



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	#7542
<b>WASPA member(s):</b>	Grapevine Interactive / DSTV
<b>Membership number(s):</b>	
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Unlawful Lottery / Pricing
<b>Date complaint was lodged:</b>	2009-09-07
<b>Date of the alleged offence:</b>	2009-09
<b>Relevant version of the Code:</b>	7.4
<b>Clauses considered:</b>	3.1.2, 3.9.1, 3.9.2, 4.1.1, 4.1.10, 4.1.11, 6.1.1, 6.2.5, 9.1.1, 9.1.4
<b>Relevant version of the Ad. Rules:</b>	2.3
<b>Clauses considered:</b>	5.2.1.2
<b>Related cases considered:</b>	7103, 7104, 7105, 7289, 7317, 9776

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### Complaint

1. On 07 September 2009 a complaint was submitted to the WASPA secretariat by a journalist relating to short code 35408 which is operated by Grapevine Interactive (the SP) in which the complainant indicated that:
  - 1.1. the SP had contravened the Lotteries Act 57 of 1997 (hereinafter the “Lotteries Act”) and offered a prize which did not promote anything as required by the Lotteries Act and required a premium rated SMS to enter.
  - 1.2. The position of the SMS cost was incorrect;
  - 1.3. There were no terms and conditions for the promotion; and
  - 1.4. There was no link to the WASPA web site as required by clause 4.1.11.

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**SP Response**

2. The SP then responded on 08 September 2009 indicating that it had already dealt with these issues in complaint 7289.
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**WASPA Secretariat reply**

3. The WASPA secretariat then replied by indicating that complaint 7289 dealt with the DSTV magazine for August 2009 and this complaint related to the DSTV magazine for September 2009.
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**SP Response**

4. The SP then responded again on 08 September 2009 indicating that: "We have investigated this complaint carefully and we are completely satisfied that the campaign in question complies fully with the WASPA Code of Conduct."
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**WASPA Secretariat request**

5. The WASPA secretariat contacted the adjudicator and requested that this matter be put on hold pending the outcome of the appeal in the matter of complaints 7103, 7104 and 7105. The adjudicator duly agreed to this postponement as the appeal in the said matters dealt with the issue of the unlawfulness of promotional competitions.
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**Outcome of Appeal in complaints 7103, 7104 and 7105**

6. The appeal in the above complaints was duly delivered on the 04 January 2011. Within the appeal it was duly found that WASPA adjudicators do not have the right to make a finding on the lawfulness or otherwise of WASPA members' conduct. As the merits of this argument were fully traversed within that adjudication which is easily available on the WASPA web site they are not repeated here.
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**Complainant Dies**

7. Thereafter on the 09 June 2011 the WASPA secretariat was informed by the complainant's wife that the complainant had passed away and further that she wished to close all complaints lodged by her husband.
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**Portions of the Code of Conduct (version 7.4) considered:**

8. **3.1.2.** Members are committed to lawful conduct at all times.
9. **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.
10. **4.1.11.** Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.
11. **6.1.1.** In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.
12. **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.
13. **9.1.1.** Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.
14. **9.1.2.** Any promotional material for a competition service must include details of how the competition operates.
15. **9.1.4.** Promotional material must clearly state any information which is likely to affect a decision to participate, including:
- (a) the closing date;
  - (b) any significant terms and conditions, including any restriction on the number of entries or prizes which may be won;
  - (c) an adequate description of prizes, and other items offered to all or a substantial

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majority of participants, including the number of major prizes;

(d) any significant age, geographic or other eligibility restrictions;

(e) any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item;

(f) the entry mechanism and workings of the competition.

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## Decision

16. From the above facts it is clear that whether there has or has not been a breach of the Lotteries Act is irrelevant for the purposes of this adjudication as WASPA adjudicators do not have the jurisdiction to make a finding on this issue. Equally the question as to whether or not the promotion actually promotes a product and whether or not the cost of the SMS was premium rated is not relevant for the purposes of this adjudication for the same reason.

17. The promotion is clearly a “competition service” as defined in the WASPA Code of Conduct version 7.4 and there are various prizes to be won, all of which refer to page 24 for the Terms and Conditions of the competitions. The competition indicates that the consumer can either enter by sending a premium rated SMS (although that is only clear once you read the “Disclaimer” portion of page 24) or enter the competition online at [www.dstv.com](http://www.dstv.com).

18. On page 24 (see Annexure E) it is indicated that the consumer should access [www.dstv.com](http://www.dstv.com) to find the necessary competition rules. Notwithstanding this page 24 actually does have terms and conditions present where the closing date of the competition as well as other restrictions on the prizes.

19. While the various competitions are on pages other than page 24, the shortcode that is needed to enter the competition is only indicated on page 24 and as a result the consumer would only be able to enter the competition by reading at least some part of page 24 (assuming that the consumer enters the competition by means of SMS rather than online).

20. There appear to be seven different competitions in the DSTV magazine as provided by

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the complainant. Unfortunately the quality of the reproduction is poor and as a result not all the text is clear, or even readable. In addition the reproduction is in black and white making it difficult to determine the colours used, although the complainant has indicated the colours by means of writing on the reproduction.

21. We now turn to the three remaining complaints which are:

21.1. The position of the SMS cost was incorrect;

21.2. There were no terms and conditions for the competition; and

21.3. There was no link to the WASPA web site as required by clause 4.1.11.

22. Turning to the question of the SMS cost there is no doubt that the SMS cost of R3 / SMS is indicated on page 24. As mentioned already since the consumer must refer to page 24 in order to know the shortcode to send the SMS, we can safely conclude that the consumer must have read at least a portion of page 24 in order to successfully enter the competition.

23. It is a requirement that the cost of the SMS be highlighted to consumers. While the cost of the SMS is indicated, it is not highlighted as is required. A reference to the Advertising Rules (clause 5.2.1) indicates that the cost of the service must be at least font size 11 and in close proximity to the short code to be used (“immediately below, or above, or adjacent to the unique access number”). This requirement was not followed by the promoter in question as the text which cost of the SMS was mentioned was not immediately below the text to enter the competition as to make it possible that the casual reader would not notice the cost of the SMS. Indeed it is precisely for this reason that several examples of where to place the cost of the SMS are provided within the Advertising Rules and the cost of the SMS is under a heading which is misleadingly labelled “Disclaimer”. Consequently I find that clause 5.2.1 of the Advertising Rules has been breached as read with clause 6.2.5 of the WASPA Code of Conduct.

24. Turning to the issue of terms and conditions relating to a competition it should be indicated that while the complainant clearly alleged that there were no terms and conditions relating to the competition, the SP chose not to respond to this allegation aside from a blanket denial that any infringement of the WASPA Code of Conduct had taken place. While there clearly were terms and conditions that were indicated on the various pages, it is difficult to determine whether these terms would comply with clause

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9.1.4 of the WASPA Code of Conduct as some aspects of clause 9.1.4 require knowledge of the manner in which the competition operates. For example if there are no restrictions on the number of entries to the competition then it is arguable that nothing need be said regarding the number of entries as there is no restriction. In contrast if each consumer was restricted to a single entry then this clearly would need to be stated within the Terms and Conditions. Various other aspects of clause 9.1.4 – such as the closing date of the competitions – are clearly stated on page 24.

25. What is, however, not clearly stated is whether the competition is open to non-DSTV subscribers. A reading of the terms on page 24 and the reference to “logging in” to the DSTV web site makes it clear (by inference) that the consumer must have a commercial relationship with DSTV in order to have login credentials but at no point do the terms actually indicate that the consumer must be a DSTV subscriber. In theory it is quite possible that someone reading a DSTV magazine at a friend’s house might enter the competition even though he cannot login to the DSTV web site or choose channel 100 as he is not a DSTV subscriber. As such he cannot access the Terms and Conditions and it is not clear whether he would be entitled to win any of the prizes. This failure to mention this condition is a breach of clause 9.1.4.
26. Turning to the DSTV web site there appear to have been no Terms and Conditions on the DSTV web site relating to the competitions. Indeed even if there were Terms and Conditions on the DSTV web site the simple reference to the home page of [www.dstv.com](http://www.dstv.com) and the requirement to log in cannot be seen as sufficient to inform a consumer of terms and conditions relating to the competition simply because the DSTV web site is extremely big and any reasonable consumer would be hard pressed to discover where the terms and conditions (if any) relating to this competition could be found. Put differently it is my finding that the SP in this matter must refer to the specific web page (or URL) where the terms and conditions can be found and a simple reference to the home page of a web site – especially an extremely large web site such as DSTV – does not achieve the aim of informing the consumer of the terms and conditions of the competition. As such clause 9.1.4 of the WASPA Code of Conduct has been breached again.
27. The listed web site on the WASPA web site for the SP is [www.grapevineinteractive.com](http://www.grapevineinteractive.com). Complaint 7289 which was delivered in July 2011 required that a link be placed on the SP’s web site to the WASPA web site. This has since been done. While it is clear that that

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the complainant was in all likelihood completely correct in his allegation that no link to the WASPA web site was present, the SP is not found to have breached this clause as this finding was already made in complaint 7289 and the SP has since remedied the breach.

28. For the above reasons clause 9.1.4 of the WASPA Code of Conduct as well as clause 6.2.5 as read with Advertising Rule 5.2.1 has been found to have been breached, but the SP is found not to have breached clause 3.1.2 and clause 4.1.11.

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### **Mitigation**

29. The SP has since remedied the failure to refer to the WASPA web site.
30. The SP has had no opportunity between complaints 7289 and this complaint to change the manner in which it sets out competitions.
31. The SP has had 10 complaints against it since the start of its membership in 2004 of which 8 were upheld which is a reasonably good record relating to complaints.

### **Aggravation**

32. The SP failed to fully address the complaint.

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### **Sanction Imposed**

33. The SP is fined an amount of R12 000.00, R6 000 of which is suspended for 6 months provided that the SP is not found guilty of breaching clause 9.1.4 or clause 6.2.5 of the WASPA Code of Conduct.

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### **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.

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**Annexure A – Complaint**

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

----- Original Message -----

From: "WASPA Complaints (<REMOVED BY ADJUDICATOR>)"  
<[complaints@waspa.org.za](mailto:complaints@waspa.org.za)>

To: <<REMOVED BY ADJUDICATOR>>

Cc: "Complaints" <[complaints@waspa.org.za](mailto:complaints@waspa.org.za)>

Sent: Tuesday, September 08, 2009 9:21 AM

Subject: [WASPA.complaints] [formal] WASPA Code of Conduct complaint

Ref:#7542

Dear WASPA member,

The attached complaint has been lodged with WASPA against Grapevine Interactive.

This complaint is being processed according to the formal complaint procedure described in section 13.3 of the Code of Conduct.

< template notice snipped by Bretton

--- A copy of the complaint follows below ---

Complaint #7542 (lodged via the WASPA website):

Full\_Name: <REMOVED BY ADJUDICATOR>

Cellular: <REMOVED BY ADJUDICATOR>

Alternate\_Contact\_Number: <REMOVED BY ADJUDICATOR>

Email: [REMOVED BY ADJUDICATOR](mailto:REMOVED BY ADJUDICATOR)

PhysicalAddress: <REMOVED BY ADJUDICATOR>

<REMOVED BY ADJUDICATOR>

<REMOVED BY ADJUDICATOR>

Port Elizabeth 6025

PostalAddress: As above.

PostCode:



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Affiliations: I am not employed by, or otherwise associated with one of WASPA\'s member companies

Affiliation\_Information:

Name\_WASP: GrapevineInteractive

OtherID: PRsc 35408 Dish Magazine September 2009

Code\_Breached: CoC 3.1.2 Knowingly being involved with an illegal lottery. Products not all of promotor and using PRSMS to enter.

Adv Rules5.2.1.2 sms cost incorrectly placed.

5.2.2.2 No T/C 0on Page and no T/C on referred web Page.

No link to WASPA on web page.

Detailed\_Description\_Complaint: As Above

Tick\_as\_appropriate: I have not contacted the service provider and believe this matter requires WASPA\'s attention

Declaration\_Good\_Faith: Information provided is true and correct and provided in good faith

**Annexure B – Reply**

----- Original Message -----

From: <REMOVED BY ADJUDICATOR>

To: <[complaints@waspa.org.za](mailto:complaints@waspa.org.za)>

Cc: <<REMOVED BY ADJUDICATOR>

Sent: Tuesday, September 08, 2009 9:47 AM

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaintRef:# 7542

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Dear &lt;REMOVED BY ADJUDICATOR&gt;,

We have already responded to this complaint - it looks like the complainant logged the same complaint again on the website.

Please advise if we can ignore # 7542, since # 7289 is currently with an independent adjudicator.

Rgds,  
<REMOVED BY ADJUDICATOR>

**Annexure C – Reply**

----- Original Message -----

From: <REMOVED BY ADJUDICATOR> To: <REMOVED BY ADJUDICATOR>  
Cc: <[complaints@waspa.org.za](mailto:complaints@waspa.org.za)>  
Sent: Tuesday, September 08, 2009 10:40 AM  
Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaint  
Ref:# 7542

Dear &lt;REMOVED BY ADJUDICATOR&gt;

Please be advised that complaint 7289 was regarding Aug issue of Dish Magazine and 7542 regarding Sept issue.

Please can you provide a formal response to complaint 7542.

Regards  
<REMOVED BY ADJUDICATOR>  
WASPA

**Annexure D - Reply**

----- Original Message -----

From: "<REMOVED BY ADJUDICATOR>Quixley" <<[REMOVED BY ADJUDICATOR](mailto:REMOVED BY ADJUDICATOR)>>  
To: <[complaints@waspa.org.za](mailto:complaints@waspa.org.za)>  
Cc: <[neil@vine.co.za](mailto:neil@vine.co.za)>; "Cliff Court" <[cliff@vine.co.za](mailto:cliff@vine.co.za)>  
Sent: Tuesday, September 08, 2009 1:52 PM  
Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaint  
Ref:# 7542

Dear Waspa,

We have investigated this complaint carefully and we are completely satisfied that the campaign in question complies fully with the WASPA Code of Conduct.

Regards

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<REMOVED BY ADJUDICATOR>

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Annexure E – Page 24 of the DISH magazine

12/09 2009 00:42 FAX 003

**you CAN WIN**

**How to enter competitions:**

- SMS the keyword and the corresponding letter of the correct answer e.g. SABO B to: 35408 (SA) +27 83 420 8104 (Southern Africa) or enter online at: [www.dstv.com](http://www.dstv.com) (SA), [www.dstvafrica.com](http://www.dstvafrica.com) (Southern Africa) or DStv Touch: Press DK (SA)

**Rules:**

- Log on to [www.dstv.com](http://www.dstv.com) (SA subscribers) or [www.dstvafrica.com](http://www.dstvafrica.com) (Africa subscribers), or check out Channel 100 for all competition rules and conditions.

**Winners Circle:**

- Log on to [www.dstv.com](http://www.dstv.com) (SA winners) or [www.dstvafrica.com](http://www.dstvafrica.com) (Africa winners) to see if you are a winner.

**Disclaimer:**

- SMSs charged at R3 per SMS. VAS rates apply; free minutes do not apply. Errors billed.
- You enter all DStv competitions and exclusive offers on the assumption that you have read, understood and accepted the rules and conditions on the DStv website.
- Standard terms and conditions apply.
- All competitions open on August 25, 2009 and close on September 25, 2009.
- Travel offers are subject to Starlight Travel and Tours and [www.onlinetravel.co.za](http://www.onlinetravel.co.za)'s terms and conditions, and exclude all costs outside the scope of the offer.

**Win!**

**Diamond jewellery**

from **Arthur Kaplan**

JEWELLERS OF DISTINCTION

The Web - Page 2

WEB - NONE

Terms and conditions: winners can select up to three items of regular-priced diamond jewellery. The prize excludes watches. Winners have until December 31, 2009, to claim their prizes. Prizes cannot be exchanged for cash and no change will be given.

**Win!**

**Cook to your heart's content with George Foreman**

George Foreman grills all have a special grease-channelling design, which reduces the amount of fat consumed during meals by channelling the fat away from the food while it is cooking into an easy-to-clean drip tray. A healthy, nutritious diet is your path to living a healthier and more fulfilling life.

**Question:** What of jewellery is Arthur Kaplan giving?

1. Silver
2. Gold
3. Diamond

Refer alongside: Keyword: Arth Kaplan

White-Black text on Grey

LEAN MEAN FAT GRILLING MACHINE

George Foreman

What special grease channel designed to reduce Protein intake Nutrient intake Fat intake

24 DISH PREMIUM September 2009

ALL COMPETITIONS REFERS TO PAGE 24 FOR T/C. NONE.