

## REPORT OF THE ADJUDICATOR

|                                                       |                                      |
|-------------------------------------------------------|--------------------------------------|
| <b>WASPA Member (SP):</b>                             | <b>Zed Mobile</b>                    |
| <b>Information Provider (IP):<br/>(if applicable)</b> | <b>N/A</b>                           |
| <b>Service Type:</b>                                  | <b>Content / Competition</b>         |
| <b>Complainant:</b>                                   | <b>WASPA Monitor</b>                 |
| <b>Complaint Number:</b>                              | <b>9809</b>                          |
| <b>Code version:</b>                                  | <b>Code v 9.0 and Ad Rules v 2.3</b> |
| <b>Date of Report:</b>                                | <b>6 October 2010</b>                |

1. Complaints 9762 and 9809 arise from the same conduct on the part of the Member. Moreover, while 9809 is a complaint by the WASPA Monitor and consequently contains sufficient detail to allow for the Adjudicator to more easily expound the facts, complaint 9762 gives an excellent demonstration of the damage that arose from the Member's conduct. Consequently these two complaints will be treated together.
2. Mira Networks acted as the service aggregator in these matters but is not the subject of either complaint.

### **Complaint 9809**

#### **Complaint and Response**

3. The WASPA Monitor brought this complaint against the Member on the 23<sup>rd</sup> of June 2010.
4. The service in question was widely advertised on national television and its provision was apparently intended to correspond with the period of the Soccer World Cup hosted in South Africa in June and July 2010. The Adjudicator was provided with six versions of the television commercial for the service, as provided to the WASPA Secretariat by the WASPA Monitor in an email of 23<sup>rd</sup> June 2010. The following was common to all of them.
  - 4.1. "18+" appeared in the top left-hand corner of the screen, and "R7,50 / SMS" in the top right-hand corner.
  - 4.2. Immediately above the prescribed field at the bottom of the screen displaying terms and conditions, a horizontal bar was displayed. This bar displayed text and by rotating along its horizontal axis repeated the following in sequence:
    - "R100 000 every day"

- “R200 000 every Sunday”
- “and a final R1 000 000”

4.3. Immediately to the right of this text the words “SMS DISKI to 37374” appeared in a circular background superimposed over the bar.

4.4. Terms and conditions were then displayed as follows:

You will be charged R7.50 per download. Obtain bill payers consent before using this service if under 18. Errors billed & free SMS's do not apply. Premium rates & WAP charges apply. Help [0861 number listed]. Check handset compatibility and T&C at [www.soccachampions.co.za](http://www.soccachampions.co.za). Artist names are for identification of tones only. Tones are not extracts of original recordings by named artists, nor are they endorsed by those artists or record companies. WAP is required. Competition closes on 11 July 2010.

4.5. All six advertisements featured a television presenter called “Nathi”. In each advertisement she would appear in a different context in company with a different other character. In one advertisement we see Nathi being interviewed and describing the service; in another she is to be seen with someone who is in the role of a weather forecaster, and so forth. In all the advertisements the following information is contained in the audio stream:

- Consumers should SMS the word “DISKI” to the short code “37374”.
- Consumers will get downloads (it was never stated how many)
- Consumers will stand a chance to win R100 000 every day, R200 000 on Sundays and R1 000 000.
- Consumers will stand a chance to participate in a game show to be presented by Nati called “Soccer Champions”.

4.6. The Adjudicator noted that in only one advertisement were viewers advised that the R1 000 000 would be given away “at the end”. It was not stated at the end of what. Other differences between the advertisements are minor and not material.

5. After the WASPA Monitor lodged the complaint, it transpired that the Member had approached the WASPA Secretariat during May 2010 to approve certain aspects of the service before it went live. It is not necessary at present to examine precisely what aspects were examined, but the result of the consultation was that the WASPA Secretariat advised the aggregator (Mira Networks) in an email of 28 May 2010 that, “...the complete lack of compliance regarding pricing, makes me think it is a complete waste of time to comment on the basics of the Code when all I can see are future complaints.” The same email later notes that the Member had been verbally advised of this. The Secretariat also brought it to the Member’s attention during the correspondence at the time that this competition may have been an illegal lottery in terms of the Lotteries Act 57 of 1997.

6. The Monitor tested the service by SMSing “diski” to the Member’s short code as instructed and came across the issues set out below. The transcript of her findings is included with the Member’s later comments thereon for ease of reference. The Adjudicator has corrected, numbered and formatted the transcript to make it easier to follow, but original spelling and grammar are largely retained. The Member’s responses are printed in square brackets in bold. The numbering corresponds to the SMSes sent to the Member.

It was brought to our attention that they [the Member] are flighting a HUGE number of ads using presenters and Isidingo personalities on Sabc.

They are promoting a competition for R100 0000 daily, R200 000 on Sundays and a R1 M final prize.

