



## REPORT OF THE ADJUDICATOR

<b>WASPA Member</b>	Opera Interactive
<b>Information Provider (IP)</b> (if any)	Clarion Marketing
<b>Service Type</b>	Subscription
<b>Source of Complaints</b>	Public
<b>Complaint Number</b>	6901
<b>Date lodged</b>	26 June 2009
<b>Code of Conduct version</b>	7.4

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### Complaint

This complaint relates to a scratch card competition with an associated subscription service which was shut down shortly after its launch<sup>1</sup> by an Emergency Panel acting under the WASPA Code of Conduct.

The offending promotion was described as follows by the Complainant:

“Inserts in the Sunday Times for BMW 3 series competition - do not indicate a price of entry for the competition as such my kids constantly enter these types of competitions and are unaware of the costs they incur for these type of competitions via sms entries.”

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### SP Response

The SP filed the same response in respect of this Complaint as filed in respect of Complaints 6858 & 6879.

“We would like to start off by saying that Opera and the IP, Clarion Marketing, had no intention of contravening the WASPA code of conduct. Clarion Marketing has a vision of establishing a long-term sustainable business within South-Africa and has to date already created 10 [unclear from the text] jobs in South-Africa.

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<sup>1</sup> <http://www.ecr.co.za/kagiso/content/en/jacaranda/east-coast-radio-blogs-consumerwatch?oid=267505&sn=Detail&pid=6028>

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It is the wishes of both Clarion Marketing and Opera Interactive to work together with WASPA to resolve this matter and will make any changes necessary to comply with the Code of Conduct.

Clarion Marketing has indicated that no new cards will be printed until the issue is resolved in full with WASPA.

We would like to take this opportunity to explain our interpretation of the service:

- The scratch card is merely a marketing mechanism to promote our content club. (Planet Moby, Ringaling.tv)
- Everybody that joins our subscription content club will receive a free reward/gift.
- The reward is pre-allocated to every card printed and ranges from Mobile Games to a BMW.
- Once a user joins the content club they are sent a welcome message ie: "*Welcome to Moby Planet! Ur subbed 2 Moby club. Help 0841951111. Opt out? Sms STOP to 31905. Cost R14/2days. SP: Opera*"

A user can opt-out of the content club at this stage

- The subscribers also receive monthly reminder messages: "*You subscribed to Scratch Card Service. R142 Days from CM. To stop service, sms STOP to 31976 (Standard SMS cost) Help? Call 0841951111*"
- The card also states at the top that "This is a mobile subscription service"
- The request from the user is to join a mobile content club. This is conveyed with words and phrases like -'mobile subscription service' 'SMS xxx to =1976 to join' 'To join simply SMS xxx to 31976'
- The request to join the subscription service is not an entry into a competition or quiz, simply because the awards are pre allocated when the cards are printed. The request is to join a mobile content club, for which there is a Trade Promotion, with awards attached

WASPA released the new code of conduct version 7.4 as at 17 June 2009. All cards that are currently in the market place have been designed and printed prior to this date. The main differences between the new version and the version used when designing and printing is the following:

Version 7.0: 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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Version 7.4: 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 **and may not be an entry into a competition or quiz.**

It is our feeling that this change cannot be applied retrospectively to the cards that has already been printed.

Clarion has committed a large amount of financial resources to cards that has already been printed and publication inserts that has already been paid for. Attached, please find a list of cards that will be entering the marketplace after 17 June 2009 but was printed and booked before this date.

We would also like to make WASPA aware of the fact that the number of complaints vs the cards that are in the marketplace (since October last year) is relatively low. Two out of these three complaints are all related to WASPA monitoring and on the third the user had not even used the service.

We hope that we can have a fruitful relationship in working together with WASPA to ensure any compliance issues.”

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### Decision

1. The Adjudicator has reviewed the joint Adjudication filed in respect of Complaints 6858 and 6879. These relate to the same promotion as this matter and were lodged by the WASPA Media Monitor after the promotion was first noted. The same response was lodged by the WASPA member in these matters as was lodged in the current complaint. This Adjudication can be found at <http://www.waspa.org.za/code/download/6858.pdf>.
2. Notwithstanding that these matters appear to have been appealed, this Adjudicator is in full agreement with the content thereof and the sanction applied.
3. The Adjudicator has further reviewed the Emergency Notice issued by an Emergency Panel convened under the WASPA Code of Conduct due to the urgency required in dealing with the matter.
4. The Complaint is upheld. While there is pricing in respect of the subscription service on the promotional leaflets, it is set out in the fine print and not displayed in the manner required by the Code of Conduct and Advertising Rules.
5. It is also telling that the complainant in this matter regarded the promotion as being a competition, indicating the confusion caused by the cards,
6. The Complainant is referred to the Adjudication in respect of Complaints 6858 and 6879, which found the SP and/or IP to have committed breaches of, *inter alia*, section 6.2.5

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(unclear pricing) of the Code as also section 8.2.2. and 8.2.2.2 of the WASPA Advertising Rules (also in respect of pricing display).

7. As regards the sanction to be applied, the Adjudicator is satisfied that there is no need for any additional sanction over and above that applied in the Adjudication in respect of Complaints 6858 & 6879. The sanction in respect of the breach upheld in this matter is accordingly ordered to be subsumed within that ordered under Complaints 6858 & 6879.
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