

REPORT OF THE ADJUDICATOR

WASPA Member: Opera Interactive

Service Type: No price information displayed for entry to competition

Complaint Number: 4783

Adjudicator: Kerron
Edmunson
Kerron Edmunson

Code and Ad Rules: v6.2 (14 August 2008) read with v1.6 of the Ad Rules

Introduction

The offence complained of was a repeat offence. In my adjudication of complaints 4781 and 4782 substantially the same issues have been considered, since those complaints are against the same SP for the same reason. Because these have all taken place within a short space of time (August and September 2008) the findings are similar, the principles applied in each will be similar, and importantly, because of the abbreviated time period, the decisions and sanctions will take account of the number of complaints and similarity of the repeated breaches.

Complaint

The complaint was made on 3 September 2008. The complainant has referred to an advertisement for entry to a competition advertised in Heat magazine (issue 22, 30 August – 5 September), which does not stipulate how much it costs to send an SMS and so to enter the competition. Specifically the advertisement states “Feel like joining the party where it all started? Well, then you’re at the right place! We’re giving away two VIP tickets to the EA Rock Fest at Maropeng! Just SMS **ROCK** and the answer to the question below to 34979 by 27 August 2008. **QUESTION:** Complete the venue name: Cradle Of _____”.

The complaint also states that “the SMS code website reveals R2-00”. Whilst it is not entirely clear what is meant by this statement, I have assumed that the website clarifies what the advertisement does not, by stipulating the amount which will be charged for the relevant SMS.

SP Response

The SP responded on 11 September 2008. The SP indicated that it and its “client” and the editor of Heat Magazine acknowledge that the price was not mentioned in the advertisement, but that the publication accepted responsibility for the omission which was “an honest mistake”, and that the SP had previously informed Heat of the requirements of the Code.

In addition, the SP then listed 4 additional matters for consideration in the adjudication of the complaint, which I am repeating in full because it is important to understand the reason for the finding within this context:

- “1. we have taken all reasonable steps to ensure our media and brand/ad agency clients are aware of the WASPA rules;
2. Opera is not responsible directly for creating promotional material for third party campaigns;
3. it is not practical for our media clients with tight print deadlines to submit page proofs to us for approval;
4. and that we cannot be responsible for internal communications at our clients (e.g. we have to rely on the persons/division responsible for mobile services to disseminate the WASPA CoC which we have provided).

For this reason we accept the costs were not displayed but we request an urgent meeting with WASPA Mancom to discuss how we can deal with these issues going forward and what appropriate sanctions should be in place.”

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.

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 Rules and Code have been quoted in full 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. Where, as in this case, a penalty is applied against the SP for breach of the Code, the SP's remedy lies then against its service provider or “client”.

As the SP has confirmed that the pricing was not mentioned on the advertisement, the SP cannot and does not seek to escape the fact that it breached the requirements of the Code and Ad Rules. I have noted that only 4 consumers entered the competition.

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, and the nearness in time of each transgression to the other (see complaints 4781 and 4782) tends to compound the “honest mistake” made by the SP in each case.

Sanction

The complaint is therefore upheld. Payment of the fine 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 breach of the Ad Rules: R15,000 of which R5,000 is suspended for a period of 6 months provided that no further similar complaints against this SP are made; and
2. refund of entry fees to subscribers requesting a refund (proof to be provided to WASPA).