjoined to SMS the word "PRADA" to the shortcode "35050" and stand the chance of winning prizes listed in the advertisement.

Complaint #2

Towards the bottom right of the page was a advertisement entitled "Smooth Operator" (the "Smooth Operator" advertisement) which promoted a service that allowed members of the public to SMS the words "TIP16 FLIRT" to the shortcode "35050" and in return be sent a "flirting tip". The advertisement was enclosed in its own border.

Complaint #3

Just below the Smooth Operator advertisement were three items one below the other entitled "Angel Messages", "Celebrity Style" and "Cool Name" respectively (the "Miscellaneous" advertisements). These were all included in the same border, but to the left and obscuring the left border was a stylised cellular telephone with the words "text fun" and "all services R5/sms" written on it. "R5/sms" was printed in yellow. The top edge of the cellular telephone slightly obscured the bottom left of the Smooth Operator advertisement.

The complaint read as follows:

"(1)(2) 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.

(3) Section 6.3.1.2.1 of the Advertising guidelines (*sic*)

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 in a font size and font type that is easily visible and readable."

and further

"(1) In the competition ad The devil wears Prada, there is no pricing for the competition.

(2) In the smooth Operator ad, there is no pricing for this service.

(3) For the text fun, there are 3 services. The pricing should be directly below or above the number. The pricing is to the side far away from the short code."

The advertisement is reproduced in Annexure "A".

Response

The WASPA Member responded as follows (the complaint text was included in the response):

"Dear Ant,

In response to this complaint:

Detailed_Description_Complaint:

(1) In the competition ad The devil wears Prada, there is no pricing for the competition. - This is correct, in our rush to meet the print deadline, we missed this detail. The pricing for the competition was R5. The lack of pricing was an oversight on our part.

(2) In the smooth Operator ad, there is no pricing for this service. Pricing is clearly displayed under "Text Fun" as "R5/sms" in bold yellow font.

(3) For the text fun, there are 3 services. The pricing should be directly below or above the number. The pricing is to the side far away from the short code. Pricing for the text services is clearly indicated under the header "Text Fun" as "R5/sms for all services" in bold yellow font.

Kind regards,

Toni

Toni Westaway
Portal & CRM
www.35050.co.za

(t) 021 415 2138
 (c) 083 255 6752
 (e) toni@itouch.co.za"

The full response is included to establish the Member's brand as "35050".

Portion of the Code Considered

The complainant cited section 6.2.5 of the WASPA code, which reads as follows:

"6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display."

The complainant also cited section 6.3.1.2.1 of the Advertising Rules, but no such section exists. The only sections incorporating the words quoted in the complaint relate to Outdoor Media (section 7), Internet Web Sites (section 9) and Email Offers (section 10). None of these sections are pertinent to the complaint.

Notwithstanding, section 5.2.2.2 of the Advertising Rules, which relate to print advertisements placed in Magazines, reads as follows:

"5.2.2.2 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 magazine and/or a series of pages 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"

Members are bound by the Advertising Rules by virtue of section 6.1.1 of the Code of Conduct.

Decision

Complaint #1

The Member admits its fault relating to the Prada advertisement, and so no further discussion is required, save to find that that this advertisement breached section 6.2.5 of the WASPA Code of Conduct.

Complaint #2

The Member's contention is that the price of the Smooth Operator advertisement appears in the stylised cellular telephone mentioned above with the title "text fun". This is a rather disingenuous contention, as the submission in respect of complaint number 3 states that "For the text fun, there are 3 services." If the Member considers the Miscellaneous advertisements to be the "text fun" items, it is surely contradictory to state

that the Smooth Operator advertisement's cost text also appears under that heading. The Member itself clearly considers these two items as separate. Moreover, while the stylised cellular telephone does slightly overlap the Smooth Operator advertisement border, this is not sufficient to establish a link between the two items. Consequently the Member's contention that a price was listed in the Smooth Operator advertisement is rejected and the adjudicator finds that this advertisement breached section 6.2.5 of the WASPA Code of Conduct.

The adjudicator moreover takes a rather dim view of the Member's assertion that the "text fun" cost related to the Smooth Operator advertisement - this was clearly a specious statement.

