



REPORT OF THE ADJUDICATOR

Complaint reference number:	#7733
WASPA member(s):	Grapevine Interactive
Membership number(s):	
Complainant:	Public (affiliated to one of WASPA members)
Type of complaint:	Unlawful Lottery / Placing of cost and Terms and Conditions
Date complaint was lodged:	2009-10-06
Date of the alleged offence:	2009-09
Relevant version of the Code:	7.4
Clauses considered:	3.1.2, 3.9.1, 3.9.2, 4.1.1, 4.1.10, 4.1.11, 6.1.1, 6.2.5, 9.1.1, 9.1.3, 9.1.4
Relevant version of the Ad. Rules:	2.3
Clauses considered:	5.2.1.1, 5.2.1.2, 5.2.2.2
Related cases considered:	7103, 7104, 7105, 7289, 7542

Complaint

1. On 06 October 2010 a complaint was submitted by the WASPA secretariat to Grapevine Interactive (the SP) from a journalist relating to short code 33833 in which the complainant indicated as follows:

1.1. *“Code_Breached: 3.1.2 Not reporting an illegal lottery (Prize is not a product of the promoter.)*

1.2. *Adv Rules : Sms cost not positioned correctly.*

1.3. *No T/C on pages.*

1.4. *The SP is aware that Section 54 of the Lottery Act is being contravened.*

#7733

1.5. *No supervision over client regarding advertising rules.*"

SP and Complainant correspondence

2. The SP responded by indicating that it had already dealt with this matter and that it would not respond again.
 3. The complainant in turn indicated that this response was unacceptable and for WASPA to proceed with a formal adjudication.
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WASPA Secretariat request

4. The WASPA secretariat contacted the adjudicator and requested that this matter be put on hold pending the outcome of the appeal in the matter of complaints 7103, 7104 and 7105. The adjudicator duly agreed to this postponement as the appeal in the said matters dealt with the issue of the unlawfulness of promotional competitions.
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Outcome of Appeal in complaints 7103, 7104 and 7105

5. The appeal in the above complaints was duly delivered on the 04 January 2011. Within the appeal it was duly found that WASPA adjudicators do not have the right to make a finding on the lawfulness or otherwise of WASPA members' conduct. As the merits of this argument were fully traversed within that adjudication which is easily available on the WASPA web site they are not repeated here.
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Complainant Dies

6. Thereafter on the 09 June 2011 the WASPA secretariat was informed by the complainant's wife that the complainant had passed away and further that she wished to close all complaints lodged by her husband.
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Portions of the Code of Conduct (version 7.4) considered:

#7733

7. **3.1.2.** Members are committed to lawful conduct at all times.
8. **4.1.1.** Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.
9. **6.1.1.** In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.
10. **6.2.5.** The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.
11. **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.
12. **9.1.2.** Any promotional material for a competition service must include details of how the competition operates.
13. **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.
14. **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.

#7733

ADVERTISING RULES VERSION 2.3

5.2.1.1 Formatting Of Cost Text:

• Non-Classified Advertisements

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.

Classified Advertisements:

This applies to Classified Advertisements - ie advertisements with unique Content access code/numbers displayed in the classified portion of the body of a magazine, or which are in classified-type format within the magazine.

The size of the text showing the cost of access must be in 9 point font size

This is 9 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.

5.2.2.1 Formatting Of T&C Text

Non-Classified Advertisements

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

This is 9 point Arial Font

The T&C cost text must be in a non-serif font, preferably 'Arial' font.

All T&C information must be placed horizontally.

Classified Advertisements:

This applies to Classified Advertisements - ie advertisements with unique Content access

#7733

code/numbers displayed in the classified portion of the body of a magazine, or which are in classified-type format within the magazine.

The size of the text showing the T&C must be in 8 point font size

This is 8 point Arial Font

The T&C must be in a non-serif font, preferably 'Arial' font.

All T&C information must be placed horizontally.

5.2.2.2 Position T&C Of Text

The T&C text must be displayed on the same page as the unique access number it applies to, even if there is a uniform T&C applicable to all Content in a magazine or applicable to all the Content in advertisement spread across a number of pages. Where the advertisement is a double-page only advertisement (with the entire advertisement contained on two facing pages), then it is sufficient that the T&C be placed on only one of the facing pages, provided the T&C is generally applicable to all the Content and Access numbers on both facing pages. If there is any deviation in the general applicability of the T&C, the exact T&C relating to that deviation must be placed at the point where different T&C would apply. (The same font sizes and layout must be used)

- 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.

Decision

15. This decision comes hard on the heels of complaints 7289 and 7542 which deal with substantially the same complaints by the same complainant. However this matter deals with an advertisement in the Edgars Decade of Beauty Magazine rather than in the DSTV (DISH) magazine and is a separate complaint.
16. It is noteworthy that both the complainant and the SP took a minimalist approach to dealing with this matter. The complainant's complaint provides less than the minimum information required to initiate a complaint. The very terseness of the complainant's

#7733

complaint makes it difficult for the SP to identify precisely what case the SP is required to answer. In addition the complainant failed to provide the advertisement in question which makes a determination of whether or not the SMS cost was incorrectly placed or absent as well as whether the Terms and Conditions were present and correctly placed impossible to determine. The additional issue of the passage of time makes it impractical to require the SP to provide the advertisement in question.

