



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Cointel
Information Provider (IP): (if applicable)	Guru Advertising
Service Type:	Competition
Complainant:	WASPA Monitor
Complaint Number:	3318
Code version:	Code v5.7 and Ad Rules v1.6

Complaint

1. In January 208 the WASPA Monitor came across a leaflet at a certain retail outlet advertising a competition. The leaflet is reproduced as annexure "A".
2. The text of the complaint reads as follows:
 - DateBreach : January 2008
 - WaspService : 33440 - Cointel
 - ClausesBreached : Code:
 - 9.1.1
 - 9.1.3
 - 9.1.4
 - DescriptionComplaint : Instore leaflet at retail outlets:
 - No cost of sms to enter the competition
 - No cost communicated that 2 sms's are required to enter the competition
 - No closing date.
3. On enquiry by the Adjudicator the WASPA Monitor added that:
 - 3.1. There was nothing printed on the reverse of the leaflet,
 - 3.2. the text printed up the left margin is illegible to the Monitor even on the original (which is A5 in size) and

- 3.3. There was no other promotional material or information relating to the competition available at the retail outlet in question.
 4. The probability is high that the text up the left margin of the leaflet relates to a reservation of Trademark rights and not to the terms of the competition.
 5. It is noted that while no terms and conditions are listed on the leaflet, the following words appear at the bottom of the leaflet: "For more info go to www.tastelight.co.za"
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Response

6. The initial response from the SP (Coiltel) was rather opaque, as a chain of parties were involved in setting up the competition in question. After further enquiry through the Secretariat, the adjudicator established that the parties involved and their relationships were as follows:
 - 6.1. The SP provided Guru Advertising (also known as "Guru 101" in the correspondence) with the shortcode used to run the competition, as well as a copy of the WASPA Code of Conduct and its own set of guidelines for using its WASP products.
 - 6.2. This was not the first time that Guru Advertising had made use of the SP and it was, in the opinion of the SP at least, aware of the WASPA Code of Conduct.
 - 6.3. Guru Advertising had in its turn been commissioned by "Thrutheline Consulting" to "research and set up the competition line for the competition" (as per Thrutheline Consulting's email of 18 February 2008). Guru Advertising did this.
 - 6.4. Guru Advertising administered the competition line and sent Thrutheline Consulting bi-weekly reports advising them of entry numbers which Thrutheline Consulting passed on to their client.
 - 6.5. Thrutheline Consulting did not deal directly with the SP, and did not know who was fulfilling this role.
 - 6.6. Thrutheline Consulting moreover was on its version not made aware of the WASPA Code of Conduct.
 - 6.7. The concept of the competition was Thrutheline Consulting's. The leaflet and the rules of the competition were, as far as I can gather, drawn up by Thrutheline Consulting or perhaps a third party mandated to do so. The exact details in this regard are unimportant.
 - 6.8. Whether Thrutheline Consulting took its instructions directly from the vendor of the products mentioned in annexure "A" or through an intermediary is similarly not relevant to this adjudication.

7. Returning to the alleged infringements of the Code of Conduct, Thrutheline Consulting gave the following response which was passed up the chain of those involved in the competition, eventually emerging in an email from the SP to the Secretariat dated 18 February 2008. The complaints are addressed *seriatim*.
- 7.1. On the infringement of clause 9.1.1 - No cost given for the SMSes to enter the competition:
- The sms cost was mistakenly not reflected, however the cost of the sms was R1.50 (In line with the lowest cost for VAS)
- 7.2. On the infringement of clause 9.1.3 – Incremental cost not communicated in that two SMSes are required to enter the competition:
- The competition required only 1 sms and not 2 as is indicated.(please see attached rules scanned from the back of a leaflet)
- 7.3. On the infringement of clause 9.1.4 - No closing date listed:
- Both start dates and closing dates were indicated in the rules. (please see attached rules scanned from the back of a leaflet)
8. The terms and conditions referred to in paragraph 7.3 cannot be attached but the terms and conditions which appear on the website at URL www.tastelight.co.za are reproduced as annexure “B”. The two versions are in all material respects the same.

Portion of the Code Considered

9. The relevant clauses in the WASPA Code of Conduct read as follows:
- 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.
- 9.1.3. 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;
- (f) the entry mechanism and workings of the competition.

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

10. Also see section 8 of the WASPS Advertising Rules.

Decision

11. The first matter to be decided is the identity of the IP. While it is trite that the SP is liable for any fine that this adjudicator may impose, it is the usual practice for the SP to recover such fines from the IP by way of a provision in its contract with the IP.
12. It is clear from the facts that even though there was a chain of bodies involved in this competition, it is Guru Advertising which entered into a contract for the provision of WASP services with the SP, and hence it is Guru Advertising which was the IP in this case.
13. This however, does not render irrelevant the evidence of Thrutheline Consulting.