Once you sms in, they start asking you for more responses like SMS your name, ID number etc

I decided to test the service and see what I could find

1. I smsed Diski to 37374. R7.50 was deducted.  
I received a sms:

Congats!Welcome 2 da game on SABC!MIL bucks waitin 4U!U could b awarded ur 1st R100000 today & b a TVstar!We need ur NAME now!Just send ur NAME to 37374.R7.50

**[An sms was sent with link to content as well as Terms and Conditions. This has not been omitted from the complaint. Please see attached logs for message flow.]**

2. I then sent my name (MARY) to 37374 and I received a response - another R7.50 was deducted.

Mary U can get RICH&FAMOUS! B da SABC MILLIONAIRE wit 1MIL at stake! B a Socca Champ! Uve 20pts. Send DISKI to 37374 &get EXTRA points.&get5contents R7.50

3. I then responded DISKI as prompted.

I received a sms:

AYOBA!Go fo da MILLION!40pts!For 30 mo:Who do u want 2 WIN da W CUP? Sms ur FAv TEAM to 37374. get 5 contents & b crowned with ur TEAM!Today R100000 fo sho.R7.50

I checked my balance and another R7.50 was deducted, I noticed I never received any links to wap sites or content items as said

**[This was sent and is shown in the attached logs]**

4. I replied: Korea dpr (another R7.50 was deducted)

I received another sms:

Hey U! 2day 3right SMSs levels U up! Take da stairs 2da MILLION! Nelson Mandela 1)Madiba 2)Nelly. Send 1 or 2 to 37374 fo 30pts mo!&get 5contents.R7.50

5. I found this sms extremely confusing, but I was still interested in the content and I knew that I knew the correct answer so I proceeded to sms Madiba to 37374

**[We do not believe this question to be confusing; a statement is made to greet the participant 'Hey U! They are then informed that have already answered three questions correctly.**

**A question is then posed Nelson Mandela 1) Madiba 2) Nelly. The link to the content items was delivered to the handset on the 2010-06-16 at 15:54:00 according to our logs, (please see the attached logs for your reference.)]**

I received another sms:

Uve 120points! 2day, right SMSs level U up! Fo 30mo! Unathi mother tongue1)Xhosa 2)French. SMS 1 or 2 to 37374. Taste da MIL!! &get 5contents(R7.50)

I then decided to check my balance and it was R74.54 so a total of R37.50 was deducted!

**[Consumers are informed of the cost: It is stated in the advertisements and each sms that the charge is R7.50]**

### **Conclusion**

This service is completely misleading.

1. Right from the beginning when you sms Diski as prompted you receive a sms stating:

**[We do not believe this to be a misleading service, as prior to participants of the DISKI game receiving the sms below they are sent the message '[U got 5contents. 100K daily 200K Sun R1MIL FINAL 11Jul at stake.Download.TCs sc.mp.zed.com PIN:9PF7L 2Exit sms STOP to 33719. R7.50perSMS sent. Inform acc payer'](#)**

**(please see the mobile logs attached for your reference)**

**This message informs them that they have got 5 content items available, the URL and pin code to access the content is given to the participant, as well as access to the terms and conditions ([.Download.TCs sc.mp.zed.com PIN:9PF7L](#))**

**Participant are told how to opt out of the marketing messages '[2Exit sms STOP to 33719](#)**

**We furthermore also inform the participants of the costs involved: [R7.50perSMS sent. Inform acc payer\]](#)**

"Congats!Welcome 2 da game on SABC!MIL bucks waitin 4U!U could b awarded ur 1st R100000 today & b a TVstar!We need ur NAME now!Just send ur NAME to 37374.R7.50"

Firstly with the use of the word "Congrats" one would easily think they are being congratulated for winning something, and then by it saying

**[Congratulations – Congrats has more than one meaning:**

**Well done**

**Nice one**

**Good for you**

**Best wishes**

**Many happy returns**

**Commiserations**

**The context in which the word, Congrats is used in this instance is congrats you got the previous answer correct, nice one! No winnings were implied or neither was any kind of false hope given as we stated that the participants COULD BE AWARDED THE 1ST R100000 today!]**

"you could be awarded ur 1st R100000 toay & b a TV star" it gives you false hope that you will win more than one payment of R100000! It continues to tell you you "need" to proceed by smsing your name. The fact that the costing just states "R7.50" is also very misleading to the customer as it should clearly state: "Just send ur NAME to 37374 cost R7.50" That way the customer knows each time they respond R7.50 is deducted.

**[The very first SMS that participants receive when they initially sms the Keyword DISKI to 37374, states the price per sms very clearly**

**Customer sends the keyword DISKI: see below**

1. 2010-06-16 15:54:00 MO PREMIUM Diski
2. 2010/06/16 15:54 MT PREMIUM U got 5contents. 100K daily 200K Sun R1MIL FINAL 11Jul at stake.Download,TCs sc.mp.zed.com PIN:9PF7L 2Exit sms STOP to 33719. R7.50perSMS sent. Inform acc payer]

2. The second sms is more confusing, stating:

"Mary U can get RICH&FAMOUS! B da SABC MILLIONAIRE wit 1MIL at stake! B a Socca Champ! Uve 20pts. Send DISKI to 37374 &get EXTRA points.&get5contents R7.50"

Once again the costing isnt clear. What are the EXTRA points for? You are never explained how the game will run or how winners will be announced etc. All you know is you get points.

