

REPORT OF THE ADJUDICATOR

WASPA Member (SP): Opera Interactive

Service Type: No price information displayed for entry to competition

Complainant: Anonymous competitor

Complaint Number: 4712

Adjudicator: Kerron
Edmunson
Kerron Edmunson

Code version: 6.1 (1 July 2008 – 14 August 2008) and 6.2 (14 August 2008 – present) read with v1.6 of the Advertising Guidelines

Introduction

I have referred to 2 versions of the Code since the complaint was submitted on 19 August 2008 but the advertisements complained of were in the same format prior to and after this time, and there is no change to the sections which apply in the two versions of the Code. The same version of the Advertising Guidelines (Ad Guidelines) was in force at all times.

Complaint

The complainant has referred to an advertisement for entry to a competition advertised on tv and radio and in several magazines, which does not stipulate how much it costs to enter the competition. Specifically the advertisement states “SMS Shine followed by bar code to 33974”.

SP Response

The SP provided a detailed response in which it indicated that it and its advertising agency had failed to mention the cost of the SMS in the radio advert but that the cost of the SMS was mentioned in the print advert, albeit in the terms and conditions at the bottom of the page and not next to the code as required by the Code (enclosed). The SP denied that the advert was flighted on tv. The SP confirmed that the adverts had been designed in May for a competition to end on 30 October 2008 and could not therefore be withdrawn (and presumably could not be amended).

In addition, the SP claimed that its IP and agency “is a respected media production and mobile company whose approach has always been exemplary in relation to mobile marketing in general and the WASPA Code of Conduct in particular”. Red Cherry (the IP) in turn blamed the agency for the radio adverts’ failure to comply.

The SP offered to pay any fees received from entrants to the competition to a charity of WASPA or the complainant’s choice as a result of the errors.

Consideration of the WASPA Code

The complainant has not referred to a specific provision within the Code but it is clear from the complaint and the SP response that the pricing provisions are relevant. Sections 4 (customer relations), 6 of the Code (advertising and pricing), and 9 (competitions) provide that:

4.1.1: members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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

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

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.

9.1.4: Promotional material must clearly state any information which is likely to affect a decision to participate, including: ...(b) any significant terms and conditions...

The Ad Rules also provide for pricing provisions in relation to all media including tv, print (magazines and newspapers), websites, emails, SMS, BTL and marketing/promotional material, and content booklets.

The Ad Rules contain several sections that are applicable to the current complaint including section 1 which provides that "these rules are an integral part of the Code v3.2 and should be read concurrently with the Code.... Examples are given in each case to be as helpful as possible ...including...the minimum criteria for formatting and information and best practise.... WASPs and their IPs may not seek to circumvent these criteria in any way by attempting to exploit any potential loopholes in the Rules where by doing so they may deprive the consumer of the minimum information required to make informed choices such as the cost of access to content/ services and the terms and conditions associated with such access."

In each section is a heading entitled "Information required for disclosure" which states that "where applicable, the following is mandatory information that must be displayed in any advertisement in any media where an access channel is advertised." Point 1 in each case states: Provide a clear indication of the total cost.

Radio is dealt with in section 3 which contains specific rules for voice-overs in relation to cost. Section 4 deals with rules applying to advertisements in newspapers and classifieds, and section 5 deals with the rules for magazines. Section 6 applies to content booklets, section 8 to below-the-line and marketing and promotional material, and section 9 applies to websites.

Decision

The SP response is not unfortunately, sufficient to overcome the omission and consequent failure to comply with the Code and Ad Rules. The Rules and Code have been quoted fully above so that it is clear that they do in fact deal extensively with the pricing of services and the entry to competitions is no exception.

It is also important to note that ultimately the SP is responsible for the acts and omissions of its service providers and that it should (as suggested in numerous other findings) enter into contracts with those parties that protect it in the case where those parties' acts and omissions cause it to suffer loss.

As the SP has confirmed that the pricing was not mentioned on the radio advertisement, the SP cannot escape the fact that it breached the requirements of the Code and Ad Rules.

The SP also confirmed that it had not properly included the pricing in the print advertisements and it is therefore clear that it is in breach of the requirements in this regard as well. However, the pricing was included in the terms and conditions at the bottom of the page of the advert as indicated by the SP, so I have taken this into account in determining a fine for the breach of various sections of the Code. As an aside, the print size of the terms and conditions seemed to be exceptionally tiny.

WASPA is required to apply the Rules and the Code against all those to whom it applies. Good intentions and remedying breaches does not detract from the fact that they were committed in the first place, but have been taken into account in determining the amount of the fines.

Sanction

The complaint is therefore upheld.

The SP has offered to donate the funds received from customers entering the competition to a charity, but this is not or at least has not been a sanction applied against defaulters to my knowledge, and so payment of the fines set out below should be made to WASPA within 5 days of the date of the publication of this adjudication:

1. breach of sections 4, 6 and 9 of the Code and the Ad Rules: R10,000; and
2. refund of entry fees to subscribers requesting a refund (proof to be provided to WASPA).