

WASPA Member (SP)	Clickatell / Autopage Cellular
Information Provider (IP)	N/A
Service Type	Competition Irregularities
Source of Complaint	WASPA Monitor
Complaint Number	#3122
Code of Conduct Version	5.7
Date of Adjudication	21/02/2008

Complaint

The Complainant raised a complaint detailing the following:

“Autopage hummer competition advertisement run in the Kulula In flight magazine (Dec 07 issue) that has omitted the following information:

No price for SMS.
No T&Cs
No closing date for competition”

SP Response

The initial SP in this Complaint, Clickatell made a request for the Complaint to be re-lodged against Autopage Cellular. The Secretariat found it appropriate to re-lodge the Complaint against both SPs, namely:

- Clickatell, which will be referred to as the 1st SP; and
- Autopage Cellular, which will be referred to as the 2nd SP.

The Adjudicator will deal with these responses separately.

1st SP's Response

The 1st SP responded by stating the following:

“Our client has informed us that this error was due to an oversight. The competition was only for the December issue of the magazine and will not be in the next issue. They have made contact with each and every SMS number that was sent in to ‘myhummer’ and informed them of the competition closing date and that the SMS they sent in had cost them R 2.00.

They have assured us they have taken this matter seriously and will insure that their whole client base is always aware of the various rules and will continue to put measures together to ensure compliance.

While the short code belongs to Clickatell, the service is operated by WASPA member: Autopage.”

2nd SP Response

“Altech Autopage Cellular would like to confirm that in no way is Autopage responsible for the advertisement placed in the magazine. The advertisement was placed by a franchisee of Autopage who falls under Autopage’s Service Provider Agreement and not under Autopage’s Wasp Licence.

A copy of the advertisement that was placed by the franchisee is attached hereto for your perusal which clearly indicates who placed this advertisement. WASPA may contact the responsible party in order to discuss the complaint with them. The franchisee’s contact details are recorded on the advertisement.

Autopage confirms that the franchisee had not followed Autopage’s approval process before printing the advertisement and under no circumstances was this advertisement approved by Autopage. The franchisee responsible for placing the advertisement has accordingly reprimanded the manager of the store who was responsible for placing the advertisement by way of a disciplinary hearing and the manager has subsequently been dismissed from duty.”

Sections of the Advertising Rules considered

The following sections of version 1.6 of the Advertising Rules were considered:

5.2. Cost and T&C Information display rules

5.2.1. Broad Overview:

Text showing full cost and T&C is required.

Sections of the Code of Conduct considered

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.
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Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. In this particular instance, both SPs indicated that there was indeed an omission on behalf of the client to provide certain details required. The Adjudicator is of the opinion that this breach extended to section 9.1.4 of the Code of Conduct as well as to section 5.1.2 of the Advertising rules.

In assessing which of the two SPs are responsible, the Adjudicator has had to rely on the responses received from the various two SPs. It would seem that the SP with the better control would in this case be the 1st SP who would have had an agreement with the party placing the advertisement. The 2nd SP's association is only limited to that of a franchisee with the party placing the advertisement in the form of a service provider's agreement. The breach therefore does not fall under the 2nd SP's WASP license.

Before making any of its codes available to a potential client, a SP has the obligation in assuring that such code is used in accordance with the WASPA Code of Conduct which must be read in conjunction with its Advertising Rules. This usually takes the form of some contractual or commercial agreement. Taking this into account, the Adjudicator is of the opinion that the 1st SP is the responsible SP and the complaint against the 2nd SP is dismissed.

It is therefore held that the 1st SP **has breached** section 9.1.4 of the WASPA Code of Conduct read with section 5.1.2 of the Advertising Rules.

The Complaint against the 1st SP is upheld.

In determining an appropriate sanction, the following factors were considered:

- The 1st SP's prompt response and follow-up with its client;
- The prior record of the 1st SP with regard to breaches of section 9.1.4 of the WASPA Code of Conduct read with section 5.1.2 of the Advertising Rules; and
- The actions taken on behalf of the client.

The 1st SP is fined R 15 000, 00 of which R 10 000, 00 is suspended for 6 (six) months. This fine is payable to the WASPA Secretariat within five (5) days of notification hereof.

The 1st SP is further ordered to ensure that its clients are made aware of the various requirements laid down by the WASPA Code of Conduct.
