

REPORT OF THE APPEALS PANEL

Date:	18 January 2011
Appellants:	Oxygen Interactive Marketing (Pty) Ltd (IP) and Opera Telecom (Pty) Ltd (SP)
Complaint Number:	6868
Code version:	7.0
Ad Rules:	2.3

1 INTRODUCTION TO THIS APPEAL

- 1.1 This report takes into consideration the similarity of the facts of this complaint to those of complaint numbers 6858 and 6879, and that the adjudicator and emergency panel considered this matter together with the other 2 complaints.
- 1.2 However the IP in this matter differs from the IP in the other 2 matters, and the arguments raised in the appeal by the IP are also different. Nonetheless our findings on the appeal against the adjudications of 6858 and 6879 are relevant and have been taken into account in deciding this appeal.
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2 THE HISTORY OF THE MATTER

- 2.1 *The service complained of*
- 2.1.1 A complaint was lodged by the Media Monitor on 23 June 2009 regarding scratch cards which were included in various magazines which the Monitor described in the following way: “*The attached leaflet inserted into a newspaper, is making use of a competition in order to sell a subscription service. If I have won by getting 3 stars, then surely I should not need to pay R14/2 days to find out what I have won. This Promotion is running on the same principle as quizzes and competitions that we have seen on the internet – it’s simply making use of newspapers as a medium*”.
- 2.1.2 As a result, the Monitor noted a breach of clause 11.1.2 of the Code but referred to v7.4. At this point we note the following:
- 2.1.2.1 As we mention in the introduction to appeal numbers 6858 and 6879, the correct version at the time was in fact v7.0 and this is the version we will apply. To the extent that the application of the incorrect version of the Code has influenced any aspect of the matter, we have taken this into account in

our findings. For the purposes of this report and our finding, the panel agrees that v7.4 should not have been applied retrospectively, nor even allowed to influence the interpretation of V7.

2.1.2.2 We have not included images of the scratch card or the terms with this report. The panel has examined the documents and will describe our findings in full below.

2.1.2.3 Both parties submitted various responses to the complaint and the adjudicator attached the IP's response of 15 July 2009 to the report as Annexure B, in which the IP states, "...it is only necessary for Opera Interactive and Oxygen Marketing to show that the request from a subscriber to join a subscription service is not a request for a specific content item, but is in fact an independent transaction with the specific intention of subscribing to a service. As such, Opera Interactive and Oxygen Marketing are not required to demonstrate that a request from a subscriber to join a subscription service is not an entry into a competition (as this is based on a subsequent version of the WASPA Code). Nevertheless, Oxygen Marketing would like it noted that the request to join the subscription service is, in any event, not an entry into a competition. The primary reason for this is that the awards are pre-allocated when the scratch cards are printed. Thus the request from the user will be primarily to join a mobile content club, for which there is also a promotional campaign through marketing material which, as a secondary motive, allocates awards to new subscribers."

2.1.2.4 The IP made a detailed submission on other matters in the response of 15 July 2009, setting out how its cards complied with various aspects of the Code and Ad Rules in setting out terms and conditions of subscription and pricing. The IP denies acting in any manner with the intention to deceive or mislead and indicates by reference to the cards how it has openly set out the manner in which the subscription works and how much it costs. They refer to the cards as a "*legitimate marketing tool*".

2.1.2.5 Finally this response attempts to distinguish the cards and their intention from a competition by stating that they did not use the words "win" or "prize" but only the word "awarded" which has a different meaning or connotation, specifically the IP states: "*In addition, the scratch card has almost consistently refrained from using the words "win" or "prize". The wording on the front of the scratch card provides that a user, upon joining, will stand a chance to "be awarded" (underlined emphasis added) a variety of benefits. Furthermore the scratch card uses the wording: "Congratulations. You have 3 matching symbols & will be awarded" and "To subscribe and find out what your award is" (underlined emphasis added). It is thus clear that this is an award or benefit, of a*

varying nature, awarded upon joining which will be given to all participants who submit valid codes. On the reverse side of the scratch card, the wording is also clear that the user will be allocated a "Gift Claim Code". There is only one instance where the reverse side of the scratch card states that one can "claim your prize". It is acknowledged that such wording should not be used, but Oxygen Marketing respectfully submits that in the circumstances it is clear that this is an award or benefit upon joining the Star Promotions Club Subscription Services, and is not a random prize."

