



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	iTouch
Information Provider (IP): (if applicable)	Samsung
Service Type:	Competition
Complainant:	WASPA Monitor
Complaint Number:	5300
Code version:	Code v6.2 and Ad Rules v2.3
Date of Report:	7 May 2009

Complaint

1. On the 28th of November 2008 the WASPA Monitor lodged a complaint against the Member in the following terms:

Date of breach: November 2008

WASP or service: itouch - 37762

Clauses breached: 9.1.1

Description of complaint:

The attached ad ran in the 27 November You Magazine.

Samsung are giving away a holiday in Miami. Readers have to SMS their IMEI numbers to 37762.

No cost of entering the competition.

Remedial options:

If this advert or marketing message is altered immediately and a copy of the amended advert provided to the WASPA Secretariat, it is likely that this complaint can be resolved informally. This remedy might prevent fines from being imposed for breaches of the WASPA Code.

The WASPA Monitor requests that the service provider provide a clear plan of action for dealing with this advert, for example:

- This advert has been withdrawn and will not be flighted from [date].
- The following changes have been made to the advert: ...
- The revised advert is scheduled to appear again on [date].

2. I attach a copy of the advertisement provided by the WASPA Monitor as Annexure "A".
 3. The Member was notified of the complaint by the WASPA Secretariat on the 28th of November. Despite two reminders sent to the Member during December 2009, no response was ever received to the complaint.
 4. On the 23rd of December, the WAPA Monitor noticed that the advertisement for the competition has included in the People magazine of that month in the same form as complained of, and requested the WASPA Secretariat to escalate the complaint to the formal complaints procedure.
 5. Little background information is available due to the non-participation of the Member in this process. I can however deduce (hopefully correctly) that the advertisement in question is in respect of a competition being run by Samsung, with the Member providing the technical means to receive and record entries via SMS. The Member is not mentioned in the advertisement itself, and presumably the WASPA Monitor identified it by means of the short code listed on the advertisement. In the absence of any evidence to the contrary I must thus consider the Member to be the SP and Samsung to be the IP.
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Portion of the Code Considered

6. The following portions of the Code of Conduct are relevant:

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.

...

9.1.4. 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.
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Decision

7. The Monitor alleges that no pricing information appears in the advertisement, but the Member (had it bothered to respond to the complaint) would probably have retorted that there was *no* cost involved in entering the competition – the entrant merely had to purchase a Samsung cellular telephone and enter the IMEI number to stand a chance of winning. Essentially then the cost of entering the competition would be the purchase of a Samsung cellular telephone.
 8. Should the Member take this view it would be mistaken. Any entry to a competition using SMS or MMS incurs a charge, if only a network bearer charge. In this case the Member may very well have charged the minimum possible, but was nonetheless obliged in terms of clause 9.1.1 of the WASPA Code of Conduct to indicate that the entrant would pay a charge of some kind, even if merely the bearer charge. I thus find that the Member has infringed clause 9.1.1 of the Code of Conduct.
 9. I note further that the advertisement does not include certain information that would be likely to affect an entrant's decision to participate. In this case, where the prize involves international flights, there is no information on liability for airport tax, transfers and visa fees, which would probably be borne by the competition winner. As this information is required by clause 9.1.4 (e) of the Code of Conduct, I find that the Member has infringed this clause too.
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Sanction

10. I do not know what the cost of entering this competition was. I assume from the facts that it was minimal, and so I can further assume, in the absence of evidence to the contrary, that the prejudice to consumers resulting from the failure to advertise the cost of entry to this competition was also minimal. I accordingly impose the following sanction on the Member for the infringement of clause 9.1.1 of the Code of Conduct: a fine of R5 000 payable to the WASPA Secretariat within 5 business days of the Member being notified of this decision.
11. In respect of the infringement of clause 9.1.4 (e) of the Code of Conduct, I impose a fine of R5 000 on the Member, wholly suspended for a period of 6 months from the date of the Member being notified of this decision.
12. I further rule that if any advertisement for this competition with the faults that I have identified in it is still appearing in any publication, it should be removed from publication forthwith.

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Annexure A



SAMSUNG

YOUR PASSPORT TO SUMMER!

Or you could treat yourself to a stylish Samsung Handset & the chance to **WIN** a Summer Holiday in Miami!

It's your call.

To enter, SMS your name & newly purchased Handset's IMEI Number to 37762.

Competition closes 31st January 2009.
Terms & Conditions apply.
See in store for details.

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