

REPORT OF THE ADJUDICATOR

WASPA Member (SP): Endemol

Service Type: No price information displayed for entry to competition

Complainant: Media Monitor

Complaint Number: 5318

Adjudicator: Kerron
Edmunson Kerron Edmunson

Code version: v6.2 read with v2.3 of the Advertising Guidelines

Introduction

This is a complaint regarding the omission of pricing information in relation to entry to a competition, the advertisements for which were published in a magazine. This, like other complaints submitted to WASPA, indicates clearly 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. WASPA can have jurisdiction over its members only.

Complaint

In no less than 10 advertisements published in the Cleo magazine, December 2008, readers are invited to enter competitions by sending a keyword to 35915. The text of the advertisement reads, variously, "Simply SMS "SNACK" and your favourite snack e.g. "SNACK, BILTONG", your name and your postal address to 35915." In this particular advertisement, the paragraph also contains the words "For more information visit www.perdeberg.co.za." This sentence is not however, included in any of the other advertisements.

The Media Monitor has apparently alerted WASPA to similar transgressions by this SP in this magazine, on previous occasions.

SP Response

The SP responded briefly to advise that its client, Caxton Publishers, had been provided with a copy of the advertising rules and reminded about the WASPA requirements, and that it seemed that the magazines had not checked the requirements prior to going to print. The SP stated that the omission had not been deliberate, but due to error. The omission was therefore not denied.

Consideration of the WASPA Code

Sections 4 (customer relations), 6 (advertising and pricing), and 9 (competitions) of the **Code of Conduct** 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, 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 WASPA Code of Conduct and should be read concurrently with the Code.... Examples of best practise are also included.... 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.”

Section 5 deals with the rules for magazines and requires that “for each unique access number the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number...” Later in that section, specifically in section 5.3, the Rules state that “promotional material must clearly state any information which is likely to affect a decision to participate...”.

Decision

The Rules and Code deal extensively with the pricing of services, particularly in relation to competitions.

It is clear that the SP is responsible for the acts and omissions of its service providers including its advertising clients, and we have suggested in other findings that an SP should enter into contracts with those parties that protect it in the event that those parties' acts and omissions cause it to suffer loss where it delegates responsibility for compliance to those parties.

The SP has admitted that the competitions did not comply, and therefore must accept that it was in breach of the requirements of the Code and Ad Rules in relation to pricing and competition, regardless of having delegated responsibility for compliance to its publisher. The wording of the one advertisement which refers to a website is not adequate in relation to the pricing display requirements.

I have taken into account the number of transgressions within the same publication.

Sanction

The complaint is upheld.

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. In relation to the breach of sections 4, 6 and 9 of the Code, and the Ad Rules: R20,000; and
2. Where requested by any customer: a refund of entry fees to be made (and where refunds have in fact been requested, proof of refunds to be provided to WASPA).