



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Celerity Systems (BulkSMS)
Information Provider (IP):	Payprofit
Service Type:	Competition
Source of Complaints:	Public
Complaint Number:	7498
Code Version (CoC):	Code of Conduct 7.4
Date of Adjudication:	04 May 2010

Complaint

1. On the 31st August 2009 a complaint was lodged with the WASPA secretariat by a journalist relating to short code 34010 which is operated by Celerity Systems which dealt with an “ADSL competition” was published in the Algoa Sun newspaper (see Annexure A) in which the complainant indicated that no terms and conditions were provided.

SP and IP Response

2. The SP responded to the complaint by referring the matter to the IP in this matter.
3. The IP then requested and received the keyword (ADSLPHONE) to that particular complaint.
4. After a delay the IP responded by indicating the following:

“I have spoken to my client and he is aware of the fact that some form of terms and conditions must be supplied when launching a competition.

The reason why no terms and conditions was supplied on the website is because the website that he refers his clients to is a VOX website and he is not able to change this website. The terms and conditions will be included in the adverts then.

The advertisement placed was a one-time advertisement and only 3 SMSs were received so exposure to the public was limited.”

5. No further correspondence was received from the SP, IP or complainant.
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Portions of the Code of Conduct (version 7.4) considered:

- 4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.
- 4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.
- 4.1.4. Members must make the terms and conditions of any of their services available to customers and potential customers, on request.
- Clause 9 as a whole.

Portions of Advertising Rules (Version 2.3) considered:

- Clause 4.2.2
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Decision

6. This complaint is complicated by the lack of sufficient information provided by all parties. While it is clear from the complaint that the code word of ADSLPHONE needed to be sent via SMS to 34010, the quality of the advertisement (See Annexure A) is extremely poor and a great deal of it is essentially illegible.
7. What is, however, clear is that the correct terms and conditions relating to the “competition” were not provided on the web site link which was provided in the replying SMS.

8. In addition the terms and conditions were never supplied to the complainant and it is not clear if the terms and conditions exist at all.
 9. It is, unsurprisingly, not acceptable for an IP and/or SP to allow a service to be flighted without the necessary terms and conditions and the IP has admitted as much in its communications.
 10. Moreover the terms and conditions were never provided to the complainant which then begs the question as to whether they ever existed in the first place.
 11. It should be noted that the sanction in this matter is not substantial. This is partly due to the fact that the harm from the service was largely insubstantial and also partly due to the fact that the IP in this matter is relatively new and has a good track record.
 12. It should be said that it is not entirely clear whether this was in fact a competition (notwithstanding both parties refer to it as such) and if so whether it complied with the necessary formalities for a competition. In this respect the IP is cautioned to ensure that it is aware of these requirements and will ensure compliance with them in any competitions it does participate in on behalf of its clients.
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Mitigation/Aggravation

AGGRAVATION

1. In aggravation of the circumstances:
 - 1.1. The IP should have checked that the correct terms and conditions were present.

MITIGATION

2. In **mitigation** of the circumstances:
 - 2.1. A total of three SMS' (or R6.00) was received from users for this service and the advertisement was flighted once.
 - 2.2. The IP in this matter has only been the subject of a single CoC contravention to date which was dealt with after the date of this adjudication (See complaint 7180).
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Sanction Imposed

3. It should be noted that at the time of the offence the IP was not a member of WASPA. As a result no sanctions can be levied on the IP.
 4. As a result of the breach of clause 3.1.2 of the CoC I impose the following sanctions:
 - 4.1. The SP is fined an amount of R5 000.00.
 - 4.2. The IP is cautioned to ensure that it is aware of the advertising requirements relating to competitions and the requirements relating to the positioning and content of the terms and conditions relating thereto.
 - 4.3. The IP and SP are cautioned that the legalities relating to promotional competitions is currently being dealt with by the WASPA Appeals Panel and that cognisance should be taken of the judgment by the WASPA Appeals Panel.
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Appeal

Please note that should the SP 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.

The screenshot shows a website advertisement for ADSL phone service. At the top right, there are links for [Help](#), [Contact Us](#), and [Login](#). The main heading is **ADSL** with a speech bubble icon. Below it, a testimonial reads: "We had a large phone bill... Thanks to vox we now call for cheap and save money." To the left is a photo of a man in a suit pointing upwards. The central headline says "Imagine 50% savings on your Telkom bill". A three-step process is outlined: 1. "Get your ADSL phone on the part of the bill calling community", 2. "Eliminate the pain of incoming calls and sweet spot bills", and 3. "Learn others to take for 100% of the money with the unique business opportunity". Below this are two buttons: "Join Now and Start Saving" with a sub-button "Order ADSL phone", and "Learn more about Vox" with a sub-button "Take a Tour". To the right is a photo of a woman. At the bottom, there are links for "Contact Us", "Help", and "Terms and Conditions". A footer contains navigation links: "Help | Contact Us | Take Tour | Order phone | Business opportunity | Term and conditions | DMCA | Free Fax Services" and a copyright notice: "© Copy Righted - Direct X Trading CC 2008. All rights reserved. Ref: 104217".