



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Micawber
<b>Information Provider (IP)</b> (if any)	mBill
<b>Service Type</b>	Competition / Subscription service
<b>Source of Complaints</b>	WASPA Monitor
<b>Complaint Number</b>	5081
<b>Date received</b>	28 October 2008
<b>Code of Conduct version</b>	6.2

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### Complaint

The WASPA Media Monitor logged a complaint on 28 October 2008 regarding a competition to win a 3G Apple iPhone which was promoted on <http://3giphone.mobefun.com>. The webpage states that the phone can be won in “**only a few steps**”. The entrant is asked to answer the following question:

**“What is the new feature of the 3G iPhone? SMS or GPS”**

The complainant went onto the site via his cellphone and entered the competition by clicking on the correct answer. He then received the following welcome message via SMS:

**FreeMSG: Your PIN is: 3090.  
3giphone.mobefun.com  
10txt20wk  
Txt:STOP to stop.**

**Txt:HELP for help.  
0800980449**

**Sender:  
(no name)  
38699**

**Received:  
10:11:54  
28-10-2008**

The complainant entered the given pin number on the website. The following message appeared on the screen:

***You have successfully entered the 3g iphone trivia quiz. You will receive instructions shortly to your mobile.***

The complainant then received the following messages on his/her mobile:

***Title:  
Enjoy your content!  
Address:  
[http://yourmobile.om/products.php?id= 500724&  
mobile-no- 27793203751](http://yourmobile.om/products.php?id= 500724&mobile-no- 27793203751)***

and

***Welcome to mBill content service! U will receive 2 menus of tones, pics and games each week!  
20/wk. 4 Help  
Txt:HELP. 2 Stop  
Txt:STOP. mBill  
0800980449***

***Sender:  
(no name)  
31633***

***Received:  
10:18:39***

**28-10-2008**

and

**FreeMSG:2 PLAY Mtrivia send ur answer 2 each question, either A,B,C or D.  
Answer all 10 Qs correctly & go in 2 draw 2 win a 3G iPhone! NEXT- Send  
question.**

**Sender:**

**(no name)**

**38699**

**Received:**

**10:18:42**

**28-10-2008**

and

**Welcome to mTRIVIA! Ur chance to playoff 2 win a 3giphone!**

**R10/answer sent.**

**Subs R10/wk. STOP to quit.**

**Mbill:0800980449**

**Sender:**

**(no name)**

**+2782004842831633**

**Received at:**

**10:19:28**

**28-10-2008**

and

**Q#1: What colour is the iPhone?: A-Blue, B-Yellow, C-Pink, D-Black**

**Sender:**

**(no name:**

**+2782003986238699**

**Received:**

**13:00:35**

**23-10-2008**

The complainant then SMS'd the correct answer - "**D – black**" to the given number. The complainant has subsequently received no further message or question from the IP.

The complainant alleges that if the competition runs over a period of time, entrants will pay R20/week plus R10 for the correct answer sms'ed. It is alleged further that the service is either broken, or a prolonged time period passes before question 2 is sent.

The complainant alleges that sections 3.3.1, 3.3.2, 9.1.1, 9.3.1 and 11.1.2 of the WASPA Code have been breached and that in light of the seriousness of the breaches, the emergency panel procedure should be invoked.

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### **SP's response**

The SP has not responded to the complaint. However the IP responded to the complaint on 30 October 2008 by stating that the website in question had been modified to comply with WASPA and ASA guidelines. These changes were apparently made on 24th October 2008.

An emergency panel ruling was then given in terms of which the competition was suspended with effect from 31 October 2008, pending the resolution of the matter via the formal adjudication process.

After being notified of the emergency panel's ruling, the IP sent a further e-mail to WASPA stating that they had taken down the offending site and changed the campaign to a "*Fun Message of the Day*" subscription service, with the chance of winning an iPhone if the user stayed subscribed to the service until its end date.

## **Sections of the Code considered**

### **3.3. Service levels**

*3.3.1. Members will not offer or promise services that they are unable to provide.*

*3.3.2. Services must not be unreasonably prolonged or delayed.*

## **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.*

*9.1.4. 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.*

### **9.3. General provisions**

*9.3.1. Competition services must have a specific closing date, except where there are instant prize-winners. 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.*

## **11. Subscription services**

### **11.1. Manner of subscription**

*11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.*

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## **Decision**

### *Background*

This complaint was referred to an emergency panel. A ruling was handed down in terms of which the panel held that there were definite breaches of clause 9.3.1 of the Code of Conduct and *prima facie* evidence of breaches of clauses 9.1.1, 11.1.1 and 11.1.2.

