



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	Grapevine Interactive / DSTV
<b>Information Provider (IP):</b>	Not applicable
<b>Service Type:</b>	Competition
<b>Complainant:</b>	Member of the Public
<b>Complaint Number:</b>	9776
<b>Code Version:</b>	9.0
<b>Advertising Rules Version:</b>	2.3

### Complaint

The complainant is a member of the public and this complaint is an escalation of an information complaint concerning the absence of a price associated with a shortcode in a commercial intended as an entry point for a competition.

The complaint was initially raised informally and when it was not resolved to the complainant's satisfaction, it was escalated to a formal complaint and referred to adjudication.

The complaint concerns a "BBC Lifestyle / Wetherlys Design Dreams competition broadcast on Multichoice BBC Lifestyle Television Channel on Saturday 19 June 2010 at approximately 16h20". The competition was promoted on a BBC channel on the DSTV subscription TV service operated by Multichoice. The complainant elaborated as follows:

*The details of the competition on television requires entries to be submitted by SMS to the number 35984. There is a cost of R3 per SMS entry.*

*I am unable to ascertain the details of the "service provider". There are 3 possible answers to the following question: Who hosts Grand Designs?*

*A Kenny McLeod*

*B Kevin McDonald*

*C Kevin McCloud*

*I submitted an entry by SMS specifying the correct answer, i.e. "C" above.*

*The television competition says "Visit [www.bbc.co.uk/lifestyle](http://www.bbc.co.uk/lifestyle) for Ts& C's".*

*I received the following SMS +27 82004604135984 after I had submitted my entry:*

*"To win the Wetherlys room makeover, send us a pic of your room& why you should win to [info@bbclifestyle.co.za](mailto:info@bbclifestyle.co.za) or go to [www.bbclifestyle.co.za](http://www.bbclifestyle.co.za) for more info".*

*This is a significant term or condition of the competition that was not mentioned in the TV advertisement. If I had known this I would not have entered the competition.*

*This must be a significant term or condition of the competition for the reason that there are millions of people in South Africa who do not have access to the internet, to check the detailed terms and conditions, or e-mail.*

*Any reasonable person would be under the impression that they would be able to successfully enter the competition by sending a correct answer by SMS to 35984.*

*The advertisement is therefore misleading and in breach of the WASPA Code of Conduct.*

The complaint seems to be, primarily, that contestants were required to send a photograph of their candidate room together with a motivation why the contestant should win the prize to the BBC by email or the contestants should visit the website located at <http://www.bbclifestyle.co.za> for more information. This was only communicated to the complainant (and, presumably, other contestants) after they entered the competition by SMS and incurred the R3 charge for doing so.

The complainant supplied WASPA with a video recording of the competition clip including the screen with the three options mentioned above. The text beneath the options reads as follows:

*VISIT WWW.BBC.CO.UK/LIFESTYLE FOR Ts & Cs*

Followed by:

*SMSs CHARGED AT R3.00. COMPETITION CLOSSES 26 JUNE 2010. VAS RATES APPLY. FREE MINUTES DO NOT APPLY. ERRORS BILLED FOR.*

The competition was not a subscription service and the entry cost appears to have been a once off charge for each entry submitted.

### **Service provider's response**

The complaint was referred to Multichoice's legal department, which does not appear to have addressed the complaint to the complainant's satisfaction. A Multichoice representative emailed the complainant on 22 June 2010 and advised him as follows:

*In response to your complaint to WASPA regarding the Wetherly's competition flighted on our BBC Lifestyle channel, we'd like to reassure you that:*

*a) Your entry has been received and that you are in the draw for the weekly R3,000 cash prize. All SMS messages received are included in the weekly draw.*

*b) We have changed the wording on the response message of the competition to make this clear to all consumers who enter the competition.*

*c) Consumers are only required to send in the picture of their room if they wish to enter for the Grand Prize (room makeover by Wetherly's).*

*We apologise for any confusion caused.*

The complainant responded as follows:

*Thank you for your e-mail of today's date and for confirming that my entry to the competition has been received.*

*I guess I will not be winning any prizes from you...*

*I wish to advise that I am not satisfied with the action that you have taken which does not take into consideration the objection that I have submitted.*

*You appear to have completely misinterpreted or misunderstood my objection. It is not sufficient for you to change the wording on the **response message** of the competition to make it clear to all consumers who enter the competition that an SMS entry will put them in line for the draw of the weekly prize.*

*My objection does not relate to the **response message** that is received by SMS. By the time a response message is received, the consumer who has seen the TV advertisement has already been deceived into paying R3 to send an SMS in order to enter the competition for the grand prize and not just for the weekly draw which is only a part of the competition.*

*My objection is specifically directed at the wording and content of the **TV advertisement** for the competition broadcast on BBC Lifestyle which deceives consumers into sending an SMS entry without being informed of a significant term or condition of the competition for a successful entry for the grand prize. I myself was deceived by the TV advertisement and I find this to be most offensive.*

