



Wireless Application Service Providers' Association

Report of the Appeals Panel

Complaint number	26653
Cited WASPA members	Strike Media (Pty) Ltd (0014).
Notifiable WASPA members	<i>Na</i>
Appeal lodged by	Strike Media (Pty) Ltd
Type of appeal	Written appeal
Scope of appeal	Review of the adjudicator's decision
Applicable version of the Code	13.9
Clauses considered by the panel	3.7, 4.2, 5.4, 5.5, 19.3
Related complaints considered	<i>na</i>
Amended sanctions	Fine overturned
Appeal fee	Appellant forfeits fee

Is this report notable?	<i>Not notable</i>
Summary of notability	<i>na</i>

Initial complaint

The initial complaint centred around a Facebook, You Tube and outdoor advertising campaign for a charity drive that appeared to be operated by the City of Cape Town.

The complaint centred on the fact that the material specified that one could “donate R10” by sending an SMS to the specified number. The material did not state that network and administrative fees would apply.

Adjudicator’s findings

The Adjudicator found a breach of Clause 19.3 and as a consequence to that, of Clauses 5.4 and 5.5. He/she imposed a fine of R25 000.

The relevant reasoning of the Adjudicator will be canvassed below in so far as is relevant to this matter.

Appeal submissions

Essentially, the Appellant put new information before this Panel.

It explained that the campaign was facilitated by an entity called Community Chest for the City of Cape Town. It further clarified that while network and administrative fees may have applied, Community Chest was contractually obliged to cover these costs, and the full R10 per SMS was handed over to the charity in question.

Given this, the Appellant submitted that the decision was incorrect.

Deliberations and findings

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

The wrong that, in the opinion of this Panel, Clause 19 seeks to prevent is a situation where a consumer believes that they are donating one amount to a charity when in fact they are donating a lesser amount. In other words, Clause 19.3 can be read to say, “Advertising for charitable promotions must make it clear that network fees and administration fees will be deducted from amounts paid *if that is the case*”.

In the matter at hand, the full R10 that the consumer expects to give to the charity, goes to the charity. In so far as any fees are applicable, these are borne by the intermediary provider and not by the consumer. While arguably not as clearly crafted as it could have been, the advertising is not misleading.

This Panel therefore finds, based on the new information before it, that there is no breach of Clause 19.3 and subsequently no breach of Clauses 5.4 and 5.5.

Amendment of sanctions

Given the above, the sanction of a fine of R25 000 is set aside.

Appeal fee

In its submissions, the Appellant states, “we have information that should have been provided to you during the complaints procedure”. This Panel concurs. This information should have been provided upfront and should have been put to the Adjudicator. The Panel has no doubt that had the Adjudicator had this information before him/her, the decision would have been different and the Appeal would have been avoided. There is an implicit duty of WASPs to respond completely and to the best of their ability to a complaint. This did not occur in this matter.

Given this, the Appellant forfeits the Appeal Fee.
