



REPORT OF THE ADJUDICATOR

WASPA Member	Opera Interactive
Information Provider (IP) (if any)	Clarion Marketing
Service Type	Promotion, Subscription
Source of Complaints	Public
Complaint Number	6905
Date lodged	26 June 2009
Code of Conduct version	7.4

Complaint

This complaint relates to a scratch card competition with an associated subscription service which was shut down shortly after its launch¹ by an Emergency Panel acting under the WASPA Code of Conduct.

A detailed complaint document was submitted to WASPA:

Type of advertising

Competition Brochure

Where and when you saw the advertising

Where? In magazines and newspapers (Sowetan ...)

When? June 2009

Who is the advertiser and what product is advertised?

Who? Opera Interactive

Product? competition

Your complaint

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

There is a competition to win numerous prizes. It clearly states that should you match 3 things you are GUARANTEED to claim one of the listed prizes on the brochure. There is an * under the writing that states "**No Hidden Costs**". What would a Hidden Cost be defined as? A cost that is not stated in the brochure, or a cost that is indicated in the fine-print? I acknowledge that, if you continue reading the documents fine print, it does state that there are costs involved to win a prize. We should then ask ourselves "If this is not the case(i.e. there are costs involved, **"why would you state such a thing?"**". In my view, this seems ambiguous. See WASPA (9.1.6.b)

In addition, the yellow box that contains the text "CONGRADULATIONS! TO CLAIM SMS GOLD1 NOW TO 31905 and the other text "To join and receive your award SMS GOLD NOW TO 31905" does not adhere to WASPA section **8.2.2.2 Position Of The Text Showing Access Cost and T&C**

In the fine print, on the reverse side, it states that in order to be eligible to enter the competition, there is a cost of R14/2 days with a **minimum 4 weeks** (which works out to over R196 in costs) that are incurred to be eligible to win the "guaranteed" prize. The fine print also states that the consumer will continue to be billed for the mobile content until they cancel the subscription.

Please set out clearly the reasons as to why you find a particular advertisement objectionable:

They should **not** state that there are ***no hidden costs when in-order to win a prize - money must be spent**. It may be reasonable to state that the wording implies that there is "no costs to sms and claim the prize".

The WASPA member filed the following response:

No Hidden Costs

The statement 'no hidden costs' was printed at the request of Media24, our media partner, and distributor of the promotional cards to comply with Media24's standards of advertising and was not in any way intended to be ambiguous or misleading. The statement 'no hidden costs' was printed to convey that there were no other costs to be incurred by the customer that are not already printed on the advertising material.

The costs to enter the service is represented on the card. When a user joins the service they also receive a welcome message stating the cost of the service, the frequency of the billing, details on how to opt- out and a customer service number.

If the user decides to opt out of the service at this stage, no billing will take place on their

account. The 4 week minimum subscription period was a printing error and has not by any means been implemented. If a user subscribes to the service, opt out immediately and follow the claim details they will be entitled to their reward.

We also need to note to the adjudicator that at this stage that the service has been suspended by WASPA."

And the Complainant rejoined as follows:

"I have read the response from the service provider and to my interpretation it was, at very best, tolerable, but certainly not up to standard and I am still left with unanswered questions.

It must be noted that the promotional item does not, at very least, adhere to the minimum standards as set out by the WASPA code 8.2.2.2 Position Of The Text Showing Access Cost and T&C.

The service provider cannot shift the responsibility of adhering to the WASPA Advertising Rules to its media partner. In response to the service provider stating that the "the 4 week minimum subscription period was a printing error and has not by any means been implemented" it still does not answer the question "what costs would the consumer incur"?. The promotional material stated that it would cost "R14/2 days", but still, the question is for how long. This costing term is, at the very least, vague.

In response to the complaint of hidden costs my questions to WASPA are the following:

- Did the promotional material adhere to the WASPA Advertising rules on the Displaying of Position Of The Text Showing Access Cost and T&C?
- Did the promotional material adhere the correct displaying of Pricing of services?

Should WASPA find that there were any irregularities in the service provider adhering to the WASPA Code of Conduct (in part or in whole) then I leave it up to WASPA to make the final call on whether or not the any further action should be taken (complaint closed or upheld)."

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. This Adjudication can be found at <http://www.waspa.org.za/code/download/6858.pdf>.

2. Although the WASPA member has filed a different response in this matter (as opposed to #6858 & #6879), the Adjudicator is satisfied that the issues raised in this complaint are duplications of issues raised under #6858 & #6879.
3. Notwithstanding that these matters appear to have been appealed, this Adjudicator is in full agreement with the content thereof and the sanction applied.
4. 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.
5. 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.
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 (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.

The Complainant is thanked for raising this matter in the manner which he has.