What are you suppose to do with them etc? You are being told you will "get5contents" but you never receive a link for content items or any MMSes with content etc so what is this content they speak of?

**[This is covered in the Terms and Conditions]**

3. The third sms is extremely confusing:

"AYOBA!Go fo da MILLION!40pts!For 30 mo:Who do u want 2 WIN da W CUP? Sms ur FAv TEAM to 37374. get 5 contents & b crowned with ur TEAM!Today R100000 fo sho.R7.50"

The sms tells you you have received points again, but there is absolutely no explanation what these points mean or how they work. You are also told: "Sms ur FAv TEAM to 37374. get 5 contents & b crowned with ur TEAM! Today R100000 fo sho.R7.50"

This bit basically states that when you sms your fav team you get 5 contents & b crowned with ur team, although you never receive any content items whatsoever, nor do you receive a [URL] from which you can download content etc. It also states "Today R100000 fo sho.R7.50" The "fo sho" can definitely be read as stating you will be guaranteed to win R100000. This is completely underhand.

4. I responded with a very random team name that doesn't really have a chance of the win and the response was:

"Hey U! 2day 3right SMSs levels U up! Take da stairs 2da MILLION! Nelson Mandela 1)Madiba 2)Nelly. Send 1 or 2 to 37374 fo 30pts mo!&get 5contents.R7.50"

When did I receive three questions and get them right? Is my name a question? They asked me to sms DISKI and I did, is this considered a right answer? Lastly is me smsing Korea to win the World Cup which has only now started and doesn't have any chance of winning....be considered a right answer? If I'm up by 3 levels what does that mean? You are asked another question which you respond to as you think you are getting somewhere, when responding the right answer you once again do not receive the (third set) of 5 content items and if you hadn't been checking your airtime with each sms you wouldn't know it costs you R7.50 each time.

It is clear that from the findings above you are able to respond with an unlimited number of smses, each time promising you 5 contents and more points. Points to a competition where absolutely no information is given except it exaggerating your chance of winning from the start! When does the competition close? How do the R100000 a day winners get told they have won?

What do you do with the points? Where are the 5 content items that keep on being promised? There is absolutely no help line number in any sms so you cant even call a help line trying to find out more information about the competition. The costing information is not clear so how far would the bill be rung up before telling you properly "Cost is R7.50/sms" There is also no information at all telling you how you can opt out or stop receiving these messages. How on earth would a customer know how to opt out of receiving these messages without any information?

Right from the beginning this service is completely misleading, it is evident that the Service Provider is luring customers into spending an unlimited amount of money on a competition with absolutely no rules, or valid information etc. This is completely unacceptable. I feel this service should be taken off the air and be made fully legitimate before any further dealings with new customers can be made.

**[This information is clearly stated in the T&C's]**

7. The Member's responses above were included in an email responding to the Monitor's findings dated 18 June 2010. The email further stated that:

- 7.1. The member believed that it's campaign as it called it was not in breach of the WASPA Code of Conduct.
- 7.2. Notwithstanding this view, the Member had amended pricing information to read "R7,50 / SMS" in its SMS messages, and had included a customer care number in the welcome SMS as well as the terms and conditions.
8. The WASPA Tester furnished further feedback on the 22<sup>nd</sup> of June to the effect that:
  - 8.1. The following SMS was received from the Member when testing the service:
 

U got 5 contents. 100 k daily 200k Sun R1MIL FINAL 11 JUL at stake.Download,TCs sc.mp.zed.com PIN:9PF7L 2Exit sms STOP to 33719. R7.50 perSMS sent. Inform acc payer
  - 8.2. The Tester was unable to access the content promised by the Member at the WAP URL provided, and was apparently sent no other link to the content. The Tester was also unable to access the full terms and conditions of the competition.
9. The Member did not accept the Monitor's view that its service infringed the WASPA Code of Conduct and as a result the Monitor recommended that the matter be referred to an emergency panel hearing in terms of section 14.7 of the Code of conduct.
10. On the 25<sup>th</sup> of June an emergency panel was convened and made the following ruling:

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Emergency Procedure Notice (2010-06-25)

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On 2010-06-25, the WASPA Secretariat invoked the emergency procedure set out in section 14.7 of the WASPA Code of Conduct. Consequently, an emergency panel consisting of three panelists was convened to review complaints 9809 and 9762.

Version 9.0 of the WASPA Code of Conduct applies to these complaints.

Complaint 9809 relates to the "Diski" content and competition service advertised on television by a variety of clips of celebrities talking about the service. The service provider for this service is Zed Mobile operating through aggregator Mira Networks.

The first complaint was lodged by the WASPA Media Monitor. The second complaint (9762) was a complaint lodged by a consumer about the same service. The panel chose to focus on the issues raised in 9809 and did not make any ruling regarding 9762.

There was a significant amount of correspondence between the SP, the WASPA Monitor and the WASPA Secretariat about this service prior to the lodging of the formal complaint. This correspondence was made available to the emergency panel.

The Diski service appears to be a hybrid content/competition service. The panel, having reviewed the complaint and associated material, took the view that based on the definition of a "competition service" in the WASPA Code of Conduct, the Diski service must comply with section 9.1 of the Code.

