



REPORT OF THE APPEALS PANEL

Complaint reference number:	26103
WASPA member(s):	MTN Internal WASP Service
Membership number(s):	0035
Complainant:	WASPA Secretariat
Type of complaint:	Promotional competition
Date complaint was lodged:	10 March 2015
Date of the alleged offence:	7 March 2015
Relevant version of the Code:	13.6
Clauses considered:	8.4, 18.2, 18.4 and 18.5

Introduction

1. The complainant, a member of the WASPA secretariat, lodged a complaint against MTN Internal WASP Services (“WASP”) regarding an unsolicited SMS sent to her husband inviting him to enter a promotional competition.
2. The cost of entry to the competition was R5.00, and not the maximum amount of R1.50 set out in section 18.2 of the WASPA Code.
3. The WASP also failed to give or make available any information about the competition to the participant before entry. The complainant therefore alleged that the WASP had also contravened section 18.4, read together with 18.5, of the WASPA Code.
4. The complaint was found to be sufficiently urgent to warrant an emergency panel hearing, due to the potential harm to the public.
5. The emergency panel convened to hear the matter found that the promotional SMS was in contravention of section 18.2, and 18.4 read together with section 18.5 of the Code.

6. The WASP failed to respond to the complaint and the emergency panel ruling despite being repeatedly notified about the complaint and the ruling.
 7. No information was put before the adjudicator by the WASP when the matter was decided, including any grounds of mitigation that could be considered by the adjudicator before they imposed any sanctions.
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Adjudicator's decision

8. The adjudicator found that the WASP had contravened sections 18.2 and 18.4, read together with 18.5; and that such contraventions were serious and flagrant.
 9. The seriousness of the contraventions was also aggravated by the WASP's failure to respond to the complaint.
 10. The adjudicator called for the promotional campaign to be suspended, and the WASP was fined an amount of R150 000.00, of which R50 000 was payable within 7 days of the adjudicator's decision, and a further amount of R100 000 was suspended for 12 months.
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Grounds of appeal

11. The WASP lodged an appeal against the adjudicator's decision on 2 July 2015.
12. In its grounds of appeal, the WASP stated that:
 - 12.1 The promoter of the relevant competition was Batsei Investments CC ("Batsei"), who is not a member of WASPA;
 - 12.2 Batsei uses the WASP's platform to send promotional SMS messages. They are responsible for uploading the relevant MSISDN's, and selecting the short codes and the content of the promotional messages;
 - 12.3 In this instance, Batsei selected an incorrect code which resulted in the charge of R5.00 being imposed instead of R1.50 as required by the Code;

- 12.4 The WASP has no control over the content of messages sent or the short codes selected by its clients, and it is impossible for the WASP to monitor all messages sent from its platform;
- 12.5 However, the WASP conceded that its platform needs to be better screened and monitored to avoid incorrect short codes being used and promotional messages being sent which do not comply with the provisions of the WASPA Code of Conduct;
- 12.6 The WASP stated that it had commenced taking certain additional measures to better screen its customers, monitor their use of short codes, and educate new customers on the use of short codes and compliance with the WASPA Code, and some of these measures were listed;
- 12.7 The WASP also apologised for its failure to respond to the complaint and cited the loss of key staff in its business as the reason for this;
- 12.8 It was in the process of refunding the R5.00 entry fee to all subscribers to the competition;
- 12.9 The sanctions imposed by the adjudicator were excessive in relation to the prejudice suffered by the complainant; and
- 9.1 The WASP requests that the appeal panel “*withdraws*” the decision of the adjudicator and the sanctions imposed.

Sections of the Code considered

13. The following sections of the WASPA Code of Conduct were considered by the appeal panel:

8.4. For a promotional competition, the “pricing information” consists of the total cost to the customer for an entry into that competition plus the words “per entry”. Examples of pricing information: “R1.50 per entry”, “R1 per entry”.

18.2. The cost for a single entry into a promotional competition must not exceed R1.50.

18.4. An offer to participate in a promotional competition must clearly state:

- (a) the competition to which the offer relates;*
- (b) the steps required by a person to participate in the competition;*
- (c) the full cost to enter the competition;*
- (d) the basis on which the results of the competition will be determined;*
- (e) the closing date for the competition;*
- (f) how the results of the competition will be made known;*
- (g) how a person can obtain a copy of the competition rules; and*
- (h) how the successful participant can obtain the prize.*

18.5. The requirement to provide the above information may be satisfied either by including the information in the advertisement for the competition, or by presenting it before the participant enters the competition. (Example: An SMS advertising a competition could direct a participant to a web page where the above information is provided as part of the process of participating in the competition.)

Findings of the Appeal Panel

14. The WASP has not disputed that the promotional SMS sent to the complainant's husband is in contravention of section 18.2, and 18.4 (read together with section 18.5) of the Code.
15. It has also not disputed that it is ultimately responsible for these contraventions due to the promoter of the competition not being a member of WASPA.
16. Therefore, there is no basis for granting the WASP's request to *withdraw* the decision of the adjudicator.

17. For the appeal against the sanctions imposed by the adjudicator, the WASP believes that the sanctions are excessive in relation to the prejudice suffered by the complainant.
18. However, the seriousness of the contraventions and the potential harm to members of the public at large also needs to be taken into account, which was correctly done by the adjudicator.
19. The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services.
20. Sections 18.2 and 18.4, read together with 18.5, of the Code were introduced to ensure that this important objective is met in the context of promotional competitions.
21. In the present matter, no information was provided to participants in this competition. The pricing imposed on the cost of entry for this promotional competition is also excessive.
22. In mitigation, the appeal panel has taken into account the additional measures that the WASP is now taking to better screen and monitor the use of its platform.
23. However, the panel is of the view that these measures should have been in place already to prevent the potential harm that could be caused to consumers where they are charged excessive amounts to enter a promotional competition such as the present one.
24. The fine of R150 000, of which R50 000.00 was ordered to be immediately payable and R100 000 was suspended for 12 months, is replaced by the sanctions contained in paragraph 26 below.
25. The WASP stated in its grounds of appeal that it was in the process of refunding “the R5 entry fee” to all the participants in this competition. It is noted however that entrants to the promotion (which invited entrants to enter to win R5000 by predicting the winner of a soccer match by replying either “Chiefs” or “Pirates”, might have been billed more than R5 as persons who

enter the competition were then told that they are “one step closer” to winning R5000 and were then invited to predict the score by submission of a further SMS.

26. The WASP is accordingly directed:
 - 26.1 within 7 days of publication of this report, to issue a blanket refund to all persons who responded to the campaign by refunding all amounts debited against those persons’ mobile or airtime accounts as a result of their entry or attempted entry (whether partial or completed) into the competition and to provide the WASPA Secretariat, within 14 (fourteen) days of receiving notice of this appeal ruling, with written confirmation of the total of all such amounts that were debited against all persons as a result of their responding to the campaign and confirmation of the total amount that it has been able to refund to all respondents within the 14 day period and proof that all such respondents have received their appropriate refund;
 - 26.2 to make payment to WASPA of a fine equal to the greater of R50 000 or double the difference between the total amount debited from all persons responding to the campaign and the total amount refunded to all such persons.
27. The panel does not impose any suspended fine against the member. If any complaints are upheld against the WASP in future for the same type of contravention of the Code, and after the new measures have been implemented by the WASP to prevent the abuse of its platform; the adjudicator hearing those complaints will be better placed to decide an appropriate sanction (if any).
28. The WASP is not entitled to any refund in respect of the appeal fee paid.