

WASPA Member (SP)	Clickatel / Exactmobile
Information Provider (IP)	N/A
Service Type	Advertising Irre
Source of Complaint	WASPA Monitor
Complaint Number	#3071
Code of Conduct Version	5.7
Date of Adjudication	21/01/2008

Complaint

In a SMS Competition launched by Ster Kinekor. (Watch a movie at Ster Kinekor theatres before 15 Jan 08, sms SUMMER and your ticket ref no to 33007. You could be partying onboard our R30 million Trimaran) the Complainant raised the following:

“The sms does not contain any cost of entering, no closing date and also does not point the user to any T&C's.”

SP Response

In the matter at hand, which will be reflected in the response, two SPs are involved. It is therefore deemed appropriate to list these two responses individually:

1st SP Response (Clickatell):

The 1st SP responded by indicating in its first response that they were not the intended SP and that the wrong SMS code was used by Ster Kinekor. They further supplied various pictures displaying other versions of the same intended advertisement, indicating another SMS code, belonging to Exactmobile. In a further more detailed response, they stated the following:

“Through investigation we have found that the SMS campaign that breached the WASPA Code of Conduct section 9.1.4 was sent by WASP ExactMobile on

behalf of their Client Ster Kinekor. Clickatell's involvement in this breach was simply due to a mix-up on Ster Kinekor and ExactMobile's part, whereby Ster Kinekor submitted text for their campaign to ExactMobile containing the incorrect Shortcode (33007).

Ster Kinekor has the Shortcode 33007 with Clickatell which is rarely used and the Shortcode 34503 with ExactMobile. Ster Kinekor makes the statement below "did not go through the normal checks", we therefore assume this is how the error occurred as the Shortcode that should have been used was 34503, a Shortcode advertised as shown below in the attached advertisements and owned by ExactMobile.

Clickatell therefore had no control in this matter, as the messages were not sent over our system, the text contained was not seen by us and we were not aware of the competition campaign that was to take place. Taking all this into consideration, we could not have taken any precaution to have prevented this error.

Below is an email and advertisements regarding the incident from the client who rents both Shortcodes 33007 from Clickatell and 34503 from ExactMobile:

Please see below response from Ster Kinekor's marketing manager, the marketing department and my comments. This is the cumulative response to the complaint.

The situation is...

SK have a dedicated shortcode (33007) which they login to via our platform and have the ability to set up their own keyword campaigns and responses. They are extremely efficient in following the WASPA guidelines on all of their campaigns. They (SK) are kept updated with the WASPA guidelines from ourselves and these are relayed to the appropriate departments within SK. (You will see correspondence below this mail last July from head of marketing @ SK to all on her team and you can see the importance placed on following WASPA guidelines).

The only offending item in question (33007) was in a bulk sms sent to Vitality Club members in the Western Cape (25000 recipients) on 21st december in a follow up to an email they would have received which also mentioned it. (attached). The terms and conditions were not directly referred to (but blanket T&Cs agreed to when signing up as an SK Vitality member are in force) but the validity period for the competition was stated. HOWEVER, the price of the sms was not stated! The rest of the campaign referred to below was done following the rules on one of Exact's '34 numbers.

The sms was a late decision to try and boost an already running campaign (which was already running on a different number following all of the rules) and due to it being during the holiday period did not go through the normal checks @ SK it would have normally which would have caught this. As previously mentioned, SK are very good at adhering to the rules on the many sms campaigns they run to their member base. This was purely an innocent accident and a 'one in a hundred mistake/oversight'.

In this particular case, the offending bulk sms was trafficked by Exact Mobile (who do all of their bulk sms'ing) of which SK are enquiring as to why this issue wasn't flagged by them (Exact) to SK. I know we (Prezence) check any bulk sms we send out on behalf of clients to make sure this kind of thing is avoided.

Unfortunately in this instance there is nothing that SK can do to retract anything and rectify the breach as it was a one off bulk sms however they will of course do anything they possibly can to make amends under WASPA's advice. There is nothing current (since December) that mentions this particular promotion on 33007.

You will see below that going forward, I have arranged that anything pertaining to 33007 will need to be cleared by me first and I will be personally assisting them in maintaining strict adherence to the WASPA guidelines. (They have requested this to make sure that they always do things properly no matter what the timing circumstances).

I trust that you will find this information to your satisfaction and I hope that WASPA will see this for what it was, an honest mistake/oversight from a Company that usually provides many campaigns of this nature that follow the guidelines to the letter.”

2nd SP Response (eXactmobile):

In its response, the 2nd SP stated the following:

“I have taken this complaint past Ster-Kinekor and they confirm that they are addressing this with their marketing team as it should never have gone out based on WASPA regulations. This outbound sms was a campaign for the smaller partner days (Vitality, Edgars) that were linked to the Extreme Summer Promotion.

In the future all their sms related marketing will be fully checked for WASPA compliance and we are confident there are now checks in place to ensure WASPA compliancy.”

Sections of the Code considered

The following sections of version 5.7 of the Code of Conduct were considered:

9.1.4. 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.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him.

After reviewing the response submitted to the Adjudicator from the 1st SP, it seems clear that it was indeed not a mistake on behalf of the 1st SP. It turns out that Ster Kinekor screened the wrong SMS code and therefore the 1st SP had no control in this matter, as the messages were not sent over its system, the text contained was not seen by them and they were not aware of the competition campaign that was to take place. The Adjudicator is therefore satisfied that the 1st SP could not have taken any precaution to have prevented such an error. The complaint against the 1st SP is withdrawn.

The 2nd SP in its response indirectly admitted that a contravention of the Code occurred and in so much accepted the responsibility, although it remains clear that the cause of the breach lied with Ster Kinekor. Having reviewed the defence offered by Ster Kinekor in the 1st SP's response, there seems to be uncertainty on their side why the 2nd SP did not screen the SMS that went out for any breaches of the Code. The Adjudicator thus feel that there was indeed a breach of section 9.1.4 a, b and e and that such a breach was due to an oversight on behalf of the 2nd SP. The Complaint is therefore upheld against the 2nd SP.

In determining an appropriate sanction, the following factors were considered:

- The prior record of the 2nd SP with regard to breaches of section 9.1.4 of the WASPA Code of Conduct;
- The reasons provided for by Ster Kinekor for the breach; and
- The willingness to address these issues in the future.

Although it has been stated that this breach of the Code was done in error and an honest mistake, the Adjudicator is of the opinion that it remains a negligent breach with serious consequences. The full extent thereof is not something that might lightly be attained and the misleading caused to customers involved is open to guess work.

Therefore, the 2nd SP is fined in the amount of R15 000, R12 500 of which is suspended for twelve months from the date of this Adjudication provided that the SP does not breach the provisions of section 9.1.4 of the Code in that period. The amount of R2 500 is to be paid to WASPA within five (5) working days of notification of this sanction.
