

REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Marketel
Information Provider (IP):	1time airlines
Service Type:	Promotional Competition
Source of Complaints:	WASPA Monitor
Complaint Number:	3862
Code of Conduct version:	Code v5.7 and Advertising Rules v1.6

Complaint

This complaint relates to two advertisements regarding a promotional competition run by the 1time airlines to mark four years of operation.

The first advertisement invites readers to sms the number “4” to the short code number 36411 in order to stand a chance to win the prizes described in the advert.

A copy of the advert is reproduced below and hereinafter referred to as “advert 1”.



WHAT ARE THE ODDS OF WINNING 4 TICKETS TO ONE OF THE 4 CORNERS OF SA?

About the same as us flying over four million passengers on the fourth of the fourth after four award-winning years in the air. But it's true.

To celebrate, we're giving away 4 sets of 4 free return flights for you and three friends to one of 4 1time destinations in South Africa: Cape Town, Johannesburg, Durban or George. Each prize includes 4 return flights, 4 days car rental, 4 nights accommodation, 4 rounds of golf, 4 pamper sessions, 4 dinners, 4 breakfasts and 4 surprise hampers for 4 lucky winners.

So simply SMS the number 4 to 36411 and you could fly for free. But hurry, the competition closes in 4 weeks, on Friday 2 May 2008.

* sms charged at R1 per sms. One entry per cellphone only. For terms and conditions visit www.1time.co.za

MORE NICE. LESS PRICE. 

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In initial correspondence to the SP on 17 April 2008, the WASPA Monitor alleged a breach by the SP of clause 9.1.4 of the Code of Conduct on the grounds that "... no cost of the entering the competition was included. As the competition is nearing its closing date, the advertiser will need to make some sort of price notification with immediate effect."

SP Response

The SP responded to the WASPA Monitor the following day, on 18 April 2008, with its sincere apologies, advising that "[T]he agency who designed the ad sent it out without approval from our client or ourselves."

The SP assured the Monitor that no further adverts would go out without its approval and advised that "Another bulk email with this attachment will not be sent again. The first and only bulk email sent was on the 4th of April 2008. Please see attached the new advert for this service which is being displayed on www.bidwar.co.za. Should another bulk email be sent, this advert will be used [see below]. The cost per sms has been added to the advert next to the shortcode and complies with the WASPA Advertising standards."


The second advert is reproduced below and hereinafter referred to as "advert 2".

Now you can Pay the price you think you should pay with Our lowest Unique Bid offer

Just sms 1time followed by your bid eg:0.99 or 99cents to 36411 all sms at R5

And if your bid is the Lowest unique bid on the 1st of may

The 4 Tickets are Yours its that simple. This could be your lucky Month.

MORE NICE. LESS PRICE.™ 

From further correspondence exchanged between the WASPA Monitor and the SP the following is apparent:

1. The WASPA Monitor regarded the display of the price per sms in advert 2 as confusing to the reader, and on 24 April 2008 requested the SP to revise the advert and send it back to the WASPA Monitor for final approval.
2. On 12 May 2008 the SP reverted, with reference to advert 2, as follows, "[T]he ad in question has not yet been used. We have instructed the change and will forward the revised ad to you as soon as we receive it. We should receive it early this week."
3. On 14 May 2008, the SP reported that "[A]fter much investigation we can confirm that the leaflet in question will not be used again. Should a similar campaign be run we will ensure that the cost per sms is not mixed with too many other words."
4. The WASPA Monitor referred the matter for adjudication for the reason that no revised version of advert 2 was submitted for its final approval.

Sections of the Code of Conduct considered

As the competition ran in April 2008, version 5.7 of the Code and version 1.6 of the Advertising Rules have been considered. The following sections in particular were examined:

V5.7 of the Code:

6. Advertising and pricing

6.1 WASPA advertising rules

6.1.1 In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published in a separate document.

6.2 Pricing of services

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6.2.2 All advertisements for services must include the full retail price of that service.

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6.2.5 The price for a premium rates service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

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.

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- 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.**

Version 1.6 of the Advertising Rules

9 INTERNET WEB SITES

9.1 SCOPE

This section applies to all advertising placed on internet-based web sites visible to the general public where Access Channels are displayed. This also includes advertisements placed on third-party web sites.