*It is a significant term and condition of the competition that consumers are required to send in a picture of their room **and why they should win** to [info@bbclifestyle.co.za](mailto:info@bbclifestyle.co.za) if they wish to enter the competition for the grand prize of a room makeover by Wetherlys. The TV advertisement does not communicate to the consumer that there are additional terms and conditions that apply for an entry for the grand prize of the competition over and above simply sending an SMS, at the premium rate of R3 per SMS, with the correct answer. You are therefore not communicating a significant term or condition of the competition to members of the public in the TV advertisement. This is contrary to the WASPA Code of Conduct.*

*The R3 that I have paid is by itself a drop in the ocean. If you multiply that by thousands or probably hundreds of thousands of entries, you and the*

*organiser of this competition are committing fraud on the public by failing to clearly specify a significant term or condition of the competition.*

*If you are prepared to change the TV advertisement so that it does not deceive and defraud the public as referred to above, please forward me a video clip of the new advertisement that will henceforth be broadcast on the BBC Lifestyle channel. I will expect to receive a copy of the new TV advertisement by Friday 25 June 2010 at the latest.*

*Unless the TV advertisement is changed immediately in accordance with my request, I will persist with my objection.*

*I trust that you will re-consider my objection and take the appropriate action in order to protect the rights of consumers in South Africa.*

*For now I am not copying WASPA on this correspondence in the hope that this matter can be resolved as soon as possible without being escalated to a formal complaint.*

The matter was referred to Multichoice's legal department which wrote to the complainant on, or about, 16 July 2010 essentially making the following points:

- The complainant himself referred to the existence of terms and conditions which were referred to in the competition promotion;
- Contestants were given notice that terms and conditions applied to the competition and where to obtain a copy of the terms and conditions;
- Where contestants lacked Internet access, the onus was on them to obtain a set of the terms and conditions; and
- Contestants were not misled as to the existence of additional terms and conditions, which applied to the competition.

Throughout this process it appears that the member deferred to Multichoice in responding to the complainant.

The complainant, in his follow up communication with WASPA on 20 July 2010, indicated that “the service provider” had failed to address his complaint to his satisfaction and asked WASPA to “proceed with the matter”.

### **Sections of the Code considered**

The complainant referred to section 9 of the Code specifically. Section 9 provides as follows:

#### **9. Competitions**

##### **9.1. Provision of information**

*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.*

*9.1.7. Any customer entering an IVR, SMS or MMS competition after the competition has closed must be sent a reply indicating that the competition has already closed. This is in order to prevent a customer from spending unnecessary time on a call or submitting repeated entries for a competition after the closing date or time.*

*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.*

## **9.2. Children's competitions**

*9.2.1. Competition services that are aimed at, or would reasonably be expected to be particularly attractive to children must not offer cash prizes.*

*9.2.2. Competition services that are aimed at, or would reasonably be expected to be particularly attractive to children must not feature long or complex rules.*

## **9.3. General provisions**

*9.3.1. Competition services must have a specific closing date, except where there are instant prize- winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.*

*9.3.2. Prizes must be awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material.*

*9.3.3. All correct entries must have the same chance of winning.*

### **Sections of the Advertising Rules considered [if applicable]**

In addition to Section 9 of the Code, quoted above, I also considered Rule 1.3 of the Advertising Rules generally. Of particular interest are the requirements for advisories and notices which are required to be on screen when such competition promotions are flighted.



## **Decision**

For the most part I am of the view that the text which was on screen and which was evident from the video footage the complainant supplied contained the necessary advisories and notices required by the Code and the Advertising Rules. I am not in a position to comment on compliance with precise formatting requirements such as font type and size based on the video footage but the text was mostly legible to me notwithstanding the poor quality of the video capture.

There were two pieces of information, which the complainant alluded to and which were not present in the text on the screen:

- The name of the service provider or the competition's promoter; and
- Contact details for the service provider or the competition's promoter.

Given Multichoice's response to the complaint that a contestant lacking Internet access bore the onus to obtain the terms governing the competition, it is not unreasonable to expect Multichoice or the relevant service provider to include contact details not dependent on Internet access in the text on screen. I recommend that Multichoice remedy this issue or take steps to ensure that this issue is remedied in future, similar competitions promoted in this manner.

That said, the text on the screen did clearly indicate the existence of terms and conditions. A reasonable person, wishing to enter the competition and being concerned about the R3,00 entry cost would have taken steps to satisfy himself or herself that he or she agreed to the complete terms and conditions before entering the competition in this manner.

## **Sanctions**

Although I find that Multichoice did not comply strictly with the information requirements in the Advertising Rules by failing to include the service provider's or competition promoter's name and contact details, I find no merit in the complaint and dismiss it.