Clause 9.1.1 - No cost given for the SMSes to enter the competition

14. It is clear that the leaflet in question failed to list the cost per entry into the competition, and Thrutheline Consulting admitted as much. Clause 9.1.1 of the Code of Conduct has thus clearly been infringed.

Clause 9.1.3 – Incremental cost not communicated in that two SMSes are required to enter the competition

15. I can see no indication that two SMSes are required to enter the competition. Perhaps the confusion arose from the requirement that a punter should purchase two of the products listed on the leaflet before that punter would be eligible to receive a scratch card. Possession of the scratch card would then allow the punter to send one SMS to enter the competition. I thus find that there has been no infringement of clause 9.1.3 of the Code of Conduct.

Clause 9.1.4 - No closing date listed

16. The complaint itself refers to a closing date that has not been listed. I have visited the website at the URL listed on the leaflet and was able to access the terms and conditions for the competition in question, which appear to be in all relevant respects the same as those provided by Thrutheline Consulting. A closing date appears in the terms and conditions and if it were merely a question of examining whether a closing date was listed *somewhere* the enquiry would stop here.

17. Unfortunately the issue is somewhat broader: an examination of clause 9.1.4 compared with clause 9.1.5 shows that certain terms must be included in the body of the promotional material, while the less important terms listed in clause 9.1.5 can be placed on a website or be otherwise accessible by the punter on request.
18. Hence the closing date, as well as the other terms listed in clause 9.1.4 insofar as they were relevant to this competition, should have appeared on the promotional material itself. See also section 8 of the WASPA Advertising Rules in this regard.
19. It is clearly not sufficient for punters to be referred to a website for such terms and conditions.
20. I have no doubt that the terms and conditions existed at the time that this complaint was made, but the Complainant and Thrutheline Consulting differ on whether the leaflet had these terms and conditions printed on the reverse. The fact that the leaflet refers to a website and does not state something like "See terms and conditions overleaf" militates against Thrutheline Consulting's version.
21. I refer to the recent report in complaint number 3123 which also dealt with a promotional leaflet and where the leaflet referred punters to a website for the terms and conditions. The adjudicator in that complaint reached the same conclusions as I have.
22. The complaint referred only to a missing closing date. The terms and conditions clearly do refer to a closing date, but as they are not accessible as required, I find that there has been an infringement of clause 9.1.4 of the Code of Conduct read with section 8 of the WASPA Advertising Rules.
23. It is quite possible that many or even most of the leaflets advertising the competition did have terms and conditions printed on the reverse side, but the leaflet obtained by the Complainant clearly did not.
24. Moreover, even if the terms and conditions *did* appear on the reverse of the leaflet without being referred to on the front, this would constitute an infringement of clause 9.1.4, though a less serious one.

Liability

25. While it appears that Thrutheline Consulting had no knowledge of the WASPA Code of Conduct, in my view Guru Advertising did have this knowledge. As Guru Advertising had taken on the role of IP, it was bound by its contract with the SP to check that the competition itself was run in accordance with the WASPA Code of Conduct. I can thus see no merit in the potential argument that the SP cannot be held liable under the Code because the infringements in question were the fault of a third party which was not subject to the WASPA Code of Conduct.
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Sanction

26. There was a clear infringement of clause 9.1.1 but because the cost to enter the competition was nominal, little prejudice to consumers could have resulted. For this reason the SP is only fined R2 000 for the infringement of clause 9.1.1 of the Code of Conduct.
27. The SP is fined an amount of R10 000.00 for the infringement of clause 9.1.4 of the Code of Conduct. Payment of R5 000.00 of this amount is suspended for 12 months from the date of delivery of this report to the SP, on condition that the IP does not infringe clause 9.1.4 during this period.

Annexure A



Taste Light and Win

the ultimate holiday for you and 5 friends

Buy any **2** of these brands
to get your **FREE** scratch
card from this store.
SMS your unique code
on the scratch card
to **33440** to stand
a chance to **WIN**.



