



Wireless Application Service Provider Association

Complaint #9751

REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Exactmobile
Information Provider (IP):	
Service Type:	Subscription Service
Source of Complaints:	Competitor (Anonymous)
Complaint Number:	# 9751
Code of Conduct version:	9.0
Advertising Rules version:	2.3

Complaint

Complaint #9751 was lodged by an anonymous competitor regarding a television commercial for a subscription service promoting a single content item. The complaint was lodged via the WASPA website.

A copy of the television advertisement was not supplied by the complainant.

The complainant alleged as follows in respect of a TV commercial advertising viewers to SMS "WWD" to 33332:

You are prompted to join the service and you could win WWD prizes. The keyword "Cena" is directly in relation to the contennt [sic] on offer. They try to cloud it with other content items.

The Complainant alleged that the SP had breached the following sections of the WASPA Code of Conduct:

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

11.1.3. For a television advert, if, during the voice over:

- a.the fact that a service is a subscription service, and***
- b.the price and frequency of the billing***



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is clearly announced in the language of the advert, then that advert may promote a single content item, provided that the key word is generic and not linked to the specific content item.

Notification of the complaint was sent to the WASP on 2010-06-15.

SP Response

The WASP response was received on 2010-06-18. Relevant sections of the response are shown below:

Code_Breached: 11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

***The user has expressed 'specific intent' to join the service by sending in the keyword CENA to 33332.
Subscribing to the WWE Subscription service is an independent transaction where the client gets billed R4.99/Day for the use of the service.
The advert predominantly refers to the service, and mentions the promotional giveaway/ competition close to the end of the running time.
A viewer of this advert would understand clearly that the service is the product being advertised, and the promotional giveaway/ competition is a bonus offered to club members.***

***Take note that this SMS request is not the entry mechanism for the promotional giveaway/ competition.
Technically, there is no entry mechanism into the promotional giveaway/ competition – entry is automatic to all members, and is free.
Any member who is a member during the dates of the completion will be automatically entered.***

This stated in the advert in the terms and conditions: "Competition is Free and open to members only. Closing Date 30 June 2010"

Also in the voice over it is clearly communicated that you need to be a member to be eligible for the prize. "... Join today and stand a chance to win....."

11.1.3. For a television advert, if, during the voice over:
a. the fact that a service is a subscription service, and
b. the price and frequency of the billing
is clearly announced in the language of the advert, then that advert may promote a single content item, provided that the key word is generic and not linked to the specific content item.



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***We have again reviewed the code, and we fully comply to rule 11.1.2.
When complying to rule 11.1.2, rule 11.1.3 should have no relevance to this advert.***

***Please note that in the advert (CENA to 33332) it is clear, (both visually and in the voice over) that multiple items are available on the service.
The advert clearly shows 3 images of different content items. (Minimum WASPA requirement is to show at least 2 examples).***

In the voice over, that runs concurrently to the 3 images, it is also clearly communicated to the user that more than a single content item is available on the service

“ get Pics, Videos & Tons more!

We believe that this advert is compliant to the code, and should not pose any problems.

On 2010-06-25 the complainant replied to the SP's response and stated that he or she was still of the opinion that the advertisement was in breach of the Code.

Decision

The subscription service that forms the subject matter of this complaint offers mobile content themed around a WWE wrestling personality by the name of John Cena.

Section 11.2.2 of the WASPA Code states, inter alia:

A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

In addition to images of the wrestler, text is also displayed on screen during the advertisement including the word “WIN” in a very large font, followed by descriptions of the prizes on offer, including a “WWE replica championship belt”, a “WWE PPV chair” and “WWE watches, t-shirts and hats”.

The voice over in the advertisement for the subscription service states as follows: ***“Join today and maybe win a WWE replica championship belt and other cool prizes. SMS Cena to 33332, that’s CENA to 33332”.***

The SP states that the SMS request is not the entry mechanism for the promotional giveaway/competition and that entry is automatic to all members.

While it may be true that any existing members might be entered into the competition automatically, the advertisement invites potential subscribers to submit a SMS and makes it clear that this will result in the consumer becoming eligible to receive a prize. Joining the service is the method by which a new subscriber becomes eligible to win the prizes, in other words the request to join the service operates simultaneously as an entry to the promotional competition. This is a flagrant breach of section 11.2.2 of the Code which makes it clear that a request to join a subscription service may not be an entry into a competition.



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Sanction

In light of the fact that the advertisement was broadcast on television, a medium that has the potential to reach large masses of people, flagrant breaches of the Code which arises in promoting a subscription service via such a medium cannot escape with light sanction.

I regard the following sanction to be appropriate in the circumstances:

1. The SP is directed to pay a fine of R80 000 to WASPA within 7 days of the publication of this report.