2.1.3 The SP apparently replied to the complaint on 29 June 2009 addressing the allegation of a breach of section 11.1.2 of the Code, advising WASPA that v7.0 of the Code was applicable. The SP contended that it was not notified of the emergency panel hearing nor was it requested to make further representations prior to the hearing.

2.1.4 The SP appears to be confused about the documents annexed to the adjudicator's report as Annexure B but the annexure is in fact the IP's appeal.

2.1.5 An emergency panel hearing was nonetheless scheduled within a week of the complaint having been made and after receiving the response from the parties, in terms of section 13.7 of the Code.

2.2 *The emergency panel hearing*

2.2.1 The emergency panel considered both v7.0 and v7.4 of the Code, and v2.3 of the Advertising Rules (Rules). This panel agreed that it is correct to apply only v7.0 of the Code.

2.2.2 The emergency panel's findings are summarised here:

2.2.2.1 There was prima facie evidence of a breach of sections 11.1.1 and 11.1.2 of the Code;

2.2.2.2 The breaches of section 11 were of such a nature as to imply prima facie breaches of sections 4.1.1 and 4.1.2 of the Code specifically in relation to pricing; and

2.2.2.3 In addition, there were prima facie breaches of chapter 8 of the Rules and section 9.1 of the Code.

2.2.3 The emergency panel made the following orders:

2.2.3.1 The SP/IP should ensure that none of the promotional material that was the subject of the complaints should be distributed to the public after the date of the ruling;

2.2.3.2 The SP/IP should take active steps to retrieve copies of the promotional material from any intermediaries to which it has already been sent and to prevent further promotional material from entering the public domain;

- 2.2.3.3 The SP/IP should suspend the mechanism of entering competitions and subscribing to services advertised in the promotional materials immediately, pending formal review of the complaint;
- 2.2.3.4 The SP/IP was prohibited from initiating any new subscriptions in response to the promotions, pending formal review;
- 2.2.3.5 The SP/IP was prohibited from levying any further charges on customers who had already subscribed pending formal review; and
- 2.2.3.6 A SMS notice was to be issued to all competition entrants at the SP's/IP's cost, to inform them that the competition had been suspended by WASPA and that they could keep their entry to the competition, pending the outcome of the formal complaints procedure, or obtain a refund of their subscription fee.
- 2.3 *The Code provisions considered by the emergency panel*
- 2.3.1 The wording of 11.1.2 in v7.0 was “*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*”.
- 2.3.2 The other provisions of the Code considered to have been breached by the emergency panel pertained to provision of information to customers (section 4.1.1 and 4.1.2), provision of information (section 9.1), and manner of subscription (section 11.1.1 and 11.1.2). The provisions of the Rules at Chapter 8 concerned below-the-line marketing and promotional material.

3 DECISIONS OF THE ADJUDICATOR

- 3.1 *Findings on Complaints*
- 3.1.1 The adjudicator prefaced the report as follows, “*Having taken all the information produced into account, the decisions I have reached are now set forth below. In reaching these decisions I have considered not only the arguments made by the IP and SP but also other information placed before me which has been admitted by either the SP or the IP or which was submitted by the Monitor and not disputed by either the SP or IP in response to the complaint or Emergency Notice*”.
- 3.1.2 The adjudicator found that sections 6.2.5 and 11.1.2 of the Code and sections 8.2.2 and 8.2.2.2 of the Rules had been breached:
- 3.1.2.1 In making a finding in relation to section 11.1.2, the adjudicator relied on an interpretation of v7.4, suggesting that it must have been the intention of WASPA to include

competitions and promotions within the ambit of section 11.1.2 even in v7.0. However, the adjudicator concludes by finding the first part of the section sufficient to determine a breach in that the subscription request transaction was not, in the adjudicator's view, an "*independent transaction*" and was "*wholly dependant on a consumer submitting a request or claim for a prize*".

