



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Digital Mall
Information Provider (IP) (if any)	Nandos
Service Type	Competition service
Source of Complaints	
Complaint Number	3123
Date received	15 January 2008
Code of Conduct version	5.7

Complaint

The complaint is in regard to a Nandos in-store leaflet promoting a Hummer competition during December 07. Competition entrants received a unique number when buying a festive meal which could then be sms'd to the short code number 32141 to stand a chance to win the Hummer.

The complainant alleges that the advertisement did not include the following information:

1. No price for SMS
 2. No contact details
 3. No T&Cs
 4. No closing date for competition
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SP Response

The SP responded on 21 January 2008 by arguing that the pamphlet advertising the Hummer competition did adhere to the WASPA Code of Conduct. They referred to the following wording: "**Terms and Conditions apply see www.nandos.co.za**." and state that the terms and conditions for the competition were made available on the Nandos website.

The promotion ended on 6 January 2008 and as a result, the terms and conditions would not be available for viewing via the previous link on the website now. A copy of the actual Terms and Conditions which were made available to the public during the competition were furnished in the SP's response.

In response to the information alleged to be lacking, the SP refers to each point in the terms and conditions which furnish the information in question as follows:

1. No price for SMS – "**refer point 8**" (*8. SMS will be charged at R1*)
2. No contact details – "**refer to <http://www.nandos.co.za/feedback/index.asp> where contact can be made with Nando's. Nando's has further published Point of Sale Material in all restaurants where feedback can be provided via Customer Care on 0860 113332.**"
3. No T&Cs – "**refer points 1 through 16**" (*see annexure A to this report*)
4. No closing date for competition – "**Refer point 4**" (*4. This promotional competition ends on 06 January 2008. There will be only one winner who will receive the prize of one (1) Pimped up Yellow HUMMER H3*)

Sections of the Code considered

9. Competitions

9.1. Provision of information

9.1.1. Any promotional material for a competition service *must clearly display the full cost to enter the competition* and any cost to the user to obtain the prize.

9.1.2. Any promotional material for a competition service *must include details of how the competition operates*.

9.1.3. Interactive competition services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

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.

9.1.5. The following additional information must also be made readily available on request, *if not contained in the original promotional material*:

- (a) how and when prize-winners will be informed;
- (b) the manner in which the prizes will be awarded;
- (c) when the prizes will be awarded;

- (d) how prize-winner information may be obtained;
- (e) any criteria for judging entries;
- (f) any alternative prize that is available;
- (g) the details of any intended post-event publicity;
- (h) any supplementary rules which may apply;
- (i) the identity of the party running the competition and responsible for the prizes.

9.1.6. Competition services and promotional material must not:

- (a) use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants;
- (b) exaggerate the chance of winning a prize;
- (c) suggest that winning a prize is a certainty;
- (d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

9.3. General provisions

9.3.1. Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.

9.3.2. Prizes must be awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material.

9.3.3. All correct entries must have the same chance of winning.

Advertising rules

Section 8 of the WASPA Advertising Guidelines also deal with leaflets/pamphlets advertising competitions. In particular, section 8.4:

8.4 INFORMATION REQUIRED FOR DISCLOSURE

8.4.1 Where Applicable, The Following Is Mandatory Information That Must Be Displayed In Any Advertisement In Any Media Where An Access Channel Is Advertised:

1. *provide clear indication of total cost*
2. provide clear indication of minimum requirements to fully access service/content
3. indicate if subscription service, and nature thereof -including price and (minimum) frequency
4. indicate web site address if referring to *additional* t&cs via web
5. indicate customer care access number
6. identification of who is providing the advertised service
7. indicate if any access requirements
8. indicate if service is handset-restricted
9. indicate if failed requests or errors charged
10. indicate network / access restrictions (if any)
11. indicate if access to service automatically places user on a distribution list.

indicate method & cost of unsubscribing.

12. indicate closing date and t&cs of competitions

13. indicate if any availability restrictions

14. indicate that all prices include vat

15. indicate if any age restrictions

Decision

The Code and Advertising rules regarding the provision of information for competitions expressly distinguishes between significant terms and conditions and additional terms and conditions. Significant provisions include the total cost, closing date and any other terms and conditions that could affect a potential entrant's decision to enter the competition.

The Code and Rules also expressly provide that significant terms and conditions must be clearly displayed in any promotional material whereas additional terms and conditions can be contained in a separate document or website, provided a link is provided in the promotional item. These provisions are mandatory.

In the current matter, the significant terms and conditions were not contained in the body of the in-store leaflet, including an indication as to the total cost for entering the competition, the closing date and contact details. There was however reference to a webpage containing such terms and conditions.

This is not sufficient and the SP has contravened section 9 of the Code read together section 8 of the Advertising Rules.

Sanction

The disclosure of proper information in advertisements relating to competitions is emphasized in the Code and Advertising Rules. Failure to list such information cannot be condoned by the fact that a link was provided to a webpage containing same.

The SP is fined R10 000.00.