Complaint #3

The final complaint is that relating to the Miscellaneous advertisements (referred to by the Member as "text fun"). The complainant did not cite the correct section of the Advertising Rules, but even if it had done so, it is unlikely that the adjudicator would have upheld this final complaint. The complainant is of the opinion that the cost should be displayed "...directly below or above the number." Section 5.2.2.2 however (the section of the Advertising Rules which would apply here) refers to the cost text being "immediately below, or above, or *adjacent*" (my italics) to the unique access number. In this case the stylised cellular telephone mentioned above contains the cost text, is immediately to the left of all three service offerings, and is clearly associated with them. The adjudicator accordingly finds that the Advertising Rules were not breached in this instance.

Sanction

Both complaints that have been upheld relate to section 6.2.5 of the WASPA Code of Conduct, and an examination of the Member's record with WASPA reveals the following:

- A complaint was upheld against the Member in the adjudicator's report in respect of complaint numbers 0014 and 0015 regarding a breach of section 6.2.5 of the WASPA Code of Conduct.
- Two complaints were upheld against the Member in respect of a breach of section 9.1.1 of the WASPA Code of Conduct (both under complaint number 0056). This section relates to the display of pricing in promotional material for competitions.

The first prior breach has predictably been taken into account in determining the quantum of the fine to be levied on the Member. The second complaint related to a different medium, having been SMSed to the complainant, and also related to a competition and not to a service. Notwithstanding, the Member is clearly not at pains to comply with the Code of Conduct as regards pricing, and this second breach has thus also been taken into account.

Complaint #1

In respect of the breach of section 6.2.5 of the WASPA Code of Conduct, a fine of R 10 000.00 is imposed on the Member.

Complaint #2

In respect of the breach of section 6.2.5 of the WASPA Code of Conduct, a fine of R 10 000.00 is imposed on the Member.

Fines are payable to WASPA within five (5) working days of notification of this sanction.

23/1/2007

Annexure A

you know you gonna get it
35050

freedom



THE DEVIL WEARS PRADA
 COMPETITION
 NOW SHOWING

WIN • WIN • WIN
 Prada Perfume, Prada Sunglasses, R2000 Spitz Shoe Shopping Voucher, The Devil Wears Prada Novel, Bio on Anna Wintour, Double tickets to watch the movie.
 To stand in line to win this fab hamper, simply...
SMS: PRADA TO: 35050
 Competition closes on the 1 November 2006
 Terms & Conditions apply - go to www.35050.co.za for more information.

DOWNLOAD INSTRUCTIONS:

sms sms the code to 35050 **web** WWW.35050.CO.ZA
wap Call these free numbers: Vodacom: 111 MTN: 123 CELL C: 140

ringtones

wap need for poly's **R5 /sms**

TO ORDER: sms the code to 35050. eg: HB1256223 to 35050

TITLE - ARTIST	MONO	POLY	TITLE - ARTIST	MONO	POLY
USA Top 10 Chart			UK Top 10 Chart		
Sexyback - Justin Timberlake	HB1256223	HB1256224	Be Without You - Mary J. Blige	HB1126892	HB1126836
London Bridges - Fergie	HB1256134	HB1256135	Hips Don't Lie - Shakira Ft. Wyclef	HB1212135	HB1212151
Give It Up To Me - Sean Paul	HB1256266	HB1256269	Deja Vu - Beyonce Ft. Jay-Z	HB1256133	HB1256137
Crazy - Gnarls Barkley	HB1205084	HB1205102	Feed Like Dancin' - Scissor Sisters	HB1268292	HB1268312
Pussycat Dolls	HB8841	HB8851	Chelsea Dagger - Fratellis	HB1261220	HB1261222
Promiscuous - Nelly Furtado	HB1240068	HB1240068	Havin' - Chamillionaire	HB1225148	HB1225150
Me And You - Cassie	HB1244546	HB1244547	Chasing Cars - Snow Patrol	HB1250987	HB1250986
Show Stopper - Diddy Kane	HB1261318	HB1261324	Don't Let Me Go - David Guetta	HB1258079	HB1258083
Sexy Love - Ne-Yo	HB8846	HB8850	Maneater - Nelly Furtado	HB24477	HB1243770
Where It's At - Evanescence	HB1261317	HB1261323	Everytime We Touch - Cascada	HB1189481	HB1189493
35050 Rock Chart			35050 Dance Chart		
Life Wasted - Pearl Jam	HB1260200	HB1260206	Rock This Party - Bob Sinclar	HB1256645	HB1256651
Tell Me - Red Hot Chili Peppers	HB1251180	HB1251184	Lost - Roger Sanchez	HB1261156	HB1261166
Rooftops - Lostprophets	HB1246109	HB1246114	Tell Me Why - Supermode	HB1256224	HB1256245
Hands - The Raconteurs	HB1256644	HB1256650	Borderline - Michael Gray	HB1256620	HB1256624
Why Cry - The Panic Channel	HB1260202	HB1260208	Dance - Goleo VI	HB1256621	HB1256625
Original Fire - Audioslave	HB1251179	HB1251183	Why U Wanna - T.I	HB1246238	HB1246264

