



Adjudicator's Report

Complaint reference	26653
WASPA member(s)	Strike Media (Proprietary) Limited (0014)
Complainant	WASPA Media Monitor
Type of complaint	Misleading advertising
Date complaint lodged	2015-06-18
Date of alleged offence	2015-06-03
Relevant Code version	13.9
Clauses considered	3.7, 4.2, 5.4, 5.5, 19.3
Related cases considered	No other cases considered

Complaint

The WASPA Monitor lodged this complaint that concerns a social awareness campaign conducted by the City of Cape Town, using the member's services. The campaign itself was intended to create awareness about the plight of the City's homeless in what is typically a cold and wet winter. It appears to be an innovative campaign although the marketing materials used to promote it are the source of this complaint:

****Name****

WASPA Media Monitor

****Email****

monitor@waspa.org.za <mailto:monitor@waspa.org.za>

Identifying the WASPA member(s) involved *WASPA member name (1)*

Strike Media

Information about the breach/complaint

Does the complaint involve a specific mobile number?

No, the complaint isn't specific to a particular mobile number. *Have you identified specific clauses in the WASPA Code of Conduct that you think may have been breached? If so, please list them below*

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

5.4. Members must have honest and fair dealings with their customers.

5.5. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

19.3. Advertising for charitable promotions must make it clear that network fees and administration fees will be deducted from amounts paid. *Please provide a detailed description of the complaint below. The more information you can provide WASPA with here, the more likely it is that we will be able to help you with your complaint*

The attached FACEBOOK promotion for City of Cape Town Shelters does not include the text "Network and Admin fees apply". You will note this has already stimulated some discussions on the FACEBOOK comments from the general public, and false information was supplied.

Whilst we are sensitive to the fact that this a charity, omitting this information cannot be overlooked. Our industry has been in the firing line before due to the FULL amount of donations NOT reaching the charity.

Potentially non-compliant marketing elements are: - Facebook promotion

- Video clip

- Outdoor stencils

Video clip will be sent via email (too big for this format)

*Does your complaint involve a specific print, radio or television advert? If so, please provide more

*information about where and when you saw or heard the advertisement**

FACEBOOK ADVERTISING: 3 June 2015 - current (document attached) Supporting documents

Files

** Strike-media-Cape-Town-Shelters.docx*

<http://www.waspa.org.za/wp-content/uploads/member_app/Strike-media-Cape-Town-Shelters.docx>

Additional information

If you would you like to suggest that the Head of Complaints consider a specific process for handling this complaint, please indicate below:

Formal process

Good faith declaration

** I hereby declare that the information provided in this complaint is to my knowledge true and correct, and that I am submitting this complaint in good faith.*

The campaign was promoted on the City's Facebook Page¹ and on YouTube². The promotional video explain the campaign best³. The campaign was promoted using street stencils that appear when it rains and through the City's social media channels.

The text used in conjunction with the video on YouTube is as follows:

Support organisations that assist the homeless in fighting the harsh Cape Town weather this winter by giving responsibly. SMS "GIVE" to 38802 to donate R10

On Facebook, there is some variation in the text used but it is more or less as follows:

It might feel good giving change to those less fortunate, but not when it keeps them on the streets. SMS "Give" to 38802 to donate R10 for local shelters.

¹ <https://www.facebook.com/CityofCT>

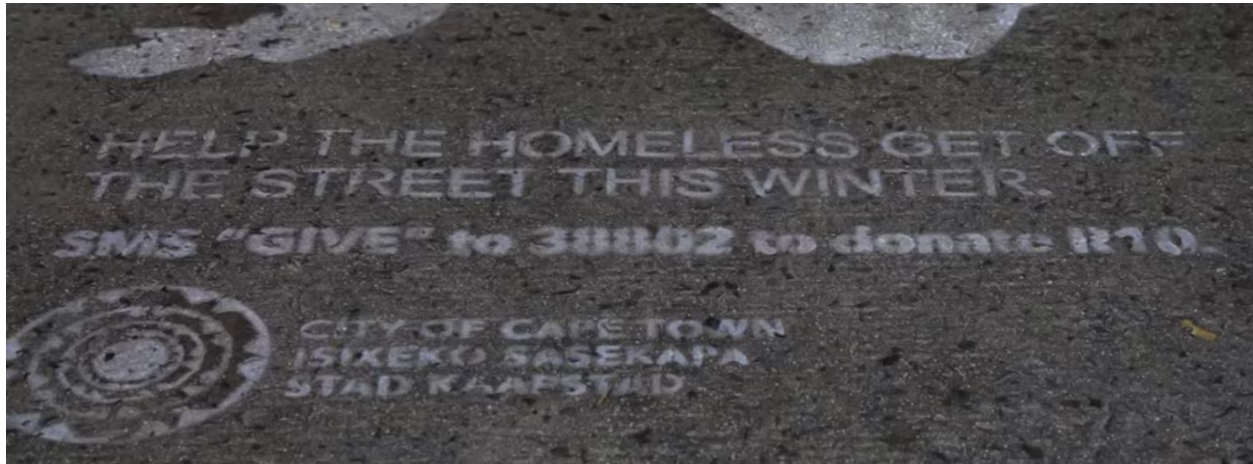
² <https://www.youtube.com/channel/UC6skQQ7uq-fyJj6cQlzOUjA>

³ Facebook:

<https://www.facebook.com/CityofCT/videos/vb.144985128871748/864035593633361/?type=2&th eater>

YouTube: <https://youtu.be/LWVGH1J5OHg>

The text used in the street stencils is as follows:



The City also promotes the use of this SMS donation mechanism on its website and the call to action in a June 2015 campaign⁴ is as follows:

Members of the public are encouraged to contact the City's toll-free number on 0800 872 201 to find out how they can donate to organisations that assist street people. Alternatively, SMS 'Give' to 38802 to donate R10. The funds will be used to supplement the street people programme.

