

REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Integrat
Information Provider (IP): (if applicable)	Jilfun
Service Type:	Competition
Complainant:	Competitor
Complaint Number:	0619
Code version:	Code v4.7 and Ad Rules v1.6

Complaint

The complaint relates to a television advertisement aired on behalf of the IP for a competition where members of the public could SMS the word "win" to a certain shortcode and stand the chance of winning a prize of R 20 000. The person who submitted the most SMSs would win a prize of R 5 000.

The Complainant alleged as follows:

"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 1.3.6 of Ad Guidelines Contact Details. Contact details must be displayed as part of the T&C details

Advertisers must include (*sic*) a helpline number or a working web site address that has direct applicability and linkage to the advertiser."

And further:

"9.1.4. There is no closing date for this competition.

The ad says Terms and conditions apply. There is however no way to see these T&C.

Section 1.3.6 No contact details or information on who is running this competition is provided.

No Helpline number of any contact details is provided."

I was provided with and viewed a reproduction of the advertisement.

Response

The response of the WASPA member read as follows:

"Our client, Jilfun marketing, placed a television advertisement which publicised the competition in question. The advertisement was to run from 4th October 2006 to the 15th of December 2006. The client withdrew the advert on 14th October 2006, after it had run for 10 days. This was after the client realised non-compliance with WASPA's advertising guidelines. The complainant notified WASPA of the breach on the 30th October 2006.

The client has admitted that they are guilty of the breach as stipulated and wishes to state mitigating circumstances regarding the breach. There are number of issues which the client wishes the adjudicator to consider before coming to his/her decision on this issue.

1. The client will be hosting a draw for the prize money, which remains in a trust account. In accordance with provision 1.3.5. of the rules for competitions, a winner will be announced within 28 days of the receipt of the complaint.
2. Kindly note that on the day of final post production of the advert the Managing Director was unavailable and left the editing and check list duties to his assistant. Jilfun marketing is a young company and has been operational for less than six months;
3. No member of the public has suffered any loss as a result of the omissions;
4. Notwithstanding termination the decision to determine a winner increases the odds of winning as the entrants are few or limited;

The client withdrew the advertisement of his own accord, after realising ethical issues may arise. The client had no malicious intent. R300 000 was spent on advertising (E.T.V); still the client was willing to suffer this loss to adhere to WASPA's advertising guidelines. An honest mistake was made and remedial action was taken immediately after noticing the mistake."

Portions of the Code Considered

The sections of the WASPA code cited by the Complainant are reproduced below:

9.1.4 of WASPA Code:

"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."

Section 1.3.6 of Ad Rules:

"1.3.6 CONTACT DETAILS: Provide web site address AND helpline number/shortcode // Contact details must be displayed as part of the T&C details.

- Advertisers must include a helpline number or a working web site address that has direct applicability and linkage to the advertiser.
- If an IVR or SMS system using any premium rated or VAS rates channel provided by or through a licensed mobile operator is used for contacting the advertiser or as a helpline access, then the fact that this access number is Premium Rated or uses VAS rates must be indicated next to the access number.
- ...
- Note the general rule in v3.2 of the WASPA Code Of Conduct that a Premium Rated SMS number used as a contact number for the advertiser, or as a helpline, or for unsubscribing from a service may not exceed R1 in total.
- ..."

Decision

The response of the member is essentially one of admitting all breaches as set out in the complaint on behalf of the IP, and setting out factors in mitigation.

The advert in question was clearly in breach of section 9.1.4 (a) of the WASPA code, and requires no further discussion. Similarly, section 1.3.6 of the Advertising Rules was also breached, in that neither a website address nor one of the following - a helpline number or shortcode or contact details - appeared as part of the T&C details. The member has admitted as much on behalf of the IP and I concur.

The alleged breach of section 9.1.4 (b) of the WASPA code is more problematic: what terms and conditions would affect a consumer's decision to enter this competition that have not been disclosed in the advertisement? A reasonable consumer would clearly expect to be notified of the closing date of the competition, but this is already addressed by 9.1.4 (a). It appears obvious from the context that only one prize of R20 000 was being offered here, and one bonus prize of R5 000 in respect of the most SMSs sent to the IP.

There are no other terms of which I am aware that should have been brought to the consumer's attention; I am thus not convinced that a breach of section 9.1.4 (b) has in fact taken place. To the extent that "general" terms were extant, these would have been available at the website / number provided in terms of the Advertising Rules, if those rules had not been breached.

Sanction

I note that the member has no previous complaints against it related to the provision of competitions.

I have also given consideration to the mitigating factors advanced by the member as follows:

1. The fact that the prize money is held in trust is neither here nor there; the fact that the draw will be made within 28 days of the receipt of the complaint is similarly not a mitigating factor: section 9.3.2 of the code demands that the draw be held within 28 days of the closing date of the competition. As there was no closing date given, one must thus assume that the closing date was the last day on which the advertisement was screened, that is the 14th of October 2006. Consumers have no knowledge of when the complaint was lodged. This oversight is however not dealt with in the code, as compliance with the code in the first place would clarify the appropriate date.
2. The internal workings of the IP are, again, irrelevant to an enquiry into mitigating factors: faults in the IP's internal administration cannot be used as an excuse for prejudice to consumers, though they do go to show a lack of intent to infringe the code.
3. I agree that it is doubtful that any consumer suffered prejudice as a result of the breaches described above; such prejudice would have been an aggravating factor if it had been present. The lack of any intention to breach the code or prejudice consumers is what is important here.
4. The odds of a particular customer winning the competition are irrelevant as a mitigating factor.
5. The advertisement was withdrawn by the IP of its own accord upon the IP establishing that it was in breach of the code, and the IP presumably suffered a loss as a result. This show of good faith is viewed favourably, as is the obvious lack of intention to breach the code or prejudice consumers.

I accordingly impose the following sanctions in respect of the complaint:

1. In respect of the breach of section 9.1.4 (a) of the WASPA code, a fine of R 3 000.00 is imposed on the member, and the member is issued with a formal reprimand.
2. In respect of the breach of section 1.3.6 of the Advertising Rules, a fine of R 3 000.00 is imposed on the member, and the member is issued with a formal reprimand.