

Name: WASPA ADVERTISING RULES

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LEGAL DISCLAIMER:

- No members of WASPA, any of the WASPA Management Committee members, or any other WASPA subcommittee members, the various authors, contributors to and editors of these Rules, the WASPA Secretariat, WASPA employees and WASPA contractors, any WASPA Code Of Conduct Adjudicators, as well as any other WASPA's administrators shall be held liable for any consequences that may arise from implementation of these Advertising Rules, or from failure to implement them.
- These Rules do not constitute legal advice, nor are they warranted as legal advice. Anyone who wishes to rely upon or implement these rules or to abide by any national law or regulation referred to in this document is strongly advised to seek proper legal counsel.
- If necessary, you should also contact the Mobile Network Operator (or a WASP where applicable) you are contracted to for advice and/or for any updates or implementations of their WASP conduct and advertising rules.
- WASPA reserves the right to immediately alter these Advertising Rules if so directed by any State body or court of law, and/or where circumstances arise.
- The latest version of these Advertising Rules will always be available at www.waspa.org.za.
- Any videos that illustrate practical implementation of the Ad Rules will be available under "WASPA1" account on <http://www.youtube.com>

INTRODUCTION:

- These Advertising Rules are published by WASPA pursuant to Section 6 of the WASPA Code Of Conduct v3.2. These Advertising Rules are referred to in the WASPA Code Of Conduct v3.2 as being "Advertising Guidelines." The term "Advertising Guidelines" shall accordingly be construed together with the term "Advertising Rules" as being one and the same.
- The "Advertising Rules" shall be henceforth be referred to in this document as the "Rules."
- These Rules form an integral part of the WASPA Code of Conduct and should be read concurrently with the Code Of Conduct available at www.waspa.org.za.
- These Rules have been formulated to provide best practice for the advertising of Content and Content Services by WASPs and their Information Providers in South Africa who use the South African mobile networks for access to their Content and services.
- The Rules have been devised to be specific to various advertising mediums which Content providers may utilize. Each medium has its own formatting and display variations which these guidelines attempt to cover.
- Whilst each section can be used as standalone criteria for that media, there are however common criteria to all the media outlined in these guidelines, specifically the information required to be displayed to the consumer, and where the medium requires it, a voice-over explaining critical information.
- Each section relating to the medium it covers will show what information and/or formatting is obligatory or what are minimum criteria. Examples of best practice are also included.
- While this document has specific instructions on formatting, timing and the information required and definitions pursuant thereto, WASPs and their Information Providers may not seek to circumvent these criteria in any way by attempting to exploit any potential loopholes in the Rules where by doing so they may deprive the consumer of the minimum information required to make informed choices as the cost of access to Content/services and the terms and conditions associated with such access.
- Advertising material for Content Services may not contain visual images that constitute or depict explicit sexual conduct as defined in the Films and Publications Act 65 of 1996 unless contained in an Adult only media that is distributed under restricted conditions.
- For subscription services, providers should take all reasonable steps to ensure that all promotional material, whether in print media, on the Internet, television or transmitted via text message, clearly explains how the subscription service works. Consumers should have ready access to an explanation of their "purchase" and what, if anything, they need to do to access the Content. Great care should be exercised in using the word 'free'.
- We expect all Information Providers and WASPs to act ethically in their dealings with consumers in the best interests of all.
- If any mobile operator provides additional rules in respect of advertising of Access Channels beyond those stated in this document, then the guidelines issued by the Mobile Network Operators where applicable shall prevail.
- The latest version of these Rules will always be available at www.waspa.org.za

DEFINITIONS:

In this document and any annexures hereto, unless inconsistent with or otherwise indicated by the context:

Adult content service

An “adult content service” is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified.

Adjudicator

An “adjudicator” is a person, independent of any member, who is appointed to review formal complaints.

Beneficiary

“beneficiary” is a charity or organisation benefiting from a charitable promotion.

Access Channels (or Bearers)

The common PSMS, SMS, IVR, USSD, MMS, 3G or WAP methods of obtaining Content or Content Services or such other methods of obtaining Content or Content Services as may be introduced by the Mobile Network Operators from time to time.

Access Controls

Methods of preventing unrestricted access to mobile content, including (but not limited to) barring, PIN controlled access and subscription only mobile content services.

Access Number:

Any SMS number (whether a long code or short code), MMS number (whether a long code or short code), IVR number (whether a long code or short code), USSD-based number, or any other number that permits the use of an Access Channel.

Access Cost:

The upfront price a user of a service will pay to obtain Content, which may or may not include any Bearer Charges.

Address

A distinct electronic address or mobile phone number of a particular Customer, or any combination of words or numbers that mediates or allows communication with a particular Customer

Adult:

Any persons 18 years or older. (See also ‘Child’)

Adult Content:

Content classified as suitable only for persons 18 years or older in terms of the mobile network operators’ Content guidelines, and/or Content classified (or which would be classified) as XX, X18 and/or F18 in terms of the Films and Publications Act 65 of 1996 as amended.

Adult Media:

Media that has been lawfully authorised to be distributed to and/or viewed by persons over the age of 18 only, and/or media that is distributed under restricted conditions as defined in the Films and Publications Act 65 of 1996

Adult Service

An “adult service” is any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.

Adult Verification System (AVS)

A method implemented and/or recognized by one or more mobile networks, which may include but which is not limited to any form of Access Controls that involves confirmation that a user is of an age that entitles such user to access or use particular services and Content. **[Contact the mobile network operator(s) you are contracted to so as to determine which AVS methods are appropriate for and/or approved by that operator]**

Advertising Rules

The advertising rules relating to WASPs as published by WASPA pursuant to Section 6 of the WASPA Code Of Conduct, and which may be amended from time to time. These Rules are referred to in the WASPA Code Of Conduct v3.2 as the “Advertising Guidelines.” The term “Advertising Guidelines” shall accordingly be construed together with the term “Advertising Rules” as being one and the same.

