



REPORT OF THE ADJUDICATOR

Complaint reference number:	15202
WASPA member(s):	Viamedia (SP)
Membership number(s):	0043
Complainant:	Public
Type of complaint:	Subscription Services & Competition
Date complaint was lodged:	2011-10-12
Date of the alleged offence:	Unknown
Relevant version of the Code:	11.0
Clauses considered:	2.9, 9.1.6, 11.1.1, 11.2.2, 11.2.3, 11.2.5,
Relevant version of the Ad. Rules:	2.3
Clauses considered:	9
Related cases considered:	14403

Complaint

The Complainant in this matter alleged that the SP breached certain provisions in the Code by offering subscription services bundled with competitions, and at the same time, utilising words prohibited by the Code.

This complaint is on the same grounds as the complaint in adjudication 14403.

Service provider's response

The SP, on behalf of the IP submitted a response in essence similar to the response submitted in adjudication 14403 and also requested that the adjudication be reviewed / adjudicated in conjunction with 14403 to avoid possible double jeopardy.

Sections of the Code considered

2.9. A “**competition service**” is any competition or game with prizes or entry mechanism into a draw. Where an auction or a reverse auction has the characteristics of a competition service, it is considered to be a competition service.

9.1.6. Competition services and promotional material must not:

- (a) use words such as ‘win’ or ‘prize’ to describe items intended to be offered to all or a substantial majority of the participants;
- (b) exaggerate the chance of winning a prize;
- (c) suggest that winning a prize is a certainty;
- (d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, it must be clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

11.2.5. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent reply.

The Adjudicator is of the opinion that the decision reached in Adjudication 14403, apart from those aspects applying to the “heads up” argument, shall apply mutatis mutandis to this adjudication and the reader is therefore referred to the decision reached in 14403.

The Complaint is upheld.

Sanctions

The sanctions issued in 14403 refer.