



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Clickatell (Pty) Limited
<b>Information Provider (IP)</b> (if any)	Mobile King
<b>Service Type</b>	Competition
<b>Source of Complaints</b>	Consumer
<b>Complaint Number</b>	0933
<b>Date received</b>	21 January 2007
<b>Code of Conduct version</b>	4.8

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### Complaint

The complaint was submitted to WASPA via its website on 21 January 2007 regarding an advertisement for a competition run by the Information Provider (Mobile King) which appeared in the Daily Sun newspaper on 19 January 2007.

The initial description of the complaint was stated as follows:

*There are several huge vialations (sic) on a full page advertisement (sic) run on Friday 19th Jan 2007. Daily sun Page 5.*

Regarding the sections of the code which the complainant alleges have been breached, the following was submitted:

*False Promises (scam)*

*Misrepresentation*

*Non deleivery pof (sic) promise every sms gets Nokia*

*State not affiliated to a network*

*Rate Of R5.00 per sms not with shortcode , at bottom,  
Misleading  
False Claims*

After the Service Provider raised concerns about the vagueness and incompleteness of the complaint, the Secretariat requested more detail from the complainant. On 24 January 2007, the complainant provided further information to supplement the initial complaint as follows:

*This is absent from the advertisement*

*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.*

*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.*

*6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services*

*Below is unclear and out of context,*

*9.1.2. Any promotional material for a competition service must include details of how the competition operates.*

*This info is absent and deemed illegal as far as lotto act goes*

*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.*

*Win Loads of airtime in advert, and chances are exaggerated see below*

*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*

*The below bodes false*

*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.*

*11.2. Customer support*

*11.2.1. Assistance, such as 'help' information, for subscription services must be easily available to customers, and must not be limited to a medium that the customer is unlikely to have access to.*

*Very grumpy sounding white male called Mark answers the customer support, when you ask him questions he slams the phone down, and is blatantly rude.*

*Illegal brand promotion, I have contacted the product manager at Rf group who hold the license for Nokia in South Africa, , Mobile king does not have permission to use nokia logo or branding in there advertisement.*

*Mobile king states they are not Affiliated to the networks, this is a lie, as they are affiliated to Clickatell who are in turn are affiliated to the networks*

*Below are adverting standards authority code, when I contacted them, they informed me waspa , is also an umbrella for them in terms of advertising breaches*

*Honesty*

*Advertisements should be honest and not abuse consumer's trust or lack of knowledge.*

*Misleading claims*

*Advertisements should not contain any statements or visual presentations, which directly or by implication, omission, ambiguity or exaggeration is likely to mislead consumers.*

*Below are all breached*

*Competitons*

*8.2.1 the competition conforms to the relevant legislation;*

*8.2.2 the prizes offered are already available or guaranteed;*

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*8.2.3 the prizes will be awarded irrespective of the number of entries received and that the competition will not be cancelled once the advertisement has been published;*

*8.2.4 a closing date for entries is stipulated as well as a date by which the name of the prize-winners will be published in at least one major regional or national publication.*

*30.3 Advertisements shall state that "conditions apply".*

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## **SP Response**

On 31 January 2007, the Service Provider furnished the Secretariat with a detailed response to the issues raised by the complainant. In its response, the Service Provider acknowledged that certain wording in the advert could be misconstrued by entrants and such wording was removed from future advertisements. It also acknowledged that the pricing for the premium rated service was not properly displayed in terms of section 6.2.5 of the Code and that the advertisement had been amended accordingly to comply.

The Service Provider also confirmed that the full cost of entering the competition was displayed in the original advert and provided an explanation as to why the airtime prizes were awarded differently to entrants from different networks.

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## **Sections of the Code considered**

1. The code

*6.2. Pricing of services*

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.*

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## 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.*

9.1.4. *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.*

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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.*

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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.*

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

2. The Advertising Rules

4.3.5 *COMPETITIONS: Indicate If Prize Award is Conditional // Must have and show a closing date If Conditional*

*(Note: This section is not meant to be an exhaustive overview of any possible permutation of competition types. The general guiding principles remain however)*

- *Promotional material must clearly state any information which is likely to affect a decision to participate, including:*
  - *the closing date;*
  - *any significant terms and conditions, including any restriction on the number of entries or prizes which may be won;*
  - *an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes;*
  - *any significant age, geographic, or other eligibility restrictions;*
  - *any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item.*
  - *any significant facility, access or skill a consumer must have in order to obtain, use or otherwise access the full or even partial extent of the*

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*award promised in the advertisement.*

*e.g. Having access to and being able to use the Internet in order to*

*fully utilize the prize*

- If a prize or reward is offered and the allocation of any prize/reward is conditional on any event and/or date, then this fact must be CLEARLY and visibly stated in the body of the advertisement as well as in the T&C text. For example, if a minimum number of participants to a competition are first required to successfully enter the competition before any prizes may be allocated and/or before the competition begins, then this must be clearly stated in the T&C text.*
- Adverts for Competitions must show a specific closing date, except where there are instant prize-winners. However if the instant prize component of a competition is first dependent on any condition (eg a certain number of SMSs must first be received before the ability to win any advertised prizes becomes applicable), then a closing date MUST be indicated.*
- If a prize or reward is offered and the notification of whether the participant to that competition has won a prize (or not) is NOT Instant, then a closing date of the competition must be CLEARLY and visibly stated in the T&C text*
- 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.*
- Prizes must be awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material.*
- All correct entries must have the same chance of winning.*

