



REPORT OF THE ADJUDICATOR

Complaint reference number:	8128
WASPA member(s):	Clickatell
Membership number(s):	0004
Complainant:	Public
Type of complaint:	Competition
Date complaint was lodged:	20-11-2009
Date of the alleged offence:	20-11-2009
Relevant version of the Code:	8.0
Clauses considered:	3.9.2; 6.1.1; 9.1.4
Relevant version of the Ad. Rules:	2.3
Clauses considered:	5.2.1.2
Related cases considered:	8228

Complaint and Response

1. This complaint concerns an alleged failure on the part of one of the SP's Information Providers "(IP)" to comply with the WASPA Code of Conduct's requirements regarding advertisement of pricing and of advertisement of competitions.
2. The SP is a member of WASPA. The IP concerned is not a member of WASPA and the SP provided WASP services to it.
3. On the 20th of November 2009 the complainant, a member of the public, lodged a complaint with the WASPA Secretariat concerning an advertisement which he had seen in a recent edition of the magazine "Popular Mechanics". The complainant alleged that the advertisement failed to list the terms and conditions of the competition, and that the pricing information in respect of SMSes to enter the competition was not correctly placed. I attach a copy of the advertisement as annexure "A".

4. The Secretariat sent the notice of complaint to the SP on the 23rd of November 2009, and the SP responded on the 27th. The SP's submission consisted of a letter from the IP in the following terms:

We would like to submit a formal apology for our deviation from WASPA guidelines in some of the Savanna Retrench Yourself campaign material. Unfortunately, all the campaign collateral has already been dispatched and cannot be changed.

Our understanding was that we needed to include the cost per SMS as well as a reference to the terms & conditions. We were not aware at the time that this reference needed to be placed in close proximity to the call to action - you will see the R2/SMS & Terms & Conditions apply is placed slightly below where it should have in the attached print ad. We will rectify this in all our future campaigns communication.

All our terms and conditions appear on our website and these include a link to the WASPA guidelines.

We have also made contact with the complainant to explain our error and have apologised.

Please accept our apology and our commitment to comply with WASPA guidelines going forward.

5. The complainant gave no response to the SP's submission, and after the lapse of some time, the Secretariat notified the complainant that the matter had been closed. The complainant objected to this and insisted that the matter should proceed to formal adjudication:

As I have mentioned before, I do not have to be satisfied with the actions but Waspa must be and decide on sanctions. Some offences are criminal and must be adjudicated. YOU MUST TAKE THIS UP WITH YOUR SENIORS! Just because an offender contacts me does not absolve him from being sanctioned or prosecuted. Remember this is about contravening WASPA rules, not mine!

6. The Secretariat consequently re-opened the complainant and sent another notice of complaint to the SP in the 11th of February 2010.
7. The SP expressed some surprise that the matter had been re-opened, and submitted a comment from the IP:

As discussed, I have spoken to [the complainant] about his original complaint and he is very happy that this matter has been resolved. He understands that the error (proximity of the cost-of-entry message) was not made with any ill-intent and is satisfied to drop his complaint. He also mentioned that he was happy to chat to WASPA directly to explain that I have called and that this matter has been resolved.

The campaign is now finished and no additional incorrect material was sent out.

Again, please convey our apologies to WASPA – we understand the importance of the guidelines and will do our utmost to comply going forward.

8. The matter was then referred to adjudication.
9. The matter was originally assigned to another adjudicator, who requested further information from the SP, which was provided on the 31st of May 2010.

10. No further submissions were made.
11. The adjudication of the complaint was delayed pending a decision in another matter. By the time the original adjudicator came to adjudicate the matter a conflict of interest had arisen and the WASPA Secretariat assigned the matter to me on the 27th of February 2012.

Sections of the Code considered

12. The alleged breach of the Code of Conduct occurred during November 2009, and accordingly version 8.0 of the Code of Conduct is applicable. The following sections have relevance.

3.9.2. Where any service provider that is not a WASPA member conducts any activity governed by the provisions of this Code, and makes use of the facilities of a WASPA member to do so, that member must ensure that the service provider is made fully aware of all relevant provisions of the Code and the member shall remain responsible and vicariously liable for any breach of the Code resulting from the actions or omissions of any such service provider.

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

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.

Sections of the Advertising Rules considered

13. Version 2.3 of the WASPA Advertising Rules apply to this complaint, and the following clauses have relevance:

5.2.1.2 Position Of 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, even if there is a uniform cost of access displayed throughout the magazine and/or a series of pages allocated to one advertiser.

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- If multiple offers are made in the same advertisement (spread across one or more pages) and the cost differs with each offering, each offering must clearly show the individual costs, again immediately below, or above, or adjacent to the unique access number in a non-serif font
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Decision

14. I examined the copy of the advertisement provided by the SP, and the following is evident:
 - 14.1. The requirements of clauses 9.1.4 (a), (b) & (f) are either not met or not adequately met. I am of the view that where the clause reads "Promotional material must clearly state...", this should be taken to mean that that the required information should appear on the actual material, and that incorporation by reference is not sufficient.
 - 14.2. The cost of entry does not appear "immediately below, or above, or adjacent to the unique access number" as required by clause 6.1.1 read with clause 5.2.1.2 of the Advertising Rules.
15. The IP in its submission admitted to the above infringements. I consequently find that the above clauses have been breached.
16. Clause 3.9.2 of the Code applies where a member provides WASP services to a client (the information provider) which is not a member of WASPA. The clause has the effect of making the SP liable for infringements of the Code by the IP. Consequently the member has infringed clause 9.1.4 as well as clause 6.1.1 read with clause 5.2.1.2 of the Advertising Rules.
17. Finally, the complainant made certain comments in paragraph 5 above regarding the responsibility of WASPA to prosecute complaints. The adjudicator in complaint number 8228, which involved the same complainant expressing the same view (and the same SP), addressed this matter, and I agree with his sentiments:

Section 13.2 of the WASPA Code states that if a complainant is satisfied that a member has adequately addressed a complaint through the informal complaint procedure, then the complaint is considered closed and no further action is taken. If the complainant is not satisfied that the complaint has been satisfactorily resolved, then the formal complaint procedure will be used to handle the complaint further.

The complainant is therefore not correct when he states that it is WASPA that must be satisfied with the response to the complaint before it is escalated from the informal to the formal complaint procedure.

Sanctions

18. A great deal of time has passed since this complaint has lodged. If the matter were "fresh", I would have requested that the SP set out the steps it had taken to ensure that its information providers comply with the Code of Conduct. In the event it would be impractical to do so. As the SP would suffer prejudice from my being unable to obtain clarity on this point, I will assume for these

purposes that the SP took adequate steps to ensure compliance by the IP and will take this as a mitigating factor.

19. The SP is issued with a formal warning to ensure that the promotional material used by its IPs complies with the WASPA Advertising Rules and with chapter 9 of the Code of Conduct.

Annexure A

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SAV-000001



Retrench yourself!

WIN a R15 000 Savanna
salary EVERY month for 5½ years
= R1 million!

SMS barcode's
last 4 digits + your name
to 34002 or enter at
savanna.co.za



Savanna.
It's dry.
But you can drink it.

WWW.SAVANNA.CO.ZA



*Prize calculated by a leading financial services provider. R1M worth R1. Taxes and conditions

Not for Sale to Persons Under the Age of 18.