



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch
Information Provider (IP) (if any)	N/A
Service Type	Competition advertising (Jippii)
Source of Complaints	Competitor
Complaint Number	0583
Date received	13 October 2006
Code of Conduct version	4.6

The Complainant alleges a breach of section 9.1.4. of the WASPA Code of Conduct with regard to an advertisement placed by the SP in the edition of People Magazine appearing in the week 10 October 2006. An element of the advertisement featured an SMS-based competition for a new motor vehicle.

In particular it is alleged that:

- There is no closing date for the competition
- There are no terms and conditions specified – for example there are no terms relating to costs which may be incurred by the winner in respect of delivery and use of the prize.

SP Response

Despite numerous reminders and despite an e-mail indication that a response would be forthcoming in respect of this Complaint, no formal response was received by the Secretariat from the SP.

It does appear from the correspondence that this may have been an oversight on the part of the SP and the Adjudicator notes that responses to other contemporaneous complaints were received from the SP.

Sections of the Code considered

The following section of version 4.6 of the WASPA Code of Conduct was considered.

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;
- (c) an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes;
- (d) any significant age, geographic or other eligibility restrictions;
- (e) any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item.

Decision

An examination of the advertisement¹ in question indicates that the competition is being used to promote subscriptions to the SP's Jippii Super Club Subscription Service.

The Complainant is incorrect to state that there is no closing date or other terms specified for the competition. The following terms, relating specifically to the competition, appear just above the general terms and conditions situated at the foot of the page:

“Competition closes 31 December 2006. Winner will be announced 31 January 2007”.

¹ A copy of the advertisement as provided is appended as Annexure A

The closing date is specified. The Complainant does not state what terms and conditions it would like to see – the example given is the absence of “terms relating to costs which may be incurred by the winner in respect of delivery and use of the prize”. But section 9.1.4 (e) refers to “significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item” (my emphasis).

The prize is a motor vehicle. The absence of terms as to delivery costs does not decisively constitute a breach of 9.1.4 (e) given that there may indeed be none – it may be that a licensed vehicle will be delivered to the winner’s door and it is obviously foreseeable that the cost of petrol and the like would be incurred by the winner in using the prize.

The only question remaining is whether the positioning of the competition-specific terms and conditions satisfies the requirements of section 9.1.4 which requires that the relevant promotional material must “clearly state” the information listed in sub-clauses (a) – (e). The specific terms are in red and separated from the general terms and conditions. While this Adjudicator finds the advert confusing and troubling in other respects it cannot be found, on balance, that it does not satisfy the requirements of the Code as alleged by the Complainant.

The Complaint is dismissed.