



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Opera Telecom
Information Provider (IP) (if any)	Thumbtribe Mobile Solutions
Service Type	Competition
Source of Complaints	WASPA Monitor
Complaint Number	4190
Date received	May 2008
Code of Conduct version	5.7

Complaint

A complaint against the SP was submitted via the WASPA Monitor on 29 May 2008 regarding a competition which was carried in the May 2008 edition of the IP's Saltwater Girl Mag. The "*Kair for your hair this winter*" competition did not include the cost of entering the competition or the closing date as required by clause 9.1.4 of the WASPA Code.

The WASPA Monitor has indicated that this is a repeat offence and cannot be resolved informally. The service provider is requested to provide a formal response to the alleged breaches so that this matter can be reviewed by an independent adjudicator.

SP Response

The SP responded to the complaint by admitting and apologizing for the breach of the code. The SP has stated that this is a first offence for the IP and has asked that this be taken into account when considering sanctions.

The IP also provided a response to the complaint. The IP has admitted the breach and stated that the publisher of the magazine replaced staff members who were unaware of their obligations under the Code. The IP states that a closing date for the competition was included on page 79 of the May issue ("The closing date for compos in this issue is Friday, 13th of June.")

The IP undertook to ensure that the cost and closing dates for sms competitions are clearly stated in future competitions.

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;
 - (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:

- (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.

9.1.7. Any customer entering an IVR, SMS or MMS competition after the competition has closed must be sent a reply indicating that the competition has already closed. This is in order to prevent a customer from spending unnecessary time on a call or submitting repeated entries for a competition after the closing date or time.

9.1.8. If a competition closes at a specific time of day, then that time must be clearly communicated to all entrants. For live television competitions, an appropriate count down or advanced warning must be provided.

9.2. Children's competitions

9.2.1. Competition services that are aimed at, or would reasonably be expected to be particularly attractive to children must not offer cash prizes.

9.2.2. Competition services that are aimed at, or would reasonably be expected to be particularly attractive to children must not feature long or complex rules.

9.3. General provisions

9.3.1. Competition services must have a specific closing date, except where there are instant prizewinners.

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.

Decision

The SP and IP has breached clause 9.1.4 of the Code.

Sanction

The SP is ordered to:

1. Provide the WASPA Secretariat with a complete list of all entrants to the competition and the total costs charged to each entrant;
2. Immediately refund the cost of entry to all entrants to the competition and provide written proof to the WASPA Secretariat that it has done so;

The SP is fined the sum of R5 000.00 which is suspended for 3 (three) months. The SP is encouraged to ensure that the IP and its clients are made aware of the requirements of clause 9 of the Code for future competitions.