The panel determined that the promotional material for the Diski service does not comply with clauses 9.1.2, 9.1.4 and 9.1.8 of the WASPA Code of Conduct. Further, the panel found prima facie evidence of a breach of clause 4.1.2 of the Code.

The panel found that it was not necessary to examine the remaining breaches of the Code identified in the complaint, or potential breaches of the WASPA Advertising Rules, since the breaches of the above clauses of the Code were deemed substantial enough to impose the remedy set out below. The panel left a determination of breaches of the remaining clauses for the formal adjudication process.

The panel hereby orders that:

1. The Service Provider must suspend all advertising for the Diski service with immediate effect. This includes, but is not limited to, all television adverts.
  2. No further advertising of the service may be conducted until such advertising is fully compliant with the WASPA Code of Conduct and Advertising Rules. Any new marketing material is to be submitted to the WASPA Monitor for review prior to being used.
  3. No further entries may be accepted into the competition by the Service Provider until such time as this material has been revised and submitted for review, as described above.
  4. Until such time as revised marketing material has been submitted for review, as described above, any additional attempts by consumers to enter the competition must be responded to with a notice that the competition has been suspended.
  5. The Service Provider must keep a full record of all entrants into the competition pending the outcome of the formal adjudication process for this matter.
  6. The aggregator supporting this service (Mira Networks) may not distribute or disperse any funds accrued for this service to the Service Provider (Zed Mobile) or to any other party, pending the outcome of the formal adjudication process.
- 11.** The Member advised the WASPA Secretariat on the 25th that advertisements for the service had ceased on the 22<sup>nd</sup> of June, and that the Member was in the process of implementing the panel's ruling; any attempt to access the service would be met with an SMS response that the service was suspended. It subsequently emerged that marketing messages were suspended on Sunday the 27<sup>th</sup>. The reason for the delay according to the Member was that the emergency panel ruling reached the Member late on Friday the 25<sup>th</sup>, and the promotion was being run out of its Madrid office.



12. Finally, the Member furnished its formal response to the complaint on the 29<sup>th</sup> of June 2010. The submissions contained therein are included under the consideration of the alleged infringements of the various sections of the WASPA Code of Conduct.
13. There is substantial correspondence between the Member and the WASPA Secretariat after the suspension of the service in which the various amendments to the service necessary to ready it for re-activation are discussed. As this correspondence is of no relevance to this complaint, it will not be traversed, other than to mention that the relevant changes were made. The WASPA Secretariat gave the go-ahead for re-activation on the 8<sup>th</sup> of July subject to the caveat that the competition might still be an illegal lottery.

### **Portion of the Code Considered**

14. The complaint relates to alleged infringements of the following sections of the WASPA Code of Conduct.

- 3.3.1. Members will not offer or promise services that they are unable to provide.
- 3.3.2. Services must not be unreasonably prolonged or delayed.
- 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.
- 4.1.7. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).
- 4.1.8. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.
- 6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.
- 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.
- 9.1.2. Any promotional material for a competition service must include details of how the competition operates.
- 9.1.3. Interactive competition services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and

must require the customer to actively confirm their continued participation.

- 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.
- 9.1.5. The following additional information must also be made readily available on request, if not contained in the original promotional material:
  - (a) how and when prize-winners will be informed;
  - (b) the manner in which the prizes will be awarded;
  - (c) when the prizes will be awarded;
  - (d) how prize-winner information may be obtained;
  - (e) any criteria for judging entries;
  - (f) any alternative prize that is available;
  - (g) the details of any intended post-event publicity;
  - (h) any supplementary rules which may apply;
  - (i) the identity of the party running the competition and responsible for the prizes.
- 9.1.6. Competition services and promotional material must not:
  - (a) use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants;
  - (b) exaggerate the chance of winning a prize;
  - (c) suggest that winning a prize is a certainty;
  - (d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.
- 9.1.8. If a competition closes at a specific time of day, then that time must be clearly communicated to all entrants. For live television competitions, an appropriate count down or advanced warning must be provided.
- 11.8.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

## Decision

15. The Member's formal response of 29 June 2010, as well as responses made to the Monitor's original remarks on 18 June 2010, where these are relevant, will be incorporated into the rulings in respect of each alleged infringement as set out below.

16. It is important to note that the Adjudicator makes decisions based solely on the information provided to him by the WASPA Secretariat and ultimately the parties themselves.

