



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Cellfind
Information Provider (IP):	Not applicable
Service Type:	Advertising Irregularities
Complainants:	WASPA Monitor
Complaint Number:	4801
Code Version:	6.1
Advertising Rules Version:	1.6

Complaint

The Complainant lodged the following complaint:

“Bidding Ad running in Sunday times, 24 august. It states that a predetermined number of entries are required in order to win the prize. This contravenes Clause 9.3.1. All advertising is to be pulled with immediate effect.”

After reviewing the SP’s initial response the Complainant wrote the following:

“I have reviewed the amendments and they need some more clarity. This is what is on their website:

3.4 All bids have an opening and closing date and time and no bids will be accepted before or after these dates and times

3.5 All items have a **minimum** running time, as advertised with opening and closing dates, determined by the principle, and once reached the bidding will close and winning bidders will be informed and their names placed on the web site with their consent.

Items needing clarity:

1. On their website, the current auctions have an opening date and time of 24 August 2008 at 12pm, and closing time of 21 September 2008.
2. As per 3.5 above, this means that no bids can be received before or after these dates - i.e. at 12:00:01 on 21 September 2008, the auctions close and the lowest unique bid for each auction will be determined (with no extension to the auction being possible).

3. Why have they added '**minimum running time**' - this implies that there could be numerous extensions to the auction duration. Surely it should just state that the auction has a fixed duration between the opening and closing date and time.
4. Does this mean that there is no minimum total number of bids that is required and that the 'auction lots' will be sold regardless of the number of bids received when the closing date has been reached -i.e. should only 2000 bids have been received for the BMW, that it will be awarded to the lowest unique bidder?"

Service provider's response

The SP in its response stated the following:

"After discussion with our client we determined that the incorrect terms and conditions were posted. Attached is the correct version with the updated terms and conditions. Following the objection received with reference to the following two items;

3.3 All items have a minimum subscription (bids), determined by the principle, and once reached the bidding will close.

3.10 Should the minimum subscription not be reached within the time as published, the principles can then re-auction the item or extend the time. All bids received for this item will be transferred as active bids.

This has addressed the following amendments:

3.2 All bids have an opening and closing date and time and no bids will be accepted before or after these dates and times.

3.3 All items have a minimum running time, as advertised with opening and closing dates, determined by the principle, and once reached the bidding will close and winning bidders will be informed and their names placed on the web site with their consent.

The advertising campaign has been amended to cater for the amendments can be viewed at: <http://www.satgen.co.za/index.php/current-auction>. Could you kindly advise if these changes are acceptable or if the Association have any further objection with regard to compliance."

Sections of the Code considered

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

Sections of the Advertising Rules considered

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.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the SP's response and has reviewed the terms and conditions available on its client's site.

The Adjudicator agrees with the submissions made by the Complainant in this matter.

The fact that the SP has accepted that its client's terms and conditions were incorrect is a submission of wrongdoing and a subsequent breach of certain provisions of the Code and Advertising Standards.

The Adjudicator has therefore no alternative but to uphold the Complaint.

Sanctions

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

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's immediate actions in trying to remediate its wrongdoing.

The SP has ensured the immediate amendment of its client's terms and conditions. The Complainant was not satisfied and issued further recommendations. To this however, the SP was not afforded an opportunity to offer a response.

Taken the above into consideration, the SP is given a formal reprimand in assuring that it complies in future with the relevant sections.

Consequently the Adjudicator orders:

- The immediate suspension of the competition service;
- That the entry mechanism for the competition be immediately deactivated;
- That an appropriate notice that the competition has been suspended be placed on the web site;

- That all billing for the service must be suspended. This includes both charges levied for entering the competition and all billing for subscription services that have been initiated as a result of a customer entering the competition; and
- The SP ensure that it and its clients conform to the relevant sections of the Code in any current and future competitions.

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the SP is indeed complying with this.