3.1.2.2

The adjudicator did, however, find that the parties were in breach of sections of the Rules that had not been identified by the emergency panel and notes "*In the present matter, I have therefore exercised my discretion not to lengthen the adjudication process unduly by inviting the SP or IP to address me further on these issues or any other section of the Code that addresses similar issues to those covered by section 8 of the Advertising Rules and have proceeded to consider additional breaches of the Advertising Rules and Code ex facie the scratch card submitted by the Monitor, the contents of which were admitted by the SP and IP. In the present matter and circumstances, I do not consider the SP or IP to have been unfairly prejudiced by the exercise of my discretion in this manner.*"

Specifically, the adjudicator found that the cost of the service was not displayed as required in Arial size 11 font and the cost was not displayed above, below or adjacent to the display of the access number nor did it appear with all of the premium numbers reflected on the cards, rendering the parties in breach of sections 8.2.2 and 8.2.2.2 of the Ad Rules and section 6.2.5 of the Code.

3.1.2.3

The adjudicator did not uphold the emergency panel findings in relation to a breach of section 4.1.2.

3.1.2.4

The adjudicator found that, in the present matter, "*only a consumer revealing a lucky match of 3 symbols on the scratch card qualifies for the award, so it is not simply the act of subscribing that qualifies a consumer for an award, but the lucky act of matching 3 symbols on the scratch card. This then definitely conveys the style of a competition or lucky draw rather than merely a straightforward reward for joining a subscription service. It does not matter if every scratch card contained a match, what is important is whether the consumer would be deceived into thinking they had qualified for a prize as a result of luck. Use of the word "award" rather than "prize" does not detract significantly from this impression and use of other words such as "congratulations" further re-inforces the impression that the consumer has won a prize in a competition. There is no description on the scratch cards of the nature of the subscription service or the type of content available to subscribers. Although there are fine print references to a subscription service, the overwhelming and dominant impression in the mind of any consumer*

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coming across the scratch card would be that it is a competition not an invitation to subscribe to a mobile content subscription service”.

- 3.1.2.5 The adjudicator did note that the SP in this matter was the same SP as the SP named in complaints 6858 and 6879 and that all 3 schemes were run on an identical basis.
- 3.2 *Sections of the Code and Ad Rules that were applied and found to have been breached*
- 3.2.1 6.2.5: The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.
- 3.2.2 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.
- 3.2.3 8.2 and 8.2.2 of the Ad Rules:
- 3.2.3.1 8.2.2: Formatting of Cost Text
- The size of the text showing the cost of access must be in 11 point font size. This is 11 point Arial Font. The access cost text must be in a non-serif font, preferably “Arial” font. All access cost information must be placed horizontally....
- 3.2.3.2 8.2.2.2: Position Of The Text Showing Access Cost and T&C
- 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 in a non-serif font. This T&C text must be placed close as possible to the unique access number. If multiple offers are made on the same advertisement and the cost and T&C differ with each offering, each offering must show the cost and T&C separately and clearly. If the access number has the ability to be torn off or detached from the promotional text and used independently, pricing information must also be displayed on both the remaining and detachable portions.
- 3.3 *Sanctions*
- 3.3.1 In imposing sanctions the adjudicator took account of other complaints (4112, 4148, 4149, 4190, 4712, 4782 and 4783) in which the SP had previously been cited and noted that although the parties had argued that they had not previously been found to be in breach of the Code, this was true only for the SP/IP combination and not for the SP separately from the IP. The adjudicator noted that the SP *“continued to take inadequate steps to ensure that its clients are made aware of the provisions of the Code. This has the potential to cause substantial harm to both consumers and the Wireless Application Services industry as a whole”.*

3.3.2 In making an order, the adjudicator found that “*in light of the previous breaches upheld, the severity of the breaches in the present matter, and the scale of the distribution of the scratch cards, I do not regard a lenient sanction as being justified in the present matter...*” and imposed the sanctions which are repeated in **Appendix A**, because of their length and complexity.

3.4 *Post-adjudication*

The appeal by the IP was submitted to WASPA in October 2009. The SP also submitted an appeal, on substantially the same grounds as the appeals which were filed in relation to the adjudications of complaints 6858 and 6879.

