REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Opera Interactive
Information Provider (IP):	MobiMedia
Service Type:	Competition
Source of Complaints:	Public
Complaint Number:	7104
Code Version (CoC):	Code of Conduct 7.4
Date of Adjudication:	15 January 2010

Complaint

1. On the 21st July 2009 a complaint was lodged with the WASPA secretariat by a journalist relating to short code 40881 which is operated by Opera Interactive in which the complainant indicated that s54 of the Lotteries Act 57 of 1997 (hereinafter the "Lotteries Act") has been contravened in that the premium SMS used in the "My Weekend" section of a newspaper was in contravention of the Lotteries Act.

2. In addition the complainant indicated that the "promotional competition" as defined in the Lotteries Act did not promote anything. A copy of the advertisement is attached hereto as Annexure A.

SP Response

3. On the 29th July 2009 a representative of the SP replied on behalf of both it and the IP in this matter. In the reply the writer dealt with complaints 7103, 7104 and 7105 as they turned on the same facts in the SP's opinion.

4. In the reply the SP indicated that it was unclear which portions of the WASPA code of conduct (CoC) had been breached in that the specific clause of the CoC was not quoted

by the complainant.

5. However assuming that the complainant was indicating that the competition in question was an illegal lottery, the SP indicated the following:

   5.1. The competitions are promotional competitions in line with the Lotteries Act promoting publications and/or other mobi-sites;

   5.2. That WASPA adjudicators are not in a position to judge whether a competition is or is not an illegal lottery;

   5.3. Complaints about the service in question have already "been through the National Lotteries Board"; and

   5.4. The cost of entry to the promotional competition was not excessive and all other WASPA rules relating to competitions were adhered to.

Complainant Response

6. The Complainant then responded to the SP's response above and indicated that:

   6.1. While the CoC does not spell out the rules regarding the Lotteries Act and other acts, there was nonetheless an advisory that was issued by the WASPA secretariat which dealt with illegal lotteries;

   6.2. In his opinion the WASPA advisory notice contradicts the SP's statement that the competition is a promotional competition in terms of the Lotteries Act;

   6.3. The Complainant undertook to follow up with the National Lotteries Board in order to establish what the outcome was in terms of that complaint;

   6.4. The point was not whether the public were paying too much for entry into the competition but rather whether there was an "entrance fee" which the complainant said the SP had admitted in its reply (i.e. a premium rated SMS);

   6.5. The purpose of the complaint was not to establish whether the Lotteries Act had been contravened, but rather whether the WASPA advisory had been contravened.

Request to WASPA secretariat

7. As a result of the Complainant's allegation relating to a WASPA advisory, the adjudicator requested that the WASPA secretariat provide the adjudicator with the WASPA advisory in question.

8. The WASPA secretariat responded by providing a WASPA notice (attached hereto as Annexure B) as well as a WASPA advisory (attached hereto as Annexure C) and referring to the WASPA Advisory web page which can be found at http://waspa.org.za/code/advisory-notices.shtml.

Portions of the Code of Conduct (version 7.4) considered:

9. **3.1.2.** Members are committed to lawful conduct at all times.

Decision

10. This adjudication follows hot on the heels of complaint 7103 and is essentially identical to that matter except in two respects:

    10.1. The premium rated SMS that was required to be send by participants to the "Alice in Wonderland" competition cost R3.00 instead of the R2.00 cost in complaint 7103.

    10.2. The promotional competition was intended to promote the newspaper in that a reader of the newspaper would need to buy the newspaper and SMS the correct word ("Alice") to the correct short code (40881).

11. The reasons as set out in complaint 7103 are apposite here and are incorporated by reference herein. Furthermore an identical finding of a breach of clause 3.1.2 of the CoC by the IP and SP is also the finding in this adjudication.

Sanction Imposed

12. Please refer to the sanction imposed in complaint 7103. Due to the fact that this complaint deals with the same IP, SP and complainant and occurs at the same time as complaint 7103 it is not deemed necessary to increase the sanction imposed in complaint 7103 and thus the sanction imposed by is simply confirmed by this adjudication.

Appeal

Please note that should the SP or IP wish to appeal this decision it must inform the secretariat of this within five working days of this decision in terms of section 13.6 of the Code of Conduct version 7.4.

Annexure A

PLEASE NOTE THAT SOME IDENTIFYING PERSONAL INFORMATION HAS BEEN REMOVED BY THE ADJUDICATOR DUE TO THE FACT THAT THIS ADJUDICATION WILL BE PUBLICLY AVAILABLE.

HAPPY ELEGANCE: Dancing in *Alice in Wonderland* at the Opera House next week will be (from left) Beate Barnard 21, Stephanie Kirsten, 12, and Carla Barnard, 23.

Win tickets to colourful 'Alice in Wonderland'

Arts Correspondent

IF YOU weren't lucky enough to snap up tickets for the sold-out Imperial Russian Ballet production being staged at the Port Elizabeth Opera House tonight, there is another dose of quality ballet in the Bay next week.

The Friendly City Youth Ballet's production of *Alice in Wonderland* will take place at the Opera House from Thursday to Saturday, July 16-18.

More than 90 young Bay dancers will participate and Laura Bösenberg, who was recently promoted to principal dancer with the Cape Town City Ballet (CTCB), will appear as Alice. Bösenberg was named CTCB's most outstanding female dancer of the year for 2008, among other accolades.

Alice in Wonderland is the fifth production to be directed and staged for the Friendly City Youth Ballet by the CTCB's Robin van Wyk.

It is suited for the whole family and should provide excellent entertainment for the school holidays.

WIN!

Besides the title role, principal characters include all the *Alice* favourites, like the Mad Hatter, the Queen of Hearts and the Cheshire Cat, as well as a profusion of hedgehogs, flamingoes, roses, lobsters, mushrooms and butterflies.

Other CTCB guest dancers will include Johnny Bovang and another former Bay dancer, Angela Hansford, who'll join the local cast of dancers in the roles of the Mad Hatter and The Queen of Hearts respectively.

☐ FIVE My Weekend readers can each win a double ticket to the 7.30pm show of *Alice in Wonderland* on Friday.

To enter, SMS the word ALICE to 40881. Entries close on Monday at noon and the winners will be notified telephonically later that day. SMSes cost R3 each, free minutes do not apply and errors will be billed.