Consequently, the emergency panel ordered:

1. The immediate suspension of the competition service pending the outcome of the formal complaints procedure.
2. That the entry mechanism for the competition be immediately deactivated.
3. That an appropriate notice that the competition has been suspended be placed on the web site.

4. 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.
5. That an SMS notice must be issued to all competition entrants (at the service provider's cost). This notification must offer customers a chance to request a refund or keep their entry in the competition pending the outcome of the formal complaints procedure.

*Breach of section 9.1*

I have been given 3 different versions of the same webpage. One was captured before the emergency panel hearing, one at the commencement of the hearing and the other during the hearing when it was discovered that the panellists were viewing different cached versions of the same webpage.

There are blatant discrepancies between the various versions of the page insofar as the rules of the competition and the requirements for winning the promoted prize. Only 1 of the cached pages corresponds with the text message sent to the complainant on 28 October 2008:

***FreeMSG:2 PLAY Mtrivia send ur answer 2 each question, either A,B,C or D. Answer all 10 Qs correctly & go in 2 draw 2 win a 3G iPhone! NEXT- Send question.***

***Sender:***

***(no name)***

***38699***

***Received:***

***10:18:42***

***28-10-2008***

This page states that 10 trivia questions must be answered before an entry qualifies further for the prize.

However, in the other cached pages, entrants are advised that they will be sent an SMS on the closing of the campaign, to which the most entertaining and/or amusing response in less than 160 words will win the prize.

The complainant received the first of the 10 trivia questions but then subsequently received nothing further.

In two of the versions of the web page, reference is made to "Min cost R120". However, I am not satisfied that the reference to a minimum cost of R120 clearly refers to the competition rather than the subscription service itself. I am therefore not satisfied that the IP has complied with the requirements of section 9.1.1 and is therefore in breach of this section.

The above discrepancies and inconsistencies, as well as the IP's failure to provide the complainant with any further questions or notifications regarding the status of his entry to the competition are blatant contraventions of sections 9.1.1, 9.1.2 and 9.1.4 as well as 3.1.1 and 3.1.2.

#### *Breach of section 9.3.1*

Once again I have examined the various versions of the web page containing the promotion. I am not satisfied that a closing date for the competition is given. The competition does not comply with section 9.3.1.

#### *Breach of section 11.1.2*

The bundling of the competition and the IP's mTrivia subscription service in the promotion is misleading and contrary to the spirit of the WASPA Code of Conduct. While a discerning visitor who investigates the small print may realise that they may only qualify to win the prize if they join the IP's subscription service, the reasonable person who visits the site will do so with the intention of entering the competition and not signing up for the subscription service.



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It is only once the entrant has entered the competition (and has been signed up for the subscription service) that they receive a confirmatory message advising them that they have subscribed to a content subscription service.

I am of the view that the IP's promotion has been deliberately structured to capture unsuspecting subscribers. There is no doubt that any requests to join the service cannot be seen as independent transactions.

The promotion and related subscription service does not comply with section 11.1.2 of the Code.

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### **Sanction**

The aforesaid breaches of the Code must be viewed in a serious light. The online promotion is intentionally aimed at misleading visitors attracted by the prospect of winning the *en vogue* Apple iPhone.

The relevant webpage appears to have been modified a number of times in various ways in an attempt to avoid the challenge posed by this complaint. The IP's failed attempts in this regard are disingenuous to say the least.

What is more disturbing is that the complainant has validly entered the competition but has received only 1 of the necessary 10 questions. In the interim, he continues to be billed the relevant subscription fee of R20/week. The complainant's assumption that the competition service is "faulty" offers the IP a welcome alternative to the more damaging assumption that they never intended awarding the promoted prize to anyone.

In light of these aggravated circumstances, the following sanctions are to be applied:

1. The competition must be stopped and removed from all websites promoting it.
2. The entry mechanism for the competition must be immediately deactivated in the event that entries are made from archived web pages. No further entries must be permitted.

3. An appropriate notice that the competition has been stopped must be placed on all relevant websites which promoted the competition.
4. All billing for the competition and the subscription service to which it is linked must be stopped. 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.
5. An SMS notice must be issued to all competition entrants (at the service provider's cost) offering customers the opportunity to request a refund.
6. The IP must refund all monies received from entrants to the iPhone competition from date of inception of the promotion until the date of this ruling in South African rands only.
7. The SP is ordered to terminate the competition and subscription services offered by the IP as aforesaid.

These sanctions are not to be suspended if an appeal is lodged.