4 **SP’S GROUNDS OF APPEAL**

4.1 The SP’s grounds of appeal have been addressed in detail in our report in response to the appeals of adjudications on complaints 6858 and 6879. We have repeated some of the grounds in this report for ease of reference.

4.2 The SP summarised its grounds of appeal as:

4.2.1 the decision-making process was procedurally flawed; and/or

4.2.2 the emergency panel and/or the adjudicator made incorrect findings on the merits; and/or

4.2.3 the sanctions imposed are grossly unreasonable.

Decision-making process procedurally flawed

4.3 The SP makes various arguments based, it says, on administrative law principles. Specifically it refers to the Promotion of Administrative Justice Act (PAJA) as a benchmark for WASPA’s proceedings, and refers also to the Bill of Rights and the common law which requires (it says) that every person should be heard before a decision is made by an administrative body with decision-making powers.

4.4 The SP also argues that if the adjudicator exercises discretion to include more charges then he or she must also request a response to the charges from the affected parties, failing which he or she will have exercised his or her discretion improperly. In addition, a finding that the SP breached both sections 8.2 and 8.2.2 of the Ad Rules is tantamount to finding that the SP breached the same clause, twice.

4.5 Accordingly the adjudicator’s finding on section 6.2.5 of the Code and section 8 of the Ad Rules should be set aside as “procedural irregularities taint the findings on the merits to such a degree that it cannot be upheld”.

Incorrect findings on the merits

4.6 The SP argues that it is “abundantly clear” that the service is a subscription service, that a club is being joined and that a subscription fee will be

charged. They refer to the number of times that the word “join” is used and refer also to the wording at the top left of the front of the card.

- 4.7 They consider the fact that v7.4 was used instead of v7.0 of the Code, but as this panel accepts this argument entirely we will not go into it further (our full argument can be found in the report we have filed on matters 6858 and 6879).
- 4.8 The SP argues that a consumer could simply ignore the second message (which referred to the subscription service) and not post the competition claim form. The adjudicator’s finding that section 11.1.2 was breached was based on “the finding that the consumer was accepting both the terms of the service which is factually incorrect. The finding which is premised on this is therefore incorrect and must be set aside”.

Sanctions grossly unreasonable

- 4.9 The SP states that on the basis of the 2 previous grounds of appeal no sanctions should be applied at all, but if they are to be applied, then they should be moderated or even suspended.
- 4.10 This is because although the adjudicator refers to several other complaints upheld against it, they all date back to 2008, all but one was suspended, and the periods of suspension have passed without the SP having re-offended. Only one required the payment of a fine, which was only R10,000, according to the SP.
- 4.11 Therefore the present fines are some ten times any previous fine, and it is also relevant (says the SP) to note that the SP has incurred substantial costs as a result of complying with the emergency panel’s findings, such that further adverse findings would amount to “a death sentence” for the SP.
- 4.12 The SP examines other fines imposed on other SPs in similar circumstances and finds that there is no consistency nor fairness in the way that fines have been imposed by adjudicators. As a result and in light of the other arguments raised, the fines are grossly unreasonable.

5 IP’S GROUNDS OF APPEAL

- 5.1 The IP’s appeal constitutes a request for leniency, specifically in relation to the amount of money which the SP is directed to pay to WASPA which constitutes a penalty against the IP in effect. Specifically the IP requests that *“Opera Telecom no longer be ordered to ‘preserve and maintain all revenue paid to it by any cellular network operator’ and rather that such funds be returned to Oxygen Marketing so that it is able to settle the outstanding amounts owed to its suppliers”*.
- 5.2 The IP acknowledges that the adjudicator has clearly demonstrated where it has contravened the Code and Ad Rules but wishes to stress that *“the various contraventions were due to poor and incorrect guidance from Opera*

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Telecom, on which advice and guidance Oxygen Marketing relied....Oxygen Marketing acknowledges that this reason (read with the reasons and explanations provided below) does not condone its conduct, nor does it provide it with indemnity from sanction, but Oxygen Marketing does respectfully submit that the Sanction [sic] should be moderated in light of this information”.