17. Nonetheless, as indicated in complaints 7289 and 7542 the outcome of the appeal in complaints 7103-7105 makes it clear that whether there has or has not been a breach of the Lotteries Act (and thus clause 3.1.2 of the WASPA Code of Conduct) is irrelevant for the purposes of this adjudication as WASPA adjudicators do not have the jurisdiction to make a finding on this issue.
18. For the above reasons the SP has been found not to breach clause 3.1.2. Due to the lack of evidence no finding is made regarding the breach or otherwise of clause 6.2.5, clause 9 and clause and clause 5.2 of the Advertising Rules. Despite this, and bearing in mind the outcome of complaints 7289 and 7542, the SP is cautioned to consider the requirements of the above clauses in advertising campaigns with which it is connected.

Mitigation

19. N/A

Aggravation

20. N/A

Sanction Imposed

21. N/A

Annexure A - Complaint

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

----- Original Message -----

From: <REMOVED BY ADJUDICATOR>

To: <REMOVED BY ADJUDICATOR>

Cc: <REMOVED BY ADJUDICATOR>

Sent: Tuesday, October 06, 2009 10:03 AM

Subject: [WASPA.complaints] [formal] WASPA Code of Conduct complaint

Ref:#7733

Dear WASPA member,

The attached complaint has been lodged with WASPA against Grapevine Interactive.

This complaint is being processed according to the formal complaint procedure described in section 13.3 of the Code of Conduct.

< template notice snipped by <REMOVED BY ADJUDICATOR>

--- A copy of the complaint follows below ---

Complaint #7733 (lodged via the WASPA website):

Full_Name: <REMOVED BY ADJUDICATOR>

Cellular: <REMOVED BY ADJUDICATOR>

Alternate_Contact_Number: <REMOVED BY ADJUDICATOR>

Email: <REMOVED BY ADJUDICATOR>

PhysicalAddress: <REMOVED BY ADJUDICATOR>

#7733

PostalAddress: As above

PostCode:

Affiliations: I am employed by, or otherwise associated with one of WASPA\'s member companies

Affiliation_Information:

Name_WASP: GrapevineInteractive

OtherID: PRSMS 33833 Key VW Edgars Decade of Beauty Magazine

Code_Breached: 3.1.2 Not reporting an illegal lottery
(Prize is not a product of the promoter.)Adv Rules : Sms cost not positioned correctly.
No T/C on pages.Detailed_Description_Complaint: The SP is aware that Section 54 of the Lottery Act is being contravened.
No supervision over client regarding advertising rules.

Tick_as_appropriate: I have not contacted the service provider and believe this matter requires WASPA\'s attention

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

Annexure B - Reply

----- Original Message -----

From: <REMOVED BY ADJUDICATOR>

To: <complaints@waspa.org.za>

Cc: <REMOVED BY ADJUDICATOR>

Sent: Tuesday, October 06, 2009 10:08 AM

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct
complaintRef:# 7733

Dear Lorraine,

We have already responded to this complaint - it seems the same complainant logs a complaint for the same issue (illegal lottery....?) EVERY month on your website.

#7733

Our response:

We have investigated this complaint carefully and we are completely satisfied that the campaign in question complies fully with the WASPA Code of Conduct.

Regards

<REMOVED BY ADJUDICATOR>

-----Original Message-----

From: WASPA Complaints <REMOVED BY ADJUDICATOR>

Sent: 06 October 2009 10:04 AM

To: <REMOVED BY ADJUDICATOR>

Cc: Complaints

Subject: [formal] WASPA Code of Conduct complaint Ref:# 7733

Dear WASPA member,

The attached complaint has been lodged with WASPA against Grapevine Interactive.

This complaint is being processed according to the formal complaint procedure described in section 13.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to complaints@waspa.org.za. Correspondence sent to any other address may not be deemed to constitute a formal response.

#7733

- The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to [<complaints@waspa.org.za>](mailto:complaints@waspa.org.za).

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the complaint follows below ---

Complaint #7733 (lodged via the WASPA website):

Full_Name: <REMOVED BY ADJUDICATOR>

Cellular: <REMOVED BY ADJUDICATOR>

Alternate_Contact_Number: <REMOVED BY ADJUDICATOR>

Email: <REMOVED BY ADJUDICATOR>

PhysicalAddress: 1<REMOVED BY ADJUDICATOR>

PostalAddress: As above

PostCode:

Affiliations: I am employed by, or otherwise associated with one of WASPA's member companies

Affiliation_Information:

Name_WASP: GrapevineInteractive

OtherID: PRSMS 33833 Key VW Edgars Decade of Beauty Magazine

#7733

Code_Breached: 3.1.2 Not reporting an illegal lottery
(Prize is not a product of the promoter.)

Adv Rules : Sms cost not positioned correctly.
No T/C on pages.

Detailed_Description_Complaint: The SP is aware that Section 54 of the
Lottery Act is being contravened.

No supervision over client regarding advertising rules.

Tick_as_appropriate: I have not contacted the service provider and
believe this matter requires WASPA's attention

Declaration_Good_Faith: Information provided is true and correct and
provided in good faith

Annexure C - Resolution

----- Original Message -----

From: <REMOVED BY ADJUDICATOR>

To: <REMOVED BY ADJUDICATOR>

Sent: Wednesday, October 07, 2009 9:34 PM

Subject: Re: [WASPA.complaints] Resolution of complaint Ref:# 7733

Hello <REMOVED BY ADJUDICATOR>

It is clear that <REMOVED BY ADJUDICATOR>has not read the complaint.

Please adjudicate as requested.

<REMOVED BY ADJUDICATOR>

Dear <REMOVED BY ADJUDICATOR>

#7733

Regarding your complaint against Grapevine Interactive regarding Edgars Decade of Beauty Magazine, we have received the following correspondence from the service provider:

[see below email response]

We would like to check that the service provider has resolved this complaint to your satisfaction. If so, we will close the complaint and notify the service provider that we have done so.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to complaints@waspa.org.za.

Warm regards,
WASPA Secretariat