



REPORT OF THE ADJUDICATOR

Complaint reference number:	#7543
WASPA member(s):	Exactmobile
Membership number(s):	
Complainant:	Public
Type of complaint:	Unlawful Lottery / Pricing
Date complaint was lodged:	2009-09-07
Date of the alleged offence:	2009-09
Relevant version of the Code:	7.4
Clauses considered:	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
Relevant version of the Ad. Rules:	2.3
Clauses considered:	5.2.1.2
Related cases considered:	7103, 7104, 7105, 7289, 7317

Complaint

1. On 07 September 2009 a complaint was submitted to the WASPA secretariat by a journalist relating to short code 34112 which is operated by ExactMobile (the SP) in which the complainant indicated as follows:
 - 1.1. "Code_Breached: CoC 3.1.2 Knowingly registering a shorcode for competition purposes
 - 1.2. Advertising Rules Web page referred to for T/C contains no T/C.
 - 1.3. Detailed_Description_Complaint: As above Sms cost also marginally out of position"

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SP Response

2. The SP then investigated the matter and provided a relatively comprehensive reply on 21 September 2009 where the SP responded to each of the three alleged breaches of the WASPA Code of Conduct.
 - 2.1. Regarding the failure to provide the cost of the SMS in the print advertisement, the SP indicated that there was no shortcode provided within the print advertisement and as such the entrant to the competition would be unable to send the SMS until he/she had visited the web site of <http://www.tropika-island.co.za>.
 - 2.2. The SP then provided a colour screenshot of the website where the cost of the SMS was located in the text below the details required by the entrant to enter the competition. As a result the SP indicated that it had provided the cost of the SMS as required by the WASPA advertising rules and referred to the allegation that the pricing was “marginally” out of position as “nit picking”.
 - 2.3. The SP then responded to the allegation that the Terms and Conditions were not available by indicating that the terms and conditions for the competition were located in a top banner which was visible throughout the website and which had a “prominent link” to the “Competition Rules”. By clicking on the banner the competition rules were displayed at the URL of <http://www.tropika-island.co.za/tiot2/therules.asp>. In addition to this link the SP indicated that the “Terms and Conditions” link was also found at the bottom of the page and resolved to the same URL.
 - 2.4. The SP then moved on to the allegation that an illegal lottery was being conducted and indicated that it believed that a WASPA adjudicator was not in a position to decide whether or not its actions breached the law. For the reasons indicated below this response need not be further articulated.
3. No further comment was made by the complainant relating to the SP’s responses.

WASPA Secretariat request

4. 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

#7543

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.

Outcome of Appeal in complaints 7103, 7104 and 7105

5. 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.
-

Complainant Dies

6. 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.
-

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

7. **3.1.2.** Members are committed to lawful conduct at all times.
8. **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.
9. **6.1.1.** In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.
10. **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.
11. **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.

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12. **9.1.2.** Any promotional material for a competition service must include details of how the competition operates.
13. **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 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.
-

Decision

14. 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.
15. It is common cause that 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.
16. Turning to the question of the SMS cost there is no doubt that the SMS cost of R2 / SMS is displayed as conceded by the complainant. The SP correctly identifies clause 9.2.1.2 of the WASPA Advertising Rules version 2.3 as the clause affecting the placement of the cost of the SMS. Within this clause it is emphasised that the cost of the SMS must be immediately below, above or adjacent to the short code. Bearing in mind that the

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instructions (“SMS the first name of your favourite celeb, your name, cell number to 34112. SMS costs R2.00 or enter on this website”) are right next to the SMS cost, it is unlikely that any entrant would be misled about the cost of the SMS and it is sufficiently close for the purposes of clause 9.2.1.2 of the Advertising Rules. As a result this complaint is dismissed.

17. Turning to the issue of terms and conditions relating to a competition it should be indicated that while the complainant alleged that there was no link to the terms and conditions relating to the competition, the SP denied this and indicated that there were two hyperlinks – a banner above and a link below – that linked to the terms and conditions of the web site. Unfortunately the SP did not provide evidence of this (the screenshot does not show the banner or the bottom of the web page) and the complainant did not in turn reply to the SP’s assertion. Bearing in mind the lack of evidence and the two competing versions regarding this assertion, there is insufficient evidence to conclude that the SP has complied or not complied with the requirements of clause 9.1.2 and 9.1.4 and as a result no finding is made in this regard.

18. For the above reasons the SP has been found not to breach clauses 3.1.2, 6.2.5 as read with Advertising Rule 9.2.1.2 and clauses 9.1.2 and 9.1.4. As a result the complaint is dismissed.