- 5.3 The reasons given by the IP in the remainder of its appeal can be summarised as follows:
- 5.3.1 The size of the penalty is “crippling”;
 - 5.3.2 Oxygen Marketing did not intend to mislead consumers;
 - 5.3.3 Oxygen Marketing relied heavily, and to its detriment, on Opera Telecoms as SP to advise it as to the local rules in South Africa, having relied on them previously in Australia, but it was not at any stage provided with a copy of the Code or advised of the applicable Rules regarding wireless advertising or services;
 - 5.3.4 Oxygen Marketing itself has not been the subject of any complaint or adverse finding under the Code in South Africa and should not be penalised for Opera Telecom’s contraventions;
 - 5.3.5 It was not aware that Opera Telecoms had a history of complaints against it;
 - 5.3.6 Opera Telecoms explicitly approved all scratch cards before they were sent to print or were published;
 - 5.3.7 Oxygen Marketing has “*invested time, resources and funds into the market with the intention of building up a large, viable and compliant mobile marketing company in South Africa*” and ...“*the severity of the penalty imposed... will have the effect of imposing massive financial constraints and losses on Oxygen Marketing to the extent that its operations in South Africa and potentially other jurisdictions, will no longer become viable or even possible...*”;
 - 5.3.8 Oxygen Marketing has subsequently become a full member of WASPA and become familiar with the Rules and Code so as to achieve full compliance in future; and
 - 5.3.9 It will send an SMS to every customer who signed up to the service offering a full refund of its monies spent on the service up until it was terminated.
- 5.4 In the alternative, the IP suggests that the SP should release all funds held by it and that any future penalty imposed by WASPA would be paid directly by the IP. No similar service will be introduced.

6 FINDINGS OF APPEALS PANEL

- 6.1 Compliance as a general rule:

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- 6.1.1 Members of WASPA must comply with the Code. To the extent that they appoint agents and service providers, they must ensure that these parties comply. Where a third party which is not a member provides wireless application services in South Africa regardless of whether or not they are a member of WASPA, the member which does business with them must ensure that they too comply with the Code.
- 6.1.2 In addition, partial compliance cannot excuse non-compliance – members must comply with all the sections, and should ensure that their agents and other contracting parties make themselves familiar with the relevant parts.
- 6.1.3 We are somewhat surprised that having dealt in a regulated industry before in Australia, the IP did not take any steps to ask the SP for a set of the rules nor did it (apparently) expect to find that the industry was in fact governed by rules. It is not clear from the appeal that the IP took any steps at all to contractually oblige the SP to advise it of the rules that might apply either.
- 6.1.4 The IP accepts that it should have complied with the Code on the basis of the adjudicator's findings. We have reviewed the findings of the adjudicator below in the course of reviewing the sanctions that were applied against the SP and IP.
- 6.1.5 As for the SP's arguments regarding administrative justice and the requirement to notify the parties of the charges against them before making a finding on their guilt or innocence, as the case may be, we have dealt with these extensively in our previous report. The salient points, in our view, are these:
- 6.1.5.1 section 36 of the Bill of Rights (*limitation of rights*) provides that rights may be limited (with exceptions);
- 6.1.5.2 given the apprehension of harm in this case which must have, at the time, been sufficient to warrant the holding of an emergency panel hearing, we believe that if it were necessary to make a finding on this, then we would also have to take the potential harm into account together with the goals of the Code, and conclude that limitations on the right to be heard were in the circumstances, justifiable;
- 6.1.5.3 in coming to this conclusion we have also noted the circumstances in which and the reasons for invoking the emergency proceeding in other matters, and the fact that the emergency process is provided for under the Code and is therefore foreseen as a possible outcome of any complaint; and