#### Nature of the Service / Competition

17. Before dealing into the alleged infringements, it will be useful to determine how the service / competition run by the Member actually worked. The conclusions in this regard are drawn from the Member's statements, the terms and conditions provided by the Member and the statements of the WASPA Monitor and Tester.
18. The URL provided by the Member in the television advertisements for viewing the full terms and conditions for the competition was "www.soccachampions.co.za", while the URL provided in its formal response was "www.socachampions.co.za" with one "c". The Adjudicator was unable to access a website at either URL - website concerned has presumably been removed. The Member in its welcome SMS to consumers listed a WAP site at which the terms and conditions could be viewed, but the WASPA Tester could apparently not access that either.
19. The Adjudicator requested a copy of the full terms and conditions for the competition as it was at the time of the alleged infringements. The WASPA Secretariat obtained terms and conditions from the Member on that basis. The document provided is labelled "Confidential Draft" and headed "South African Broadcasting Corporation Limited (SABC) - Promotion - Terms and Conditions". The competition described is clearly that complained of, and while the SABC was indeed involved in the delivery of the service, the heading of these terms and conditions seems to imply that the SABC and not the Member is offering the service. Perhaps the arrangement that the Member had with the SABC was that the SABC would provide the content downloads and the Member would "resell" it, and this seems to be supported by the Member's formal response as quoted in paragraph As to section 9.1.3, the Member had the following to say:.
20. It is thus not clear whether the above document constitutes the full terms and conditions or whether it was displayed on the Member's website at the time of the alleged infringements. Given the nature of the Adjudicator's request for further information, however, the Adjudicator will proceed on the basis that this document is in fact the document that the Member *purports* was displayed on its web site. As neither the Monitor nor the Tester managed to access the site, the Adjudicator hesitates to hold that this document *was actually* displayed
21. The service operated on the following basis:
- 21.1. After viewing promotional material, the consumer SMSes the word "diski" to the short code 37374.
- 21.2. A welcome SMS is sent back to the consumer.
- 21.3. SMSes are sent to the consumer with questions to be answered. Answer SMSes are charged at R7.50 each. Each correct answer earns the consumer points in the competition. As many of the questions are not capable of being

judged as correct or not (e.g. asking the consumer's name), is not clear how these points are allocated.

21.4. Each answering SMS from the consumer entitles the consumer to download 5 content items from the Member's WAP site.

21.5. An SMS to the short code would also enter the consumer in the competition draw(s) as discussed below.

21.6. The competition itself was to last for 42 days – from 31st May until 11th of July 2010. During this time draws were to take place for R100 000 every day, R200 000 every Sunday and R1 000 000 at the end of the competition.

22. According to the full terms and conditions, no payment is required for entry into the competition draws, but that document also states that each purchase gives "... a free entry for the different draws depending when the participants have purchased the content" and later, "The Participant that purchases content ... enters freely into the draws of the day the Participant has purchased the Content." and later, "Each draw consists of general knowledge questions and other non-skill games where the consumer will get points for answering correctly or being lucky in the non-skill games. Each point is a participation in the draw."

23. The Adjudicator finds it very difficult to establish from the above how the point system works and how it relates to draws. This much is clear: sending an SMS to "diski" would enter the consumer in the competition, but what the consumer's status in the competition would be is not clear. It is not clear how the points allocated to consumers work. We are told that each point entitles the consumer to participation in the draw; given that "correct answers" to questions posed by the Member per SMS attract 20 or 30 points, is a consumer who answers two questions correctly entered into a draw for the aggregate of these points (50 times)? The above also seems to imply that the consumer is entered into the draw on the day on which the consumer "purchased the Content" (itself a fundamentally misleading phrase). Would that be one entry or 50 entries on the day that the consumer answers two questions correctly? Are points carried over to the weekly draw? Are they carried over to the final draw? The Adjudicator does not know the answer to these questions, and neither would a consumer, even if that consumer had sight of the formal terms and conditions.

24. The alleged breaches of the Code of Conduct will be dealt with below.

Members will not offer or promise services that they are unable to provide (Section 3.3.1)

25. The Monitor stated that while she had sent several SMSes to the Member's short code, she had never received any link from the Member to allow her to download the content.

26. The Member contended in its formal response that:

Any user sending an SMS to the short code 37374 can download its Content at the WAP site [HTTP://sc.mp.zed.com](http://sc.mp.zed.com), which means that Zed is able to provide on behalf of SABC the services promoted.

- 27.** The WASPA Tester however also received such an SMS and was not able to download content from the WAP site indicated by the Member when she attempted to do so on the 22<sup>nd</sup> of June.
- 28.** According to the Member's response on the 18<sup>th</sup> of June, it had sent the "content offering" to the WASPA Monitor when she used the service, and that this is confirmed in the message logs supplied by the Member. The Adjudicator had sight of these logs and the Member certainly did send the URL of a WAP site with a pin code for access. In any event, it is clear that despite their best efforts, neither the WASPA Monitor nor the WASPA tester, both people who frequently interact with such services, could access the content in question. Consequently the Adjudicator finds on balance that the content that was purchased by consumers by SMSing to the Member's short code was in fact inaccessible at the times when the service was tested, or at least not accessible to all consumers who attempted to access it.
- 29.** As the Member did not in fact provide the services that it offered to provide, it has breached section 3.3.1 of the Code of Conduct

Services must not be unreasonably prolonged or delayed (Section 3.3.2)

- 30.** The Member's response to this allegation was not relevant, but the Adjudicator in any event does not think that the circumstances of this complaint as set out in paragraph According to the Member's response on the 18<sup>th</sup> of June, it had sent the "content offering" to the WASPA Monitor when she used the service, and that this is confirmed in the message logs supplied by the Member. The Adjudicator had sight of these logs and the Member certainly did send the URL of a WAP site with a pin code for access. In any event, it is clear that despite their best efforts, neither the WASPA Monitor nor the WASPA tester, both people who frequently interact with such services, could access the content in question. Consequently the Adjudicator finds on balance that the content that was purchased by consumers by SMSing to the Member's short code was in fact inaccessible at the times when the service was tested relate to delay or prolongation of services, but rather a failure to provide them at all. Consequently there has been no breach of section 3.3.2.