Mitigation

19. N/A

Aggravation

20. N/A

Sanction Imposed

21. N/A

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 (.)" <complaints@waspa.org.za>

To: <<REPLACED BY ADJUDICATOR>>; <<REPLACED BY ADJUDICATOR>>

Cc: "Complaints" <complaints@waspa.org.za>

Sent: Tuesday, September 08, 2009 9:29 AM

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

Ref:#7543

Dear WASPA member,

The attached complaint has been lodged with WASPA against eXactmobile. 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 #7543 (lodged via the WASPA website):

Full_Name: <REPLACED BY ADJUDICATOR>

Cellular: <REPLACED BY ADJUDICATOR>

Alternate_Contact_Number: 0413601669

Email: <[REPLACED BY ADJUDICATOR](#)>

PhysicalAddress: <REPLACED BY ADJUDICATOR>

<REPLACED BY ADJUDICATOR>

<REPLACED BY ADJUDICATOR>

Port Elizabeth 6025

PostalAddress: As above

#7543

PostCode:

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

Affiliation_Information:

Name_WASP: ExactMobile

OtherID: PRSC 34112 Y8u magazine #143 03/09/2009

Code_Breached: CoC 3.1.2 Knowingly registering a shorcode for competition purposes

Advertising Rules Web page referred to for T/C contains no T/C.

Detailed_Description_Complaint: As above

Sms cost also marginally out of position

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 - Attachment

12/09 2009 01:04 FAX

001
Page 1 of 2

11/12/09 Hannes Senekal
Comments for 7543 here with 7543

INBOX Compose Addresses Folders Options
Current Folder: **INBOX**
Welcome! s3n3kai@iburst.co.za

Message List: Delete Forward Forward as Attachment Reply Reply All

Subject: WASPA Code of Conduct Complaint #7543
From: s3n3kai@iburst.co.za
Date: Mon, September 7, 2009 3:37 pm
To: complaints@waspa.org.za
Cc: s3n3kai@iburst.co.za
Priority: Normal
Options: View Full Header | View Printable Version | Download this as a file | View Message details

Complaint #7543 (lodged via the WASPA website):

Full_Name: Hannes Senekal

Cellular: 0834680805

Alternate Contact_Number: 0413601669

Email: s3n3kai@iburst.co.za

PhysicalAddress: 18 Carrington Place
Warbler Street
Cotswold Extension
Port Elizabeth 6025

PostalAddress: As above

PostCode:

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

Affiliation_Information:

Name_WASP: ExactMobile

OtherID: PRSC 34112 Y8u magazine #143 03/09/2009

Code_Breached: CoC 3.1.2 Knowingly registering a shorcode for competition purposes
Advertising Rules Web page referred to for T/C contains no T/C.

Detailed_Description_Complaint: As above
Sms cost also marginally out of position

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

https://webmail.wbs.co.za/src/read_body.php?mailbox=INBOX&passed_id=4473&startM... 9/12/2009

Annexure C - Reply

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

From: "<REPLACED BY ADJUDICATOR>" <<[REPLACED BY ADJUDICATOR](#)>>

To: <complaints@waspa.org.za>; <<[REPLACED BY ADJUDICATOR](#)>>; <<[REPLACED BY ADJUDICATOR](#)>>

Sent: Monday, September 14, 2009 10:47 AM

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaintRef:# 7543

Do you have a copy of this ad? This ad was placed by a client of one of our IP's. We have not managed to get a copy of the ad yet. It will speed up the process if we can get a copy of the ad.

Regards

<REPLACED BY ADJUDICATOR>

Director of Portal & Entertainment Business

Tel : +27 <REPLACED BY ADJUDICATOR>

Fax : +27 11 465 5325

GSM : +<REPLACED BY ADJUDICATOR>

email : <[REPLACED BY ADJUDICATOR](#)>

The information transmitted in this e-mail is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer. All rights reserved by Exact Mobile (Pty) Ltd.

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

From: WASPA Complaints (<REPLACED BY ADJUDICATOR>)

[mailto:complaints@waspa.org.za]

Sent: 08 September 2009 09:29 AM

To: <<[REPLACED BY ADJUDICATOR](#)>>; <<[REPLACED BY ADJUDICATOR](#)>>

Cc: Complaints

Subject: [formal] WASPA Code of Conduct complaint Ref:# 7543

Dear WASPA member,

The attached complaint has been lodged with WASPA against eXactmobile. This complaint is being processed according to the formal complaint procedure described in section 13.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to

#7543

provide the WASPA secretariat with any information you deem to be relevant to this complaint.

- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to <complaints@waspa.org.za>. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

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

Complaint #7543 (lodged via the WASPA website):

Full_Name: <REPLACED BY ADJUDICATOR>

Cellular: <REPLACED BY ADJUDICATOR>

Alternate_Contact_Number: 0413601669

Email: <[REPLACED BY ADJUDICATOR](#)>

PhysicalAddress: <REPLACED BY ADJUDICATOR>
<REPLACED BY ADJUDICATOR>
<REPLACED BY ADJUDICATOR>
Port Elizabeth 6025

PostalAddress: As above

PostCode:

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

Affiliation_Information:

Name_WASP: ExactMobile

#7543

OtherID: PRSC 34112 Y8u magazine #143 03/09/2009

Code_Breached: CoC 3.1.2 Knowingly registering a shorcode for competition purposes

Advertising Rules Web page referred to for T/C contains no T/C.

Detailed_Description_Complaint: As above

Sms cost also marginally out of position

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 D - Reply

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

From: "<REPLACED BY ADJUDICATOR>" <<REPLACED BY ADJUDICATOR>>

To: <complaints@waspa.org.za>

Cc: <<REPLACED BY ADJUDICATOR>>

Sent: Monday, September 14, 2009 5:45 PM

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conductcomplaint

Ref:# 7543

I have looked through the documentation and cannot understand what the complainant is complaining about. I have called this person and he told me that this is one of about 250 complaints he has lodged. I have asked him for more clarity on the complaint so that I can respond.

Regards

<REPLACED BY ADJUDICATOR>

Director of Portal & Entertainment Business

Tel : +27 <REPLACED BY ADJUDICATOR>

Fax : +27 11 465 5325

GSM : +<REPLACED BY ADJUDICATOR>

email : <REPLACED BY ADJUDICATOR>

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#7543

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

From: WASPA Complaints (<REPLACED BY ADJUDICATOR>)
[mailto:complaints@waspa.org.za]
Sent: 14 September 2009 12:35 PM
To: <REPLACED BY ADJUDICATOR>
Cc: complaints@waspa.org.za; <REPLACED BY ADJUDICATOR>;
<REPLACED BY ADJUDICATOR>
Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaint
Ref:# 7543

Hi Gavin,

Please see attached fax received from the complaint indicting the add.

Regards
Lorraine

<REPLACED BY ADJUDICATOR> wrote:

Do you have a copy of this ad? This ad was placed by a client of one of our IP's. We have not managed to get a copy of the ad yet. It will speed up the process if we can get a copy of the ad.

Regards

<REPLACED BY ADJUDICATOR>

Director of Portal & Entertainment Business Tel : +27 <REPLACED BY ADJUDICATOR> Fax
: +27 11 465 5325 GSM : +<REPLACED BY ADJUDICATOR> email : <REPLACED BY
[ADJUDICATOR](#)>

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

From: WASPA Complaints (<REPLACED BY ADJUDICATOR>)
[mailto:complaints@waspa.org.za]
Sent: 08 September 2009 09:29 AM
To: <REPLACED BY ADJUDICATOR>; <REPLACED BY ADJUDICATOR>
Cc: Complaints
Subject: [formal] WASPA Code of Conduct complaint Ref:# 7543

Dear WASPA member,

The attached complaint has been lodged with WASPA against eXactmobile.
This complaint is being processed according to the formal complaint

#7543

procedure described in section 13.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to <complaints@waspa.org.za>. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

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

Complaint #7543 (lodged via the WASPA website):

Full_Name: <REPLACED BY ADJUDICATOR>

Cellular: <REPLACED BY ADJUDICATOR>

Alternate_Contact_Number: 0413601669

Email: <[REPLACED BY ADJUDICATOR](#)>

PhysicalAddress: <REPLACED BY ADJUDICATOR>
<REPLACED BY ADJUDICATOR>
<REPLACED BY ADJUDICATOR>
Port Elizabeth 6025

PostalAddress: As above

PostCode:

Affiliations: I am not employed by, or otherwise associated with one

#7543

of WASPA\'s member companies

Affiliation_Information:

Name_WASP: ExactMobile

OtherID: PRSC 34112 Y8u magazine #143 03/09/2009

Code_Breached: CoC 3.1.2 Knowingly registering a shorcode for competition purposes Advertising Rules Web page referred to for T/C contains no T/C.

Detailed_Description_Complaint: As above Sms cost also marginally out of position

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 E - Reply

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

From: "<REPLACED BY ADJUDICATOR>" <<REPLACED BY ADJUDICATOR>>

To: <complaints@waspa.org.za>; <<REPLACED BY ADJUDICATOR>>; <<REPLACED BY ADJUDICATOR>>

Sent: Monday, September 21, 2009 11:50 AM

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaintRef:# 7543

Attached find Exactmobile's response to this complaint.

