



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Opera Interactive
Information Provider (IP):	MobiMedia
Service Type:	Competition
Source of Complaints:	Public
Complaint Number:	7105
Code Version (CoC):	Code of Conduct 7.4
Date of Adjudication:	15 January 2010

Complaint

1. On the 21st July 2009 a complaint was lodged with the WASPA secretariat by a journalist relating to short code 40881 which is operated by Opera Interactive in which the complainant indicated that s54 of the Lotteries Act 57 of 1997 (hereinafter the “Lotteries Act”) has been contravened in that the premium SMS used in the “My Weekend” section of the La Femme magazine was in contravention of the Lotteries Act.
2. In addition the complainant indicated that the “promotional competition” as defined in the Lotteries Act did not promote anything. A copy of the advertisement is attached hereto as Annexure A.

SP Response

3. On the 29th July 2009 a representative of the SP replied on behalf of both it and the IP in this matter. In the reply the writer dealt with complaints 7103, 7104 and 7105 as they turned on the same facts in the SP’s opinion.
4. In the reply the SP indicated that it was unclear which portions of the WASPA code of conduct (CoC) had been breached in that the specific clause of the CoC was not quoted

#7103

by the complainant.

5. However assuming that the complainant was indicating that the competition in question was an illegal lottery, the SP indicated the following:
 - 5.1. The competitions are promotional competitions in line with the Lotteries Act promoting publications and/or other mobi-sites;
 - 5.2. That WASPA adjudicators are not in a position to judge whether a competition is or is not an illegal lottery;
 - 5.3. Complaints about the service in question have already “been through the National Lotteries Board”; and
 - 5.4. The cost of entry to the promotional competition was not excessive and all other WASPA rules relating to competitions were adhered to.
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Complainant Response

6. The Complainant then responded to the SP’s response above and indicated that:
 - 6.1. While the CoC does not spell out the rules regarding the Lotteries Act and other acts, there was nonetheless an advisory that was issued by the WASPA secretariat which dealt with illegal lotteries;
 - 6.2. In his opinion the WASPA advisory notice contradicts the SP’s statement that the competition is a promotional competition in terms of the Lotteries Act;
 - 6.3. The Complainant undertook to follow up with the National Lotteries Board in order to establish what the outcome was in terms of that complaint;
 - 6.4. The point was not whether the public were paying too much for entry into the competition but rather whether there was an “entrance fee” which the complainant said the SP had admitted in its reply (i.e. a premium rated SMS);
 - 6.5. The purpose of the complaint was not to establish whether the Lotteries Act had been contravened, but rather whether the WASPA advisory had been contravened.
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Request to WASPA secretariat

7. As a result of the Complainant's allegation relating to a WASPA advisory, the adjudicator requested that the WASPA secretariat provide the adjudicator with the WASPA advisory in question.
 8. The WASPA secretariat responded by providing a WASPA notice (attached hereto as Annexure B) as well as a WASPA advisory (attached hereto as Annexure C) and referring to the WASPA Advisory web page which can be found at <http://waspa.org.za/code/advisory-notices.shtml>.
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Portions of the Code of Conduct (version 7.4) considered:

9. **3.1.2.** Members are committed to lawful conduct at all times.
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Decision

10. This adjudication follows hot on the heels of complaint 7103 and is essentially identical to that matter except in two respects:
 - 10.1. The premium rated SMS that was required to be send by participants to the "Blackberry" competition cost R3.00 instead of the R2.00 cost in complaint 7103.
 - 10.2. The promotional competition was intended to promote the La Femme magazine in that a reader of the newspaper would need to buy the magazine and SMS the correct word ("Police") to the correct short code (40881).
 11. The reasons as set out in complaint 7103 are apposite here and are incorporated by reference herein. Furthermore an identical finding of a breach of clause 3.1.2 of the CoC by the IP and SP is also the finding in this adjudication.
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Sanction Imposed

12. Please refer to the sanction imposed in complaint 7103. Due to the fact that this

#7103

complaint deals with the same IP, SP and complainant and occurs at the same time as complaint 7103 it is not deemed necessary to increase the sanction imposed in complaint 7103 and thus the sanction imposed by is simply confirmed by this adjudication.

Appeal

Please note that should the SP or IP wish to appeal this decision it must inform the secretariat of this within five working days of this decision in terms of section 13.6 of the Code of Conduct version 7.4.

#7103

Annexure A

PLEASE NOTE THAT SOME IDENTIFYING PERSONAL INFORMATION HAS BEEN REMOVED BY THE ADJUDICATOR DUE TO THE FACT THAT THIS ADJUDICATION WILL BE PUBLICLY AVAILABLE.

Win a BlackBerry Curve phone and Police sunglasses with La Femme

LA FEMME readers can share in the race day spoils of this weekend's Vodacom Durban July by entering our two fabulous SMS competitions.

You may not be able to make it to the top fashion and horse racing razzle – being held at Greyville Racecourse on Saturday but you can certainly take a chance on scoring in the stylish cellphone and sassy sunglasses stakes.

Fancy winning a state of the art BlackBerry Curve cellphone worth R6000? Or, how about a pair of Police sunglasses valued at R1700?

Well, here's how you can place your bet on one of these great reader prizes:

For the BlackBerry Curve, SMS La Femme by [REDACTED] the word LAFEMME followed by [REDACTED] BLACKBERRY to the number 40881. Please supply your name with your message.

For the Police sunglasses SMS the words LA FEMME followed by POLICE to the number 40881, and your name.

The cut-off for entries is noon on Wednesday, July 8, and the winner will be notified shortly thereafter.

SMSes should be kept to a maximum of 320 characters at a charge of R3 per 160 characters. Free minutes do not apply and errors are billed.



COOL WINNINGS . . . Along with serious punters, fashionistas will be foremost at the 2009 running of the Vodacom Durban July this weekend. Among those stealing the spotlight will be reigning MSA Tatum Keshwar – showing off a fabulous BlackBerry phone and top South African designer David Tiale – in snazzy Police sunglasses – the two items offered as La Femme reader prizes.