



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Cointel
Information Provider (IP) (if any)	Shell South Africa Marketing (Pty) Ltd
Service Type	Competition advertising
Source of Complaints	WASPA Monitor
Complaint Number	3124
Date received	15 January 2008
Code of Conduct version	5.3 & 5.7

Complaint

The WASPA Monitor identified a potential breach of section 8.2.1 of the WASPA Advertising Rules in competition leaflets available instore at Shell Garages during December 2007. It is clear from the Complaint lodged that a potential breach of section 9.1.4 of the Code of Conduct is also alleged and the SP and IP responded on this basis.

SP Response

The IP provided the following Response:

"The terms and conditions were displayed on our website www.shell.co.za (see below attachment), which amongst other things covered the mechanics of the campaign, the promotional period as well as the SMS fee (as per the WASPA Code of Conduct).

In addition, all the POS material (Fridge Cards, Hanging Mobile and the leaflets that were handed out in-store) referred customers to the website to view the T&C in full. (see attached artwork)."

The SP in its initial response to the Complaint stated that it had supplied the required advertising guidelines & Terms and Conditions for them to use when running a SMS Campaign.

The SP filed a further response essentially acknowledging the breach and raising in mitigation the fact that it was the IP's second SMS campaign and that inexperience rather than an intention to mislead was the cause of the breach.

Sections of the Code considered

The following sections of the WASPA Code of Conduct (versions 5.3 and 5.7) were considered:

3.9. Information providers

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

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.

The following section of the Advertising Rules was considered:

8.2.1 COST OF ACCESS & T&C DISPLAY RULES

8.2.1.1 Formatting Of Cost Text

- The size of the text showing the cost of access must be in 11 point font size
This is 11 point Arial Font
- The access cost text must be in a non-serif font, preferably 'Arial' font.
- All access cost information must be placed horizontally

8.2.1.2 Formatting of the T&C Text

- The size of the text showing the T&C must be in 9 point font size

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- The T&C cost text must be in a non-serif font, preferably 'Arial' font
- All T&C information must be placed horizontally

8.2.1.3 Position Of The Text Showing Access Cost and T&C

- 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 in a non-serif font.
- This T&C text must be placed close as possible to the unique access number.
- If multiple offers are made on the same advertisement and the cost and T&C differ with each offering, each offering must show the cost & T&C separately and clearly.
- If the access number has the ability to be torn off or detached from the promotional text and used independently, pricing information must also be displayed on both the remaining and detachable portions.

Decision

The Adjudicator finds that there has been a breach of section 9.1.4 which clearly requires the five categories of information listed to be set out in promotional material, i.e. the competition leaflet which contained the instructions on how to enter and featured a "call to action" in the form of the short code. It flows from the breach of section 9.1.4 of the Code that section 8.2.1 of the Advertising Rules has also been breached.

The Code of Conduct and Advertising Rules create a clear distinction between terms and conditions which must be presented with any call to action and those which may be regarded as additional and therefore incorporated by reference. This is only logical: use of SMS as a competition entry mechanism will be mostly a function of impulse and it is the duty of the service provider to ensure that all information critical to informing the decision to enter or otherwise is present at the time the impulse is formed.

The breach is a serious one. The failure to provide an access cost and a closing date creates significant potential for prejudice to consumers.

The Adjudicator accepts, however, that there was no intention to mislead consumers and that the failure to provide the required information arose from a misreading of the guidelines with which the IP had been provided. This version is supported by the fact that the terms and conditions available on the website are clearly written with compliance with the Code of Conduct in mind and by the appearance of references to the applicability of the terms and conditions on all promotional material.

The Adjudicator does not regard the SMS cost of R2 per SMS to be excessive in the sense that it may not reasonably have been regarded as dissuading any one from entering the competition based on price considerations.

The clear evidence of compliance in the website terms and conditions indicates that the SP took reasonable steps with regard to informing the IP of its obligations under the Code. The SP is nevertheless required by section 3.9.1 of the Code to ensure that services provided by the IP do not contravene the provisions of the Code.

As regards sanction the Adjudicator has taken into account the points raised in mitigation and the record of the SP.

In the circumstances the following sanction is imposed:

- The IP through the SP is issued with a formal reprimand and a fine of R10 000, payment of which is suspended for a period of one (1) year subject to the IP not being found to be in breach of section 9 of the Code of Conduct or section 8 of the Advertising Rules during this period;
- The SP is ordered to check the logs corresponding to the shortcode and the competition and to immediately reimburse any person who entered the competition after the closing date (20 January 2008) and was charged for such entry. The SP is ordered to make the final results of such investigation known to the WASPA Secretariat within ten (10) days of date of receipt of this Adjudication.