



REPORT OF THE ADJUDICATOR

Complaint reference number:	26404
WASPA member(s):	Clickatell (Pty) Ltd
Membership number(s):	0004
Complainant:	Public
Type of complaint:	Promotional Competition
Date complaint was lodged:	2015-05-04
Date of the alleged offence:	2015-05-04
Relevant version of the Code:	13.9
Clauses considered:	18
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	N/A

Complaint

The Complainant in this matter alleged that the SP overstepped the pricing limitations prescribed by section 18.2 of the WASPA code and further alleged that subscribers are being misled through the voting process which is according to the complainant nothing less than an entry into a promotional competition.

Service provider's response

The SP in this matter inter alia provided a response and later again issued a reply by its client, which stated the following:

"In terms of section 18 of the WASPA Code of Conduct the cost of a single entry into a promotional competition must not exceed R1,50.

The mymostbeautiful competition is not a promotional competition it's a voting competition. Entrants of the mymostbeautiful competition are not charged a fee to enter. Entry is free. Public voters are charged sms fees for voting NOT for entering. This complaint alleges that the voting fee is a fee for entry into the randomly selected cash prizes up for grabs. This is not the case, the sms voting fees are for determining the mymostbeautiful winner.

We aren't charging anything for voter entry. Voting is charged. This is supported by the fact that voters can vote multiple times and yet will only have one chance to win any of randomly selected cash prize and not multiple entries one per sms paid. Each voter completely free of charge, is in the running to win a cash prize.

We have consulted with a commercial lawyer and WASPA adjudicator to look into this on our behalf and are of the firm opinion that we have not contravened any rules.

We hope this helps clarify the competition in more detail to the complainant."

Sections of the Code considered

18.1. A "promotional competition" means any competition, game, scheme, arrangement, system, plan or device for distributing prizes as defined in section 36 of the Consumer Protection Act, 2009.

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

18.3. All valid and correct entries must have the same chance of winning.

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 after having reviewed the SP's initial response and subsequent reply via its client is of the opinion that there are two distinct competitions:

- So-called "baby photo" competition (main competition); and
- The "voting" competition (secondary competition)

These will be dealt with separately.

Main competition

The entry process followed cannot be regarded as falling foul of the WASPA Code of Conduct and more in particular insofar it relates to section 18.2.

It is clear that **no** entrance fee is charged. Section 18.2 is very clear and states the following: The cost for a **single entry** into a promotional competition must not exceed R1.50 (Adjudicator's own emphasis).

The allegation that the process of voting should be regarded as being the equivalent of entry into the main competition cannot be upheld by the Adjudicator. Voting is a process that is open to the public, free of choice and not enforced on any entrant into the competition. Although an entrant could assumingly heighten his / her own chances of winning by voting for his / her entry, such act or process cannot, in the opinion of the Adjudicator be equated to the process of entering. These are two distinct processes.

Secondary competition

The fact that a voter also stands the chance to win random cash prizes are linked to the process of voting in the main competition and can be equated to requiring a "customer" to purchase a product (voting in this instance) before they can qualify to enter into the voting / secondary competition (qualifying criteria).

In this matter, if a person votes in the main competition, his / her action of voting qualifies him / her to be automatically entered into the voting / secondary competition and thereby also giving him / her the chance to randomly win a prize. However, the person is automatically entered into the voting / secondary competition, free of charge.

The voter pays for the voting in the main competition and thereby also qualifies to be entered into the voting / secondary competition as a byproduct, standing a chance to win a cash prize.

The Adjudicator is therefore of the opinion that the voter is not levied a fee for entering into the voting / secondary competition and is therefore further of the opinion that such process cannot be regarded as a breach of section 18.2.

The Adjudicator did not find it necessary to elaborate whether the competition at hand resided within the scope of the definition of "promotional competition" as defined under section 18.1 since a breach of 18.2 could not be established.

The Complaint is therefore dismissed.