Age Restricted Content

Content Services restricted to users above 18 years of age and includes, but is not limited to Adult Content and Gambling Services. The phrase age restricted content services shall be construed accordingly.

Auto-Generation (or Auto-Generated)

In relation to use of Access Channels only, Auto-Generation means the provision of any Content which is generated substantially or wholly as a result of or as part of an automated process.

Automated

In relation to use of Access Channels only, automated means a process which is substantially part of or wholly as a result a process that does not have any human intervention.

Authority

Means ICASA, its successor and/or the relevant regulatory authority vested with and authority in terms of the Independent Communications Authority of South Africa, Act 13 of 2000 and its successors in title, to operation of any telecommunications or broadcasting network or similar systems in the Republic of South Africa (See www.icasa.org.za)

ASASA

The Advertising Standards Authority Of South Africa (See www.asa.org.za)

Bearer(s) [or Access Channel(s)]:

The common PSMS, SMS, IVR, USSD, MMS, 3G or WAP methods of obtaining Content or such other methods of obtaining Content as may be introduced by the Mobile Network Operators from time to time.

Bearer Charges:

The amount charged by a mobile operator for the use of its network from time to time.

Below-The-Line Marketing:

Includes but is not limited to any marketing material that includes Promotional Flyers/Leaflets, CD's, Flash Drives, Promotional Stickers, Scratch cards, Business-card sized leaflets, Small Z-cards, Promotional materials and products, including promotional materials printed on/displayed on any FMCG products. e.g. executive gifts, cool drink tins, beer cans, bottle tops, wrappers, boxes etc

Best Practice:

Suggested method of implementation of the Ad Rules so as to avoid possible infringement.

Cell C

Cell C (Pty) Ltd, registration number 1999/ 07722/07.

Charges/Cost:

The amount incurred by the consumer in accessing the Content services offered

Charitable promotion

A "charitable promotion" is any promotion which has a primary goal of benefiting a registered charitable organisation.

Child

Any natural person under 18 years of age. The term "children" shall be construed accordingly.

Childrens Service

"Children's services" are those which, either wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children.

Commercial Message

A "commercial message" is a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

Classified Advertisement(s):

A brief listing usually appearing in print media for items for sale and/or services offered, usually arranged by category. The brief design of the listing is usually distinct from any other advertising format within that media.

Code Of Conduct:

The WASPA Code Of Conduct, as is amended from time to time.

Competition Service

A "competition service" is any competition or game with prizes or entry mechanism into a draw.

Contact and dating

A "contact and dating" service is any service intended to enable people previously unacquainted with each other to make initial contact and arrange to meet in person.

Commercial Message

A message sent by any access channel that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

Competition

Any competition or game with prizes or entry mechanism into a draw, whether a winner is determined by chance or by skill.

Competition Segment

Any set of competitions or games with prizes or entry mechanism into a draw, whether a winner is determined by chance or by skill which are part of an overall competition scheme.

Condition (or Conditional):

In relation to Access Channels, a Condition is any situation or any other state of affairs required for full use of a Content Service, or is any defined or stated requirement necessary for obtaining any result.

Contact Services (also Contact-type or Chat or Flirt or Dating Services)

In relation to Content Services provided by WASPs using Access Channels, Contact Services are interactive communications facilities that allow for interaction between a sender and recipient, where the participants in the interaction may be a human controller of the Service devising responses, an automated system, a combination of human and automated, or which may be human-to-human interaction to the extent that such human-to-human communication is mediated by a machine under the control of the controller of the Contact Service where that machine may select or otherwise control the delivery of a message based on any defined rules, which may include rules relating to the age or any other profiling information of any Customer; or which may include rules based on any words, numbers or combination of words and numbers placed within the body (but not identifying Address) of messages generated by or received by a Customer. The phrase Contact Services shall be construed accordingly. [See also "Live Chat"]

Content subscription service

A "content subscription service" includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a "club" or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, locationbased services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.

Content (or Content Services):

All forms of Content, material, information, applications and/or Value Added Services or Premium Rated Services or activity and includes, *inter alia*; text, data, pictures, voice, graphics, animation, games, video clips, music, sound recording and experiences such as gambling, competitions and voting lines, accessed by and provided by WASPs to Customers via the mobile networks using any Access Channel, but excludes human-to-human communication as provided by the mobile network operators. This exclusion does not apply to human to human communication provided by WASP's. The phrase Content Services shall be construed accordingly

Content Booklet:

A small booklet or Z-card where Content services are displayed. One or more Content providers may provide Content in the booklet. These Content booklets are typically in ISO B3 to B5 size.

Customer

A "customer" is a user of a mobile cellular telecommunications service that has indicated a willingness to access or utilise a service provided by a wireless application service provider

CSD

Circuit Switched Data, a type of communication in which a dedicated channel (or circuit) is established for the duration of the transmission;

Display Text

Any combination of text in any typeface or design, as is used for indicating information on any media.

Distribute (or Distribution)

In relation to any Content, without derogating from the ordinary meaning of that word, distribute includes the sale, hiring out, offer or keep for sale or hire, or exhibition. (See also the "**Films and Publications Act 65 of 1996**" as amended <http://www.polity.org.za/html/govdocs/legislation/1996/act96-065.html> & <http://www.polity.org.za/pdf/Films&PublicationAct18.pdf>)

Distribution List

A list containing details of mobile phone numbers or any other electronic address where that list is used as