False or deceptive information (Section 4.1.2)

- 31.** In its formal response, the Member made the following remarks concerning this allegation:

We consider that users have enough Information to understand the Promotion and the services provided. According to the TV spots and the first SMS received by the users, all the Information about the promotion is accessible at [www.socachampions.co.za](http://www.socachampions.co.za).

- 32.** In determining whether the Member's conduct in marketing the service infringed section 4.1.2, the contents of the terms and conditions are not to be relied on alone. Certainly, terms and conditions that comply in every respect with the Code of Conduct would not assist a Member if its marketing of any service was knowingly misleading.

- 33.** To belabour the points made from paragraph Before dealing into the alleged infringements, it will be useful to determine how the service / competition run by the Member actually worked. The conclusions in this regard are drawn from the Member's statements, the terms and conditions provided by the Member and the statements of the WASPA Monitor and Tester. on, the advertisements that the Adjudicator had sight of did not make it clear what was being offered to the consumer by the Member; moreover, the Adjudicator agrees with the Monitor that the SMS messages sent to consumers in response to their SMSes to the Member's short code were confusing and at times nonsensical. The functioning of the service itself is rather opaque, with the SMSes mentioning "points" that consumers apparently earn by answering questions per SMS correctly, and where giving one's name is counted as a correct answer.
- 34.** Were it not for the fact that the Member had checked the workings of this service with the WASPA Secretariat before proceeding with it, the Adjudicator would have held that the Member did not intend to confuse consumers. Rather the Adjudicator's view would have been that the Member did not understand the Code of Conduct adequately and any misrepresentation of confusion created was unintentional, and as the section in question uses the word "knowingly" no infringement of this section would have taken place.
- 35.** The WASPA Secretariat however made the Member aware of certain shortcomings in the proposed service before it commenced with the service offering. Amongst these criticisms was that the consumer would not know what he or she was purchasing. Hence the Member cannot be said not to have known that it's promotional material in respect of the service was confusing, and consequently the Adjudicator finds that the Member has infringed section 4.1.2 of the Code of Conduct.

#### Customer Support (Sections 4.1.7 and 4.1.8)

- 36.** The Adjudicator could not find any specific allegation of an infringement of these sections, beyond the mere listing by the Monitor of this section as one that had been infringed.
- 37.** The Member's input on this point from its formal response was as follows:

There is a customer care line which is included in the TV advertisements and on the T&C's available at [www.socachampions.co.za](http://www.socachampions.co.za). In addition, we are including this Information in the free SMS received by the users.

- 38.** With little to draw on, the Adjudicator must be satisfied with the fact that a help desk number was provided in the television advertisements discussed above. Although the number was not initially included in SMSes to consumers, this does not appear to be a requirement of the sections in question. Consequently the Adjudicator does not find an infringement of either of these sections.

#### Misleading Pricing (Section 6.2.4)

- 39.** The Member had the following to say regarding this alleged infringement:

It is stated in the advertisement, in the previous SMS received by the users and on the web site [www.socachampions.co.za](http://www.socachampions.co.za) that each sms has a charge of R7.50. There is not required multiple communications to obtain the content.

**40.** The full terms and conditions dealt with in paragraph The URL provided by the Member in the television advertisements for viewing the full terms and conditions for the competition was “[www.socachampions.co.za](http://www.socachampions.co.za)”, while the URL provided in its formal response was “[www.socachampions.co.za](http://www.socachampions.co.za)” with one “c”. The Adjudicator was unable to access a website at either URL - website concerned has presumably been removed. The Member in its welcome SMS to consumers listed a WAP site at which the terms and conditions could be viewed, but the WASPA Tester could apparently not access that either. stated that for each SMS sent, the consumer would receive five items of content. The terms and conditions displayed on the television advertisements however say that R7.50 will be charged *for each download*. The SMSes sent to consumers in response to SMSes sent to the short code are not consistent with this. Some of the SMSes sent to the Monitor state that R7.50 is charged for 5 downloads, while those containing questions to be answered make no mention of downloads, and thus could be taken to mean that the R7.50 is in respect of the competition draw, though on the Adjudicator’s understanding the consumer was actually “buying” 5 items of content for his / her R7.50. Several of these SMSes also neglect to mention that R7.50 will be paid *per SMS sent*.

**41.** In light of the above, the Adjudicator is of the view that the pricing stated in advertising is misleading and hence that the Member has infringed section 6.2.4 of the Code of Conduct.

#### Competition Cost (Sections 9.1.1 and 9.1.3)

**42.** In the Member’s view:

There is no cost to enter into the competition as the users are paying for the Content and not for the competition; nevertheless, the promotional material of the promotion includes the price of the service.

