



REPORT OF THE ADJUDICATOR

WASPA Member:	MTN Internal WASP Service (IWS) (Member number - IWS 0035)
Service Type:	Competition
Complainant:	WASPA Secretariat
Complaint Number:	26103
Code Version:	13.6

Complaint

The complainant, a member of the WASPA secretariat, lodged a complaint in relation to an sms received by her husband.

In essence, her husband received the following SMS inviting him to enter a competition:

Win R5000 cash! Tell us who is going to win the Absa Premier League match between Chiefs and Pirates taking place today. Chiefs or Pirates? Sms ur answer to [36586](#) and u could be the winner. To opt out reply stop

The complainant submitted that her husband has no prior relationship with Absa or IWS, and that there is a R5 charge to enter, which is in breach of provisions relating to competitions.

WASP response

Despite requests, and despite an emergency panel decision, the WASP has not responded.

Sections of the Code considered

The complainant identified the following clauses:

8.4. For a promotional competition, the **"pricing information"** consists of the total cost to the customer for an entry into that competition plus the words "per entry". Examples of pricing information: "R1.50 per entry", "R1 per entry".

18.2. The cost for a single entry into a promotional competition must not exceed R1.50.

18.4. An offer to participate in a promotional competition must clearly state:

- a. the competition to which the offer relates;
- b. the steps required by a person to participate in the competition;
- c. the full cost to enter the competition;
- d. the basis on which the results of the competition will be determined;
- e. the closing date for the competition;
- f. how the results of the competition will be made known;
- g. how a person can obtain a copy of the competition rules; and
- h. how the successful participant can obtain the prize.

18.5. The requirement to provide the above information may be satisfied either by including the information in the advertisement for the competition, or by presenting it before the participant enters the competition. (Example: An SMS advertising a competition could direct a participant to a web page where the above information is provided as part of the process of participating in the competition.)

Decision

The wording of the complaint suggests that the complainant is raising issues around consent to receipt of marketing material. However, none of the clauses cited are relevant to this issue and I therefore cannot consider same at this time.

In relation to the named clauses, I must consider the material before me. As the WASP has repeatedly failed to respond, this material is essentially the complaint and the thoughts of the emergency panel.

Clause 8.4 read, 'For a promotional competition, the **"pricing information"** consists of the total cost to the customer for an entry into that competition plus the words "per entry". Examples of pricing information: "R1.50 per entry", "R1 per entry".'

The Emergency Panel found the WASP in breach of this clause. While I agree that the pricing information is patently missing, I do not agree that Clause 8.4 is a clause that imposes a positive duty. It is a definition. **While the sms is arguably in breach of another aspect of the Code in this regard, I am not able to find a breach of Clause 8.4.**

Clause 18.2 states that, 'The cost for a single entry into a promotional competition must not exceed R1.50.'

The Emergency Panel found a breach of this clause and I am in agreement. The cost of the sms is *ex facie* R5, which is clearly in excess of the allowed R1,50. There is no contradictory information before me.

I therefore find a breach of Clause 18.2.

Clause 18.4 and 18.5 read together require certain information to be available to the consumer who is invited to enter a competition – whether in the sms or (and more likely) in a web page accessed via the sms.

The Emergency Panel found that the sms did not have the required information.

I agree that the required information is not in the sms. In addition, there is no reference to a webpage in the sms. The reasonable recipient of this message would have no idea where to go to get more information about the competition.

The WASP is therefore in breach of Clauses 18.4 and 18.5, as read together.

The Emergency Panel has also called on me to consider Clause 4.2 of the Code. I have carefully considered the procedural provisions relating to Emergency Panels. Clause 24.68 to 24.78 which regulate this procedure are silent as to whether the Panel can “add” clauses. Given that Clause 24.30 specifically prohibits the adjudicator from adding clauses, I am of the opinion that the Emergency Panel is similarly prohibited. **I do not consider Clause 4.2 to be validly before me.**

Sanctions

The WASP has been found in breach of Clause 18.2 and 18.4 with 18.5.

The WASP has also repeatedly failed to respond to notices of this matter and appears *ex facie* to have simply ignored this matter in its entirety.

The breaches themselves are serious in that they are flagrant breaches of clear provisions of the Code. The seriousness of the breaches is aggravated by the failure to respond to this matter at all.

The sanctions are therefore as follows:

- The campaign in its current format must be suspended;
- The WASP is fined R50 000 payable within 7 days of receipt hereof.
- I impose a further R100 000 fine, suspended, should the WASP be found in breach of any aspect of Clause 18 of the Code (or provisions of the Code relating to Promotional Competitions) in the next 12 months.