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*4.3.12 PRICING: Show component, bearer and total cost //Cannot use term Standard*



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*Rate when no free/discounted SMS/Minutes cannot be utilised**Overview:*

*The display text must show the full or potential cost of access for fully obtaining the advertised Content and/or service.*

*Background:*

*Note that the term "Standard Rates Apply" as has in the past been used widely is, according to the definitions supplied by all three mobile networks, an incorrect description of IVR and PSMS, as a "Standard Rate" is only applicable to use of eg free bundled SMSs/Minutes. The original term was "VAS Standard Rates Apply" which was only applicable to IVR access, but which many over time incorrectly abbreviated to "Standard Rates" with purported applicability to for both IVR, PSMS, and Premium Rated USSD Access Channels.*

*Standard Rate: [see Also definition of Standard Rate in the Definition section]*

*A Standard Rate is a rate that is part of an in-bundle tariff which a user would ordinarily pay for domestic person to person communication pursuant to the specific terms and conditions of their service agreement with a mobile network operator. No "revenue sharing" applies. Thus, where free/bundled SMSs/Minutes cannot be utilized or where the tariff for an Access Channel differs from the in-bundle tariff for any user pursuant to the terms of conditions of the service agreement that user has with a mobile network operator, then term "Standard Rate" may not, from implementation of the Ad Rules, be used under those circumstances.*

*Instead, the following must be used:*

*For IVR Lines: "VAS Rates Apply. Free Minutes Do Not Apply"*

*Premium Rated SMSs: "Premium Rates Apply. Free SMSs do not apply".*

*Note: This notation must be used irrespective of the value of an SMS (eg 50c/OBS) if the SMSs/Minutes are not available free or in a bundle.*

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**4.4 INFORMATION REQUIRED FOR DISCLOSURE**

*4.4.1 Where Applicable, The Following Is Mandatory Information That Must Be Displayed In Any Advertisement In Any Media Where An Access Channel Is Advertised:*

**1. PROVIDE CLEAR INDICATION OF TOTAL COST**

- *R5/SMS. Premium rates. Free SMSs Do Not Apply.*
- *R20/game. Premium rates. Free SMSs Do Not Apply. WAP required.*
- *Two SMSs Required at R--- each. Premium rates. Free SMSs Do Not Apply.*
- *Call 08x-xxx-xxx. VAS Rates Apply. Free minutes Do Not Apply.*

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**9. INDICATE IF FAILED REQUESTS OR ERRORS CHARGED**

- *Errors charged*
- *Failed Requests Billed*

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**12. INDICATE CLOSING DATE AND T&Cs OF COMPETITIONS**

- *Competition closes 1 January 2006. Winners will be notified by SMS. You must be over 18 to enter*

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**14. INDICATE THAT ALL PRICES INCLUDE VAT**

- *All Prices include VAT.*

**Decision**

The initial complaint lodged by the complainant was vague and contained general allegations with no reference to specific sections of the Code and/or Advertising Rules. The Service Provider initially took issue with the complaint on these grounds and suggested that the complaint should not be dealt with using the informal complaint procedure. This request was refused and the complaint was, in my opinion, correctly referred to the formal complaint procedure.

While I agree that the initial complaint was indeed vague and unclear, it has been held in past adjudications that members of the public cannot be required to be intimately familiar with WASPA's Code of Conduct and Advertising Rules. Furthermore, the complainant has supplemented the initial complaint and has provided more information and certain references to specific sections of the Code.

Before dealing with individual sections of the Code and Advertising Rules, I would like to make some general comments about the allegation made by the complainant that the advertisement that appeared in the Daily Sun on 19 January 2007 is false and misleading.

The use of an asterisk (\*) between the words "Every" and "SMS" is misleading even though reference is made to additional text in the terms and conditions at the bottom of the advert. I have taken note of the Service Provider's explanation for the use of the asterisk and I am well aware of this practice in advertising. However, in this particular case, there is a reasonable likelihood that certain readers would gain the impression from the wording of the advert that every SMS sent by an entrant would win a prize, i.e. that there is a certainty of winning a prize.

However, I am happy that the Information Provider has taken steps to clarify this issue and it appears that the wording of the advertisement has been amended for future publication.

With reference to the particular sections of the Code of Conduct read together with the Advertising Rules, I have come to the following conclusions:

1. The Service Provider has breached section 6.2.5 of the Code read together with 4.3.12 and 4.4 of the Advertising Rules by failing to display the cost of every SMS together with suggested wording such as: *“Premium rates. Free SMS’s do not apply”*; alongside the premium number in all instances where it is displayed in the advert.
  2. The Service Provider is not required to indicate a closing date for the competition as per section 9.3.1 of the Code read together with 4.3.5 of the Advertising Rules as the competition only provides for instant prize winners.
  3. The Service Provider’s explanation for the irregular awarding of airtime prizes to entrants from different networks is acceptable and I find that this does not constitute a contravention of section 9.3.3.
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### **Sanction**

The Service Provider is ordered to immediately remedy its breach of section 6.2.5 of the Code.

The Service Provider is hereby given a formal reprimand.