**43.** While the Adjudicator accepts that this statement is indeed a reflection of fact, it is not a reflection of the impression created in the minds of consumers, some of whom, such as the complainant in complaint 9762, were firmly under the impression that the more SMSes that were sent, the greater the chance of being successful in a competition draw. This impression was greatly encouraged by the manner in which consumers “earned” points for each SMS sent to the short code.

**44.** As the Adjudicator interprets section 9.1.1, the test to be applied is whether the actual advertised pricing matches the actual cost of entry into the competition. As this is indeed the case, the Member has not infringed this section.

**45.** As to section 9.1.3, the Member had the following to say:

The users of the services provided through the short code 37374 are not paying ongoing incremental cost for any competition as the payments made are in exchange of the Content offered by SABC.

- 46.** The Adjudicator finds that the Member has not infringed this section either: while the consumers were confused as to whether they were paying for content or a competition, they were actually paying for content, and hence this section does not apply.

Competition Terms and Conditions (Sections 9.1.2, 9.1.4, 9.1.5, 9.1.6 and 9.1.8)

- 47.** Section 9.1.2 of the Code of Conduct imposes an obligation on the Member to include details of how the competition works in promotional material for the competition. In the Adjudicator's view, this section must be read with sections 9.1.4, which imposes a duty on the Member to include certain essential information in the promotional material which is likely to influence the consumer's decision to participate, and with section 9.1.5, which provides for certain information to be available on request by the consumer.
- 48.** The Member's response to the alleged infringement of all three of these sections was that the relevant information was available at the web site [www.socachampions.co.za](http://www.socachampions.co.za).
- 49.** Referring to the analysis of the competition starting in paragraph Before dealing into the alleged infringements, it will be useful to determine how the service / competition run by the Member actually worked. The conclusions in this regard are drawn from the Member's statements, the terms and conditions provided by the Member and the statements of the WASPA Monitor and Tester., it is clear that information that the consumer would need in order to decide whether to participate in the competition is missing from the terms and conditions set out in the advertisements themselves. No mention is made of points and how they are accumulated (though the Adjudicator is not at all certain whether accumulating points has any effect at all, such is the confusion in this matter). Certainly the confusion experienced by the Complainant in complaint 9762 as to how the points system worked is sufficient to show that this information should have been included here. Confusion also abounds as to what a consumer is getting for the R7.50 paid; the full terms and conditions state that content alone is obtained and that entry into the competition draws does not attract a charge, but this information is not displayed in the terms and conditions displayed on the advertisements. Hence the Member has infringed section 9.1.4.
- 50.** As mentioned above, the Adjudicator was unable to verify the contents of the Member's web site, as it appears to have been taken off line. The WASPA Tester was unable to access the terms and conditions at the time of the alleged infringement, and in the absence of other information to the contrary the Adjudicator finds that the terms and conditions were in fact not available on the website at the time.
- 51.** Even if we assume that the full terms and conditions were available at the time of the alleged infringement, the manner in which the qualification for draws and the point system was described therein is opaque to the Adjudicator, let alone to a consumer, and the Member has thus infringed section 9.1.5.



- 52.** Consequently, the Adjudicator finds that the Member has infringed sections 9.1.4 and 9.1.5 of the Code of Conduct, and by extension also section 9.1.2.
- 53.** The Monitor was of the view that certain language used by the Member in SMSes to consumers could give an inflated impression of their chances of winning a prize in the competition. The Adjudicator does not agree that this was the case in the messages that he has perused, and accordingly the Member is not found to have infringed section 9.1.6.
- 54.** It is not clear on what basis the WASPA Monitor felt that the Member had contravened section 9.1.8. The Member advised that the competition was not a live TV competition and the Adjudicator accepts this; the Adjudicator could not find any further grounds for such a complaint. No infringement is found in respect of this section.

#### Termination of a Subscription Service (Section 11.8.1)

- 55.** The Adjudicator agrees with the Member's contention that this service was not a subscription service; this section hence does not apply.

### **Complaint 9762**

#### **Complaint and Response**

- 56.** This complaint stems from the competition described more fully in complaint 9809. The facts are as follows:
- 57.** On or about the 18<sup>th</sup> of June 2010 the Complainant, a member of the public, lodged a complaint through the WASPA website at [www.waspa.org.za](http://www.waspa.org.za). She had seen the competition advertised on television, and had been SMSing the Member's short code vigorously for some days. As she said in her complaint:
- “...[the Complainant continued to SMS the short code] due to the fact that they keep on asking knowledge questions and i thought the more you answer and the more points you get you stand a bigger change of winning.”
- and further,
- “I spend over 8000-00 on sms's and i know its stupid but the moment you wanna stop they sms you back and say\"dont quit now you are allmost there or you reasching gold etc, obviously you will go on.”
- 58.** To add to the Complainant's troubles, she had used a cellphone and MSISDN belonging to her employer in SMSing the Member's short code.
- 59.** According to the Complainant, as of the date of the complaint, no draw had taken place.
- 60.** The Complainant made enquiries to several parties regarding the competition , and obtained conflicting versions of how the competition worked:

“A person at SABC and Myra assure me the more sms's you send the bigger is your chance just for Celine from Club Zet inform me if you send 1 or 1000 sms's your chance is the same.”