9.2 DISPLAY RULES FOR COST AND T&C INFORMATION

9.2.2 Cost of Access Display

9.2.2.1 Formatting Of Access Cost Text:

- **Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a non-serif font**
- **The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.**
- **The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.**
- **All access cost information must be placed horizontally**

9.2.2.2 Position of Access Cost Text

- **For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font.**
- **If the ad and/or offer is on a third party web site as a graphic or display text, then the display text with pricing and contact info must be displayed immediately below, above or to the side of the access number to show the FULL cost to consumer. This includes, for example, text-based ads placed on Google-based (or similar) advertisements.**
- **The T&C text must be placed close as possible to the unique access number.**

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9.2.9 CONTACT DETAILS: Provide web site address AND helpline number/shortcode // Advertisers must include a helpline number or a working web site address that has direct applicability and linkage to the advertiser

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10 EMAIL OFFERS

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10.2.2.1 Formatting Of Access Cost Text

- **The size of the text showing the cost of access must be 80% of the largest-sized version of the access number displayed on the advertisement.**
- **All access cost information must be placed horizontally.**

10.2.2.2 Formatting & Font Criteria For T&C Text

- **The T&C text must be 70% of the largest-sized version of the access number displayed on the advertisement**

10.2.2.3 Position Of the Access Cost Text

- **Display Text with pricing and contact info must be displayed on immediately below, above or to the side of the access number to show the FULL cost to consumer. The T&C text must be placed close as possible to the unique access number.**

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10.2.8 CONTACT DETAILS: Provide web site address AND helpline number/shortcode // Advertisers must include a helpline number or a working web site address that has direct applicability and linkage to the advertiser

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Decision

Advert 1

A careful inspection of advert 1 reveals that it does display the cost per sms entry however the information appears in a barely legible font at the bottom left corner of the advertisement. The font size of the information pertaining to pricing and the position of the information in the advert infringes the provisions of section 6.2.5 and 9.1.1 of the Code of Conduct as well as sections 10.2.2.1, 10.2.2.2 and 10.2.2.3 of the WASPA Advertising Rules.

The omission of a website address and helpline number or shortcode amounts to a breach of section 10.2.8 of the WASPA Advertising Rules.

Advert 2

Although the SP advised that advert 2 was not used for email marketing purposes, the advert was displayed at www.bidwar.co.za and is therefore subject to the provisions of the Code of Conduct and section 9 of the WASPA Advertising Rules insofar as they pertain to website advertising.

The pricing text used in this information is somewhat confusing and is not presented independently of any other text (the pricing text appears in the same sentence as the description of how the bidding process works). No terms and conditions information is contained in advert 2 nor is there any display of a website address and helpline number or shortcode. Advert 2 therefore breaches section 9.2.2.1, 9.2.2.2 and 9.2.9 of the WASPA Advertising Rules.

The complaint is accordingly upheld.

Sanction

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

- The SP's prompt response and follow-up with the IP;
- The prior record of the SP with regard to the breaches of sections in the Code of Conduct and WASPA Advertising Rules pertaining to advertising and competitions; and
- The action taken/not taken by the SP.

However there were several infringements of the Code of Conduct and the WASPA Advertising Rules by the SP in respect of both adverts published and the SP failed to notice certain breaches in respect of the second advert even after the WASPA Monitor had drawn its specific attention to compliance with the WASPA Code and Advertising Rules.

The SP is reprimanded for non-compliance with the provisions of the WASPA Code and Advertising Rules and specifically for failing to ensure that its customers comply with the provisions of the Code as contemplated by the provisions of section 3.9.1 of the Code.

The SP is directed to identify the advertising agency who produced the advertisements that form the subject matter of this complaint and is directed to deliver a copy of this adjudication report to the most senior executive at such agency and confirm that it has done so within 7 days of the receipt of this report.

The SP is fined R12 000.00 which must be paid over to WASPA within 7 days of receipt of this report. Without in any way derogating from the foregoing sanction, in the event that the fine is not paid timeously, then, in addition to the sanctions outlined above, all services to the IP by WASPA members shall be suspended for a period of 6 months.