The Monitor's primary concern is that there is no mention that "Network and Admin fees" apply and, instead, the implication of how the calls to action are worded is that all of the money donated goes to the intended charities. The Monitor confirmed with the member that "Network and Admin fees" are, in fact, deducted from the donations.

To aggravate the situation, when asked on Facebook how much of the donations are given to the intended charities, a City representative stated:

The full amount is given to the shelter. Thank you.

Member's response

WASPA received an email response from the member on 29 June 2015 which included an email from its client stating the following:

As per our telephone conversation, the City of Cape Town will include the disclaimer in all their electronic communication (sic) as of July, 1st 2015.

I note that this undertaking doesn't include the street stencils at all. The Monitor followed-up with the

⁴ <https://www.capetown.gov.za/en/Pages/SeventeensheltersgetshareCityswinteraidstreetpeople.aspx>

Secretariat on 3 July with the following feedback:

Just to let you know that as of today, 3 July 2015, this campaign is still being promoted on (1) Facebook and the (2) video clip still has no "network and admin fees apply" text displayed.

Therefore there "commitment" to have it changed by 1 July 2015 has not taken effect as promised.

If you are able to inform the adjudicator of this, please do so.

There was no further input from the member in the case file I received for review.

Sections of the Code considered

This complaint is governed by version 13.9 of the Code. The complaint cited the following clauses of the Code:

Professional conduct

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

...

Provision of information to customers

5.4. Members must have honest and fair dealings with their customers.

5.5. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

...

Provision of information

19.3. Advertising for charitable promotions must make it clear that network fees and administration fees will be deducted from amounts paid.

I have also taken into account sections 3.5 to 3.7 of the Code for the purpose of assessing the member's potential responsibility. These sections state the following:

Customers who are not WASPA members

3.5. Members must ensure that any customer who is not a member of WASPA, but is providing

services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.

3.6. Members must ensure that any customer who is not a member of WASPA, but is providing services covered by this Code of Conduct, provides those services in a manner consistent with the requirements of this Code of Conduct.

3.7. A member is liable for any breaches of this Code of Conduct resulting from services offered by a customer, if that customer is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that customer provides services in a manner consistent with the requirements of this Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches.

Decision

It is patently clear from the street stencils and digital messaging using on Facebook that the campaign does not “make it clear that network fees and administration fees will be deducted from amounts paid”. This is a breach of section 19.3.

There is no evidence before me that the member has failed to conduct itself professionally with the Secretariat or other stakeholders so I don't agree that there has been a breach of section 4.2. I do, however, believe there is merit to the contention that the member has breached sections 5.4 and 5.5 for two reasons:

1. The member failed to ensure that the campaign messaging complied with section 19.3's disclosure requirement; and
2. The member failed in its duty to ensure the City complied with the same disclosure requirement.

The basis of the second reason can be found in sections 3.5 to 3.7.

The text of the street stencils and that was included in the Facebook and YouTube posts failed to “make it clear that network fees and administration fees will be deducted from amounts paid”. To aggravate matters, the City's representatives actively misled members of the public by informing them that “full amount is given to the shelter”.

The Monitor did not provide any evidence that the member was responsible for this statement but the fact that this statement was made indicates that the member did not take adequate steps to make the City aware of and ensure the City complied with the Code's requirements, specifically section 19.3's.

The campaign messaging was deceptive due to an omission of text indicating that “network fees and administration fees will be deducted from amounts paid” and, despite being made aware of this by the

Monitor on more than one occasion (at the very least during the complaint process), the member failed to address this deception.

While the text of the street stencils may have been challenging to correct or supplement, changes to text on Facebook, YouTube elsewhere online are relatively trivial. There is no good reason why steps should not have been taken to address these concerns.

Conclusions

In the circumstances, I find the member in breach of the following sections of the Code –

1. 19.3;
2. 5.5 because the campaign text was deceptive and misleading due to non-compliance with section 19.3, and
3. 5.4 because the effect of non-compliance with section 5.5 in this matter indicates that the member did not have “fair and honest dealings” with consumers who made use of the member’s services to participate in the City’s campaign.

Notwithstanding being made aware of the non-compliance with section 19.3, the member failed to “demonstrate that they have taken reasonable steps to ensure that that customer provides services in a manner consistent with the requirements of this Code of Conduct”. I therefore have little difficulty holding the member responsible for the City’s failure to comply with the Code.

Sanctions

In the circumstances, I impose a fine of R25 000 which is payable on demand by the Secretariat.