Regards

<REPLACED BY ADJUDICATOR>

Director of Portal & Entertainment Business

Tel : +27 <REPLACED BY ADJUDICATOR>

Fax : +27 11 465 5325

GSM : +<REPLACED BY ADJUDICATOR>

email : <REPLACED BY ADJUDICATOR>

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#7543

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

From: WASPA Complaints (<REPLACED BY ADJUDICATOR>)
[mailto:complaints@waspa.org.za]
Sent: 08 September 2009 09:29 AM
To: <REPLACED BY ADJUDICATOR>; <REPLACED BY ADJUDICATOR>
Cc: Complaints
Subject: [formal] WASPA Code of Conduct complaint Ref:# 7543

Dear WASPA member,

The attached complaint has been lodged with WASPA against eXactmobile. This complaint is being processed according to the formal complaint procedure described in section 13.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to <complaints@waspa.org.za>. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

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

Complaint #7543 (lodged via the WASPA website):

Full_Name: <REPLACED BY ADJUDICATOR>

Cellular: <REPLACED BY ADJUDICATOR>

Alternate_Contact_Number: 0413601669

#7543

Email: <REPLACED BY ADJUDICATOR>

PhysicalAddress: <REPLACED BY ADJUDICATOR>
<REPLACED BY ADJUDICATOR>
<REPLACED BY ADJUDICATOR>
Port Elizabeth 6025

PostalAddress: As above

PostCode:

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

Affiliation_Information:

Name_WASP: ExactMobile

OtherID: PRSC 34112 Y8u magazine #143 03/09/2009

Code_Breached: CoC 3.1.2 Knowingly registering a shorcode for
competition purposes
Advertising Rules Web page referred to for T/C contains no T/C.

Detailed_Description_Complaint: As above
Sms cost also marginally out of position

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 F – Formal Reply**WASPA Complaint Number : 7543**

Dear WASPA member,

The attached complaint has been lodged with WASPA against eExactmobile.
This complaint is being processed according to the formal complaint
procedure described in section 13.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.

#7543

- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to <complaints@waspa.org.za>. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

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

Complaint #7543 (lodged via the WASPA website):

Full_Name: <REPLACED BY ADJUDICATOR>

Cellular: <REPLACED BY ADJUDICATOR>

Alternate_Contact_Number: 0413601669

Email: <[REPLACED BY ADJUDICATOR](#)>

PhysicalAddress: <REPLACED BY ADJUDICATOR>
<REPLACED BY ADJUDICATOR>
<REPLACED BY ADJUDICATOR>
Port Elizabeth 6025

PostalAddress: As above

PostCode:

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

Affiliation_Information:

Name_WASP: ExactMobile

OtherID: PRSC 34112 Y8u magazine #143 03/09/2009

Code_Breached: CoC 3.1.2 Knowingly registering a shorcode for competition purposes Advertising Rules Web page referred to for T/C contains no T/C.

#7543

Detailed_Description_Complaint: As above Sms cost also marginally out of position

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

ExactMobile's Response:

The complainant has lodged a complaint against 3 sections of the code of conduct. The complainant saw an advertisement for Tropika in a magazine. The readers were requested to visit a web site where more information was provided. There was no short code or any sms interaction within the print ad. The contents of the print ad will therefore be ignored for the purposes of this complaint.

Readers are directed to <http://www.tropika-island.co.za>

Complaint No 1: Detailed_Description_Complaint: As above Sms cost also marginally out of position

Possible braches of the code :

The code of conduct in section 6.2.5 states :

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.

The advertising guidelines states :

