

<b>WASPA Member (SP)</b>	Opera Telecom SA
<b>Information Provider (IP)</b>	Seventeen Magazine
<b>Service Type</b>	Irregularities - Competition
<b>Source of Complaint</b>	WASPA Monitor
<b>Complaint Number</b>	#4112 #4148 # 4149
<b>Code of Conduct Version</b>	5.7
<b>Date of Adjudication</b>	29/05/2008

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## **Background**

Due to the similarity of the following complaints and also due to the fact that it is pertaining to the same magazine, SP and the SP's combined response to the various complaints, the Adjudicator found it appropriate to adjudicate these matters simultaneously.

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## **Complaint # 4112**

The Complainant raised a complaint detailing the SP's failure in supplying various aspects surrounding the competition advertised in the April 2008 issue of Seventeen magazine. These included:

1. No cost of entering the competition via sms is communicated to reader;
2. No closing date; and
3. Does not point the user to any T&C's elsewhere in the magazine.

There is no need to provide a copy here of the said advertisement.

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## **Complaint # 4148**

The Complainant raised a complaint detailing the SP's failure in supplying terms and conditions advertised in its competition on a half page advertisement in the May 2008 issue of Seventeen magazine. There is no need to provide a copy here.

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## **Complaint # 4149**

The Complainant raised a complaint detailing the SP's failure in supplying terms and conditions advertised in its competition on a full page advertisement in the May 2008 issue of Seventeen magazine. There is no need to provide a copy here.

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## **SP Response**

The SP responded by admitting such breach but iterated that it was not due to any malice on their side. In its defense it responded as follow:

"I write in defense to the above complaints lodged with the WASPA secretariat, against the advertisements placed in the Seventeen Magazine, May edition. After reviewing the advertisements, in greater detail and evaluating its content inline with the prescribed WASPA guidelines, I consulted with my client, the information provider, who in fact is the Seventeen Magazine brand itself, we concluded and accept that certain aspects of the WASPA code appear to have been breached. However, I assure you that in no way was the breach intentional nor blatant in anyway whatsoever.

The terms and conditions, the competition duration dates and the content pricing for all mobile related content or competitions, was in fact clearly published on Page 92 in the May edition, of Seventeen Magazine, though we do admit to eliminating reference to the said page in error.

The reason for the error was indeed an honest mistake and an oversight on the information provider's part. The individual responsible for graphics layout and presentation, did present the correct folders for approval to the editor, after amendments were made tough, the graphics designer erroneously submitted the unedited folders to the printer. The original amendments included the addition of the TEXT to reference the terms and conditions, pricing and end dates of the competition on Page 92, as well as the pricing, adjacent to the Short Codes on each of the individual adverts.

This was indeed a mistake by a graphics designer still in training and by no means intentional. Notably the information provider has hosted previous mobile competitions and is well aware of WASPA's prescribed guidelines and would in no way intentionally exercise a deliberate breach of the "Code of Conduct"

Going forward, Opera Interactive, together with the information provider endeavor to implement multiple checks on all print campaigns prior to

publication. Included in our processes Opera will circulate regular reminders of the WASPA code of conduct to all clients.

In lieu of the facts provided above, I appeal to you to consider a leniency over the alleged breach. Opera Interactive and the information provider would like to sincerely apologise for any inconvenience caused, due to this error in publication.”

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### **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.
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### **Decision**

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

In this matter the SP has admitted that its client has omitted from displaying the relevant costs, terms and conditions as well as a closing date associated with its various competitions advertised.

It is therefore held that the SP **has breached** section 9.1.4 of the WASPA Code of Conduct. More specific, sections a), b) and e) thereof.

The Complaint against the SP is upheld.

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

- The prior record of the SP with regard to breaches of section 9.1.4 of the WASPA Code of Conduct;
- The facts surrounding the breach as reflected in the SP’s response; and
- The quick response and subsequent follow-up by the SP.

The SP is fined R10 000, 00 for its breach of clause 9.1.4 of the Code of which the whole amount is suspended for a period of six months from date hereof. Should the SP or the IP fail to comply with this clause of the Code during this period, they would be obliged to pay the whole amount without any recourse.

The SP is further ordered to ensure that its clients are informed of the WASPA Code of Conduct, its Advertising Rules and the subsequent consequences it might carry.

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