For more info go to www.tastelight.co.za

Annexure B

COMPETITION RULES

1. This Promotional Competition is organised by Coca-Cola South Africa a division of Coca-Cola Africa (Proprietary) Limited and Amalgamated Beverage Industries and/or their designated agencies (hereinafter referred to as the Organisers).
2. The Promotional Competition is open to residents and citizens of South Africa who are 18 years and older, except employees and immediate family members of any employees of the Organisers, their advertising agencies, advisers, dealers, suppliers and Bottlers of beverages identified by the trademarks owned by or licensed to The Coca-Cola Company, its affiliates and/or associated companies. Participants and winners who are minors must be assisted to the extent necessary by their parent or lawful guardian.
3. By entering the Promotional Competition, all participants and winners agree to be bound by these rules which will be interpreted by the Organisers, whose decision regarding any dispute will be final and binding. The Organisers reserve the right to amend, modify or change these rules at any time during the Promotional Competition.
4. The Promotional Competition shall commence on 1 August 2007 and end on 31 October 2007, both days inclusive.
5. There are 6 prizes to be won, each consisting of a 1 week stay for the winner plus 5 of his/her friends at a Clifton or Bakoven Mansion ("the Holiday"). The said house shall comprise a swimming pool, Jacuzzi, sauna, bar, billiards room and theatre room. The Holiday is only redeemable during the periods of 26 November to 16 December 2007 or 14 January to 3 February 2008. Each prize includes round trip economy class air tickets from Johannesburg to Cape Town for 6 people, pre-arranged activities consisting of, *inter alia*, 2 x house party with a DJ and celebrity entertainment to be determined by the Organisers, 1 x sunrise champagne breakfast on Table Mountain, a helicopter ride, a cruise to Seal Island subject to local weather conditions in Cape Town, sundowners, 1 x tour of the Franschoek wine route, meals prepared by an allocated chef, the services of a chauffer, 1 x manicure, 1 x pedicure, 1 x facial and 1 x massage for each of the 6 people on the designated days and as determined by the Organisers.
6. To stand a chance of winning one of the Holidays, you must purchase any 2 x packs of Coca-Cola light, Coca-Cola light with lemon, Tab, Sprite Zero or Schweppes Lemon Lite or any combination thereof from any of the participating outlets which include Engen (including Engen on the Go, Engen Quick Shops & Zenex), BP Express, Sasol Delight & Exel, Total La'Boutique & Total Bonjour, Caltex Starmart, Shell Select & Shell Ultra City, whereupon you will be handed a scratch card, which must be scratched to reveal a unique number. To enter, you must SMS the words "TASTE LIGHT" and the unique number on the scratch card to 33440.

7. Participants may enter the competition as many times as they wish.
8. Entries which are unclear, illegible or contain errors will be invalid.
9. The draw for the prizes will take place on 8 November 2007. One entry shall be drawn from each of the 6 participating outlets and those persons, whose names appear on the entries drawn will be contacted telephonically by the Organisers. During that telephone call, the person whose name was drawn will be required to verify and confirm the unique number appearing on his/her scratch card. After confirmation has taken place, the person will be declared the winner of the Holiday by the Organisers.
10. If the Organisers are unable to reach any person whose name was drawn within 2 days of drawing his/her name for whatsoever reason, such person will be disqualified and a draw for another name shall take place.
11. Prizes are not transferable nor redeemable for cash and the Organisers are not liable for any defect in the prizes. The Organisers reserve the right to substitute a prize with any other prize of comparable commercial value.
12. The judges' decision shall be final and no correspondence shall be entered into.
13. All participants and winners indemnify the Organisers, their advertising agencies, advisers, nominated agents, suppliers and Bottlers of beverages identified by the trademarks owned by or licensed to The Coca-Cola Company, its affiliates and/or associated companies against any and all claims of any nature whatsoever arising out of and/or from their participation in any way howsoever in this Promotional Competition (including, as a result of any act or omission, whether negligent, grossly negligent or otherwise on the part of the Organisers).
14. All participants and the winners and/or their legal guardians, as the case may be, indemnify the Organisers, their advertising agencies, advisers, nominated agents, suppliers and Bottlers of beverages identified by the trademarks owned by or licensed to The Coca-Cola Company, its affiliates and/or associated companies against any and all claims of any nature whatsoever arising out of and/or from their participation in any way howsoever in this Promotional Competition (including, as a result of any act or omission, whether negligent, grossly negligent or otherwise on the part of the Organisers).
15. The Organisers may require the winners to complete and submit an information disclosure agreement and indemnification to enable the Organisers to ensure compliance with these rules. Should any winner be found not to have complied with these rules, he/she shall be automatically disqualified.
16. The Organisers may require the winners (at no fee) to be identified, photographed and published in printed media, or to appear on radio and television, when accepting their prizes and/or after he/she has received the prize. Should this become necessary, such winner may be required to sign a letter of consent.

17. The Organisers shall have the right to use any photographs of any of the winners in perpetuity.
18. The winners and their chosen friends shall be required to indemnify the Organizers for any damage, loss, injury or death they may suffer as a result of undertaking the Holiday, howsoever caused and of whatever nature.
19. All queries in connection with this competition, should be directed to the Coca-Cola consumer line on 0860 112526.