wallpapers

wap needed **R5 /sms**

TO ORDER: sms the code to 35050. eg: HB1078559 to 35050

HB1078559	HB1078536	HB1235176	HB1244612	HB1255101	
HB1246640	HB663017	HB1245215	HB1179885	HB1179886	HB1255080
HB481399	HB481397	HB595803	HB587049	HB977282	HB1003926

animated wallpapers

wap needed **R5 /sms**

TO ORDER: sms the code to 35050. eg: HB451525 to 35050

HB451525	HB594990	HB632898	HB632902	HB947117	HB632892	HB595585

video clips

wap needed **R5 /sms**

TO ORDER: sms the code to 35050. eg: HB1043304 to 35050

HB1043304	HB1114537	HB1094190	HB1089056	HB650866	HB1089010

name tattoo

wap needed **R5 /sms**

TO ORDER: sms the code to 35050. eg: HB244006 to 35050

HB244006	HB244000	HB244019	HB244056	HB244025	HB244046	HB243998

covertones

sms the code to 35050. eg: HB1250777 to 35050 **R10 /sms**

TITLE - ARTIST	CODE	TITLE - ARTIST	CODE
TOP Covertones			
Ain't No Man - Christina Aguilera	HB1250777	Love Don't Let Me Go - David Guetta	HB1259869
Be Without You - Mary J. Blige	HB1147695	Maneater - Nelly Furtado	HB1246415
Buttons - The Pussycat Dolls	HB1225183	Mas Que Nada - Sergio Mendes	HB1246416
Chasing Cars - Snow Patrol	HB1256282	Me And You - Cassie	HB1237850
Chelsea Dagger - Fratellis	HB1261243	Promiscuous - Nelly Furtado	HB1254716
Crazy - Gnarls Barkley	HB1220179	Ridin' - Chamillionaire Ft. Krizzle Bone	HB1254718
Deja Vu - Beyonce Ft. Jay-Z	HB1257654	Rooftops - Lostprophets	HB1246407
Everytime We Touch - Cascada	HB1255775	Sexy Love - Ne-Yo	HB1259775
Hips Don't Lie - Shakira Ft. Wyclef	HB1235535	Sexyback - Justin Timberlake	HB1261200
Feed Like Dancin' - Scissor Sisters	HB1259852	Sa What - Field Mob Ft. Ciara	HB1261225
In The Morning - Razorlight	HB1250778	Tell Me Baby - Red Hot Chili Peppers	HB1261227
Is It Any Wonder - Keane	HB1225181	No Way To Tell A Lie - James Dean	HB1261199
London Bridges - Fergie	HB1257656	Unfaithful - Rihanna	HB1246412

Cover Tones are high quality cover versions of the original songs that gives u value for money

SMOOTH OPERATOR

Learn the rules of attraction from the jive-talking brother,
LOVER BILL

sms **TIP16 FLIRT** to 35050
 and get a slick flirting tip from Lover Bill



ANGEL MESSAGES: Get some divine wisdom from your very own angel! Just SMS ANGEL16 to 35050 right now!

CELEBRITY STYLE: What's your celebrity style? To find out SMS STYLE16 and YOUR NAME to 35050 to find out! eg: SMS STYLE16 RAY to 35050

COOL NAME: How cool is your name? SMS COOL10 and YOUR NAME to 35050 to find out! eg: SMS COOL16 CLINTON to 35050

35050 FEEDBACK

Who is the hottest celebrity couple? Let us know. SMS **FEEDBACK & UR ANSWER** to 35050. eg: FEEDBACK Justin & Cameron to 35050 **R5/sms**

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