



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buoungiorno South Africa (SP)
Information Provider (IP):	Not applicable
Service Type:	Subscription
Complainant:	Public
Complaint Number:	20299
Code Version:	12.1
Advertising Rules Version:	Not applicable

Complaint

The complainant saw a banner stating “You are today’s iPad2 winner”.

The communication of the complaint is slightly confusing, as there are two screen shots with this communication made in very different ways, and it is not clear to ne which one is in question.

What does appear to have happened is that the complainant believes that the banner led him to the WASP’s landing page, where he communicates that he was informed that he only stood a chance to win the iPad.

Service provider’s response

The service provider denies responsibility for the banner, although it acknowledges that the landing page pictured belongs to it.

It stated, inter alia:

In the case where we are unable to identify the Affiliate following some investigation, which is often the case as most Affiliate networks use so-called “blind networks” where the publishers that connect to the network is not identified to the advertiser, unfortunately on such occasions, we can only issue a strong written warning to all contracted Affiliates to ensure any offending publishers are removed immediately but without a URL that

includes the tracking information or the logs from a completed subscription of a customer it remains difficult to establish exactly who the offending party is.

Sections of the Code considered

9.1.1. The total cost for any entry into a promotional competition shall not exceed R1.50.

9.1.2. 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.

9.1.3. Any promotional material for a competition service must include details of how the competition operates.

9.1.4. Interactive competition services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

9.1.5. 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;

(f) the entry mechanism and workings of the competition;

(g) how a person may obtain the competition rules.

9.1.6. The following additional information must also be made readily available on request, if not contained in the original promotional material:

(a) how and when prize-winners will be informed;

(b) the manner in which the prizes will be awarded;

(c) when the prizes will be awarded;

(d) how prize-winner information may be obtained;

(e) any criteria for judging entries;

(f) any alternative prize that is available;

(g) the details of any intended post-event publicity;

(h) any supplementary rules which may apply;

(i) the identity of the party running the competition and responsible for the prizes.

9.1.7. 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.

9.1.8. Any customer entering an IVR, SMS or MMS competition after the competition has closed must be sent a reply indicating that the competition has already closed. This is in order to prevent a customer from spending unnecessary time on a call or submitting repeated entries for a competition after the closing date or time.

9.1.9. If a competition closes at a specific time of day, then that time must be clearly communicated to all entrants. For live television competitions, an appropriate count down or advanced warning must

be provided.

Decision

This decision is in some ways complex, and in others simple.

What is simple is that the communication “You are today’s iPad2 winner” is clearly in breach of a number of sections of Clause 9; especially as it appears that one is not in fact a winner of an iPad at all. This is not denied, and there is nothing before me that leads me to believe that clicking on the link will win one an iPad.

The banner is therefore in breach of, inter alia, Clause 9.1.7.

What becomes more complex is what responsibility the SP has for this banner. On the complainant’s version alone, I had understood that clicking on the banner led him to the SP’s landing page. If this was the case, the SP would be completely responsible for the banner.

However, the SP seems to be explaining that the banner simply appeared “over” its landing page; placed by an unidentifiable Affiliate. In other words, it is advertising and the content of the landing page was unrelated.

This is supported by the fact that, on the material provided by the complainant, the thing that the landing page offers you a chance to win is an iPhone 5, not an iPad 2, so the offers are unrelated.

This having been said, the SP appears to concede that this must have been placed by an Affiliate. I find the explanation of “blind networks” and unidentified affiliates concerning. In allowing an “Affiliate” to advertise or place banners on its webpages, the SP should exercise some caution and good corporate governance. To have a system in place that allows advertisers to place any content that they wish to, and without being tracable, is surely grossly irresponsible.

Clause 3.1.1 states “Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA”. Clause 3.9.2 says, “Where any information provider that is not a WASPA member conducts any activity governed by the provisions of this Code, and makes use of the facilities of a WASPA member to do so, that member must

ensure that the information provider is made fully aware of all relevant provisions of the Code and the member shall remain responsible and liable for any breach of the Code resulting from the actions or omissions of any such information provider.”

Given this, I am satisfied that it is within my mandate to hold the SP responsible for the breach of Clause 9.1.7.

Sanctions

I impose the following sanction:

For allowing a grossly misleading banner to be placed on its website, without procedures for recourse in place, I fine the SP R50 000,00.

To prevent against further breaches of this nature, I impose a further suspended fine of R100 000,00 which will immediately be triggered by an incident of a similar nature where recourse against the IP is impossible.