- 61.** The Complainant states that after her requests for information, Myra Networks sent her an SMS informing her that her subscription had been terminated. It is unclear why Myra would have sent the SMS rather than the Member, but nonetheless, it is clear why the Complaint found this upsetting: She had spent R8 000 on the competition and had accumulated almost 140 000 points. Given that she assumed that the more points she had, the better her chance of winning was, her upset was understandable.
- 62.** The complaint was included with complaint 9809 for consideration by the emergency panel on the 25<sup>th</sup> of June 2010. The panel did not make any ruling in respect of this complaint.
- 63.** The Member's did not respond fully to the specifics of this complaint, merely referring the WASPA Secretariat to its response to complaint 9809. The only specific response given by the Member to this complaint was contained in an email to the WASPA Secretariat on the 25<sup>th</sup> of June 2010:

“With regards to the Initial Complaint Notification #9762 from the complainant [complainant name]:

- \* All the terms and conditions, details and functioning's of the Socca Champions promotion are available at [www.soccachampions.co.za](http://www.soccachampions.co.za)

- \* The points accrued in the promotion:

Each point a participant gets is worth one participation in the draw for the daily (the draw for R100000) and weekly (the draw for R200000) and grand prize (the draw for R1 million).

- \* Winners of the daily and weekly prizes:

The winners of the daily and weekly prizes have been drawn and are being drawn on a daily and weekly basis. The names of the winners are available on the official Socca Champions website for review. [www.soccachampions.co.za](http://www.soccachampions.co.za)”

## Decision

- 64.** The Adjudicator does not deem it necessary to determine which sections of the Code of Conduct the Member has infringed by its actions in respect of this complaint, as this conduct is the same as that which is the subject of complaint 9809 and has been examined thoroughly. The same decision applies in respect of this complaint as was made in respect of complaint 9809.
- 65.** It remains however to comment on the conduct of the Complainant in this matter. The Complainant was certainly misled by the Member's conduct, but nonetheless was extremely foolish in using her work cellphone in the way that she did. One can only hope that she has learnt a lesson from this experience.

## Sanction

- 66.** The impression created in perusing the documents provided in support of this complaint is one of chaotic planning and a loose understanding of the WASPA Code of Conduct on the part of the Member. The Member's main challenge in offering this service was to combine a content offering with a competition, an endeavour that was a signal failure.
- 67.** The Adjudicator however did not find any intention on the part of the Member to mislead the public, even though its actions certainly had that effect. Its actions in proceeding with the service despite disapproval from WASPA points more towards recklessness rather than an intention to mislead as such. However, the fact that the service was extensively advertised on television aggravates the seriousness of the infringements of the Code of Conduct.
- 68.** The Member attempted to obtain pre-approval for the service from the WASPA Secretariat, but when it failed to obtain such approval, went ahead in offering the service nonetheless. The service was on the Member's version run from its Spanish office, and it is a plausible assumption that the local employees of the Member who were attempting to obtain WASPA's approval were pressured by the Spanish office to get the service ready to go live in time for the commencement of the World Cup; however this is conjecture on the Adjudicator's part. The fact remains that the Member had been told that its service as proposed did not comply with the WASPA Code of Conduct but nonetheless proceeded to take it live. It is not clear whether the advice sought amounted to a service as contemplated in section 14.8 of the Code of Conduct. Even if it did, the fact that the Member ignored WASPA's disapproval of its service outweighs any mitigation that may have accrued to the Member and its actions in this regard must be seen as an aggravating factor.
- 69.** The Adjudicator noted that the Member had several previous complaints upheld against it, but none of these related to competitions, being almost exclusively in respect of subscription services. As is noted above, the instant complaint does not relate to subscription services.
- 70.** The Member has been found to have infringed sections 3.3.1, 4.1.2, 6.2.4, 9.1.2, 9.1.4, and 9.1.5. The Adjudicator does not find it feasible to impose separate sanctions for the discrete infringements, and imposes the following sanction in respect thereof:
- 70.1. The Member is fined the amount of R50 000, payable to the WASPA Secretariat within 5 business days of notification of this report.
- 70.2. The Member is to refund all monies paid by consumers in respect of this service from the date that it went live until the 27<sup>th</sup> of June 2010 or the date on which the Member ceased to process payments in respect of the suspended service, whichever is later. For the avoidance of doubt, this order does not apply to monies accruing to the Member after the service was resumed on or about the 8<sup>th</sup> of July 2010. The Member is to provide proof of

fulfilment of the refund to the WASPA Secretariat within 10 business days of notification of this report.

71. Mira Networks acted as the service aggregator in this matter, and was informed of the possible breach before the service was launched. Despite having the benefit of this warning, Mira Networks nonetheless allowed the service to proceed. Mira Networks was not the subject of these complaints and was not given the opportunity to respond. The Adjudicator consequently makes no ruling in respect of Mira Networks, but nonetheless wishes to express his displeasure at its conduct. The WASPA Secretariat is consequently requested to forward a copy of this report to Mira Networks.

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