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- 6.1.5.4 the panel is quite comfortable based on WASPA precedent and the provisions of the Code, that an adjudicator is authorised to consider additional information and indeed, required to ensure that unwary consumers are not exposed to conduct which breaches the ethical tenets of the Code. We are also sympathetic to the argument that a person should know the case they must meet. In weighing up all the facts, however, in this case we find that an overriding consideration must be the requirement that members comply with the Code. This also means that failure by WASPA to refer to a particular section of the Code in the course of conducting an emergency panel hearing does not and should not absolve a member of compliance with obligations which always existed.
- 6.2 Applicable version of the Code:
The panel finds that the correct version of the Code that should have been applied was v7.0.
- 6.3 Finding on section 6.2.5:
- 6.3.1 In our view, the pricing for the service was not in fact clearly displayed – it is only displayed in 1 line of the text, and it was certainly not displayed with all instances in which the number was printed on the advertisement.
- 6.3.2 Section 6.2.5 was therefore not complied with in our view and we uphold the finding of the adjudicator in this regard.
- 6.4 Finding on section 11.1.2:
- 6.4.1 In closely examining the provisions of the “promotion” the advertisement does mention under the Star Promotions Club banner that it is a subscription service but the wording is far less clear and in far smaller text, and there is no indication whatsoever as to what services are being subscribed to, how often, and for how much. Unless the consumer knows what the Star Promotions Club is all about, the advertisement sheds no light on this. The consumer would have to (we are advised) review the terms of the website for basic information which in our view ought to be supplied in the advertisement itself to ensure the proposed transaction can be properly understood.
- 6.4.2 It would appear that sending a text message to the short code would have had 2 results, both of which happened at the same time as a result of the text message. The first was that the person sending the message would have been subscribed to Star Club Promotions offering unspecified things, costing R14 every 2 days. The second is that the person would have been a candidate for an “award”. There is no argument by the IP that contradicts or denies this fact. In our

view, the possibility that a subscriber might win an “award” by sending an SMS is the most overwhelming impression that one has of the advertisement, and not the resulting subscription to ongoing services of some kind. The attempt by the SP and IP to categorise the advertisement as offering something other than a “random prize” is simply without foundation in our view. There is no argument by either SP or IP that contradicts or denies this fact. The suggestion that a consumer could have simply chosen not to be part of the competition is disingenuous.

6.4.3 Therefore we find that the SP and IP are in breach of section 11.1.2. of the Code.

6.5 Finding on sections 8.2 and 8.2.2 of the Ad Rules:

6.5.1 It is not possible to assess the size of the font that was actually used in the advertisement given that the document provided is not apparently the same size as that which was in fact published as a scratch card, but in this regard, we rely on the findings of the adjudicator and find that there was a breach of section 8.2.2 of the Rules. It is further clear from the advertisement provided to us that there was also a clear breach of section 8.2.2.2 of the Rules in that the full and final cost of the access was not displayed immediately below, or above, or adjacent to the unique access number. We rely on the findings of the adjudicator and find that there was a breach of both sections 8.2.2 and 8.2.2.2 of the Rules, and that there is no ‘double jeopardy’.

6.6 Sanctions:

6.6.1 We have noted the arguments raised by the SP in relation to the reference by the adjudicator to other complaints against the SP, and we accept them.

6.6.2 Our findings on sanctions apply to both SP and IP since we are minded to overturn the sanctions imposed by the adjudicator.

6.6.3 The parties’ grounds of appeal relate to the size of the fines and nature of other penalties, at least in the alternative. Given our findings on breaches of sections 6.2.5 and 11.1.2 of the Code and sections 8.2.2. and 8.2.2.2 of the Rules, some adverse finding must be made against the SP and IP and some form of redress is appropriate.

6.6.4 The panel agrees that the fines imposed by the adjudicator are substantial and disproportionate in light of the breaches and out of step with the remedies imposed on members in other similar matters and we take the point that the IP has not previously had any adverse rulings made against it.

6.6.5 In all the circumstances, the panel makes the following order:

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- 6.6.5.1 The sanctions ordered by the adjudicator which are set out in full in **Appendix A** are overturned and the SP should accordingly release all funds held by it for the IP to the IP;
- 6.6.5.2 The SP is fined R60,000; and
- 6.6.5.3 The IP is fined R40,000
- 6.6.5.4 .
- 6.7 The fines should be paid to WASPA within 5 days of the publication of this report.
- 6.8 The appeal fees are not refundable.

APPENDIX A:

SANCTIONS IMPOSED IN ADJUDICATION OF COMPLAINT 6868

1. The SP is directed to immediately:
 - 1.1 suspend all further billing for the services; and
 - 1.2 pending full compliance by the SP with the sanctions contained in paragraph 2 below:
 - (a) withhold payment of all amounts due by it to the IP as contemplated by the provisions of section 13.4.1(i) of the Code;
 - (b) preserve and retain all revenue paid to it by any cellular network operator in respect of the services and to refrain from dissipating such revenue in any way;
 - (c) send an SMS message to all subscribers to the affected services advising them as follows:
"The [name of service] has been suspended due 2 breach of WASPA Code of Conduct. Further communications will follow. For help contact [telephone number of SP]"; and
 - (d) suspend all billing for the services.
2. The SP is further directed:
 - 2.1 to furnish WASPA with monthly statements of account ("the statements") detailing all revenue either already received by the SP or that is to be paid over to the SP by any cellular network operator in respect of the services from their commencement date until their termination;
 - 2.2 to deliver a written consent to WASPA within 7 days of the delivery of this adjudication report irrevocably authorizing WASPA to verify and audit the accuracy of the statements with the relevant network operators concerned and indemnifying WASPA against any and all claims for loss, costs and expenses that may be made against it by the IP, a network operator or any other person in this regard;
 - 2.3 to send an SMS message to all subscribers to the affected services advising them that the subscription service has been terminated due to breach of WASPA Code of Conduct and advising subscribers of their right to claim a refund of all content subscription fees paid by contacting the SP's help desk by 5pm on a date falling 30 days after the sending of such message or the first business day thereafter if that date falls on a weekend or public holiday;
 - 2.4 following delivery of the SMS message provided for in paragraph 2.3, to terminate the content subscription service and all billing for the service;
 - 2.5 as contemplated by the provisions of section 13.4.3(g) of the Code, to issue a blanket refund to all subscribers claiming a refund within the period mentioned in paragraph 2.3 above within 30 days of the expiry of such period provided that any amounts to be refunded shall be paid:
 - 2.5.1 firstly from any IP revenue share held by the SP in terms of paragraphs 1.2(a) and (b);
 - 2.5.2 on exhaustion of the IP revenue share, from the SP revenue share; and
 - 2.5.3 on exhaustion of the SP revenue share, from additional funds to be collected by the SP from the IP;failing which the WASPA Secretariat shall direct all members to suspend all services to the IP and the amount to be refunded to any subscriber shall be pro-rated such that the amount shall bear the same proportion to the subscriber's refund entitlement as total available funds bear to total refund entitlements;
 - 2.6 within 30 days of the expiry of the 30 day refund period provided for in paragraph 2.5 above, to:
 - 2.6.1 pay over or forfeit to WASPA an amount equal to:

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- (a) R100 000; or
- (b) 100% of the SP revenue share generated by the service less VAT and less the total amount of blanket refunds paid out from the SP revenue share; whichever amount is the greater failing which the SP's membership of WASPA shall be suspended until such time as the greater amount has been paid; and

2.6.2 pay over to WASPA a fine of:

- (a) R200 000 to be collected from the IP; or
- (b) 100% of the remaining IP revenue share generated by the service that is held or received by the SP, less:
 - (i) VAT (if applicable);
 - (ii) the total amount of any blanket refunds paid out from the IP revenue share; and
 - (iii) the actual cost price of any prizes purchased by the IP and which are to be awarded to consumers as prizes in the competition; whichever amount is the greater failing which the WASPA Secretariat shall direct all members to suspend the provision of all services to the IP and to refrain from the commencement of any new services to the IP until such time as the greater amount has been paid in full.

3. The SP is directed to deliver a report to the WASPA Secretariat by 30 December 2009 detailing the award of all prizes in the competition by the IP and the date on which each prize was received by or delivered to the winner thereof.
4. In terms of section 13.4.2 of the Code, the sanctions contained in paragraphs 1 and 3 above may not be suspended pending any appeal that may be instituted in this matter but shall be effective immediately on the publication of this report.