9.2.1.2 Position of Access Cost Text

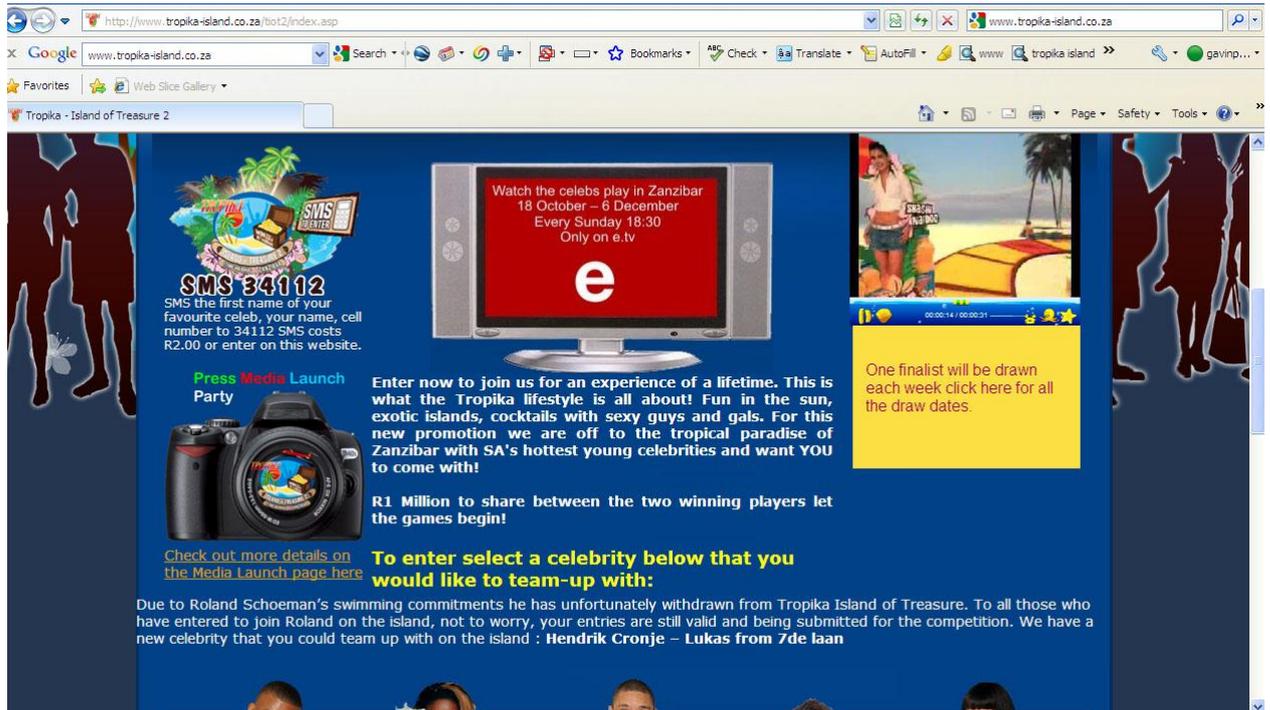
For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font.

The

The pricing and short code is displayed on the page : <http://www.tropika-island.co.za/tiot2/index.asp>

The following is a screen shot of the section of the page where the pricing is displayed.

#7543



Exactmobile does not believe that it is in breach of this clause. The pricing is directly below the short code and is contained within the details of how to enter this competition. Readers are also able to register via the web site and will therefore not incur any SMS costs if they enter on the web site. The complainant also states that the pricing is marginally out of position. This is really nit picking and trying to find the smallest possible error in order to lodge a complaint.

Complaint number 2.

The Web page referred to for T/C contains no T/C

On the top banner which is visible throughout the whole site a prominent link "Competition Rules" is displayed. On clicking on this link the page <http://www.tropika-island.co.za/tiot2/therules.asp> is shown.

This page clearly shows the T/C. There is further a link at the bottom of the page which says "Terms and Conditions" which links to the same page. All the terms and conditions are clearly displayed on this page.

Complaint number 3.

The complainant states :

Code_Breached: CoC 3.1.2 Knowingly registering a shorcode for competition purposes

The code of conduct in section 3.1.2. states : Members are committed to lawful conduct at all times.

Exactmobile assumes that the complainant has an issue with Exactmobile offering a premium rated short code which is used for competition purposes and further assumes that the complainant believes that this may be in contravention of the lotteries act.

Exactmobile has followed the recent court cases of FNB and Winikaya. Exactmobile is of the opinion that the lotteries board has an issue with competitions where the aim of the competition is to make money and use this money to purchase prizes and generate a profit. Exactmobile has also considered the alternative way of entering competitions by means of posting a post card to enter competitions. The cost to post a post card, including the stamp and, postcard and cost to get to a post box to be in excess of

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R7.50. Therefore entering competition at R2.00 cannot be seen as making money from such a competition.

Exactmobile further believes that WASPA's does not adjudicate against Law. WASPA states that it's members are committed to lawful conduct at all times, but does not act against any activities which may be deemed to be unlawful. WASPA is not a court of law. Further the issue of the lotteries act and SMS competitions is a grey area and this needs to be ironed out with the NLB. WASPA's Mancom is in discussions with the NLB on this matter. The consumer bill which has been passed may also change this landscape when the regulations are finalized.

If Exactmobile's interpretation of this section of the complaint is considered not to be valid, Exactmobile requests it to be given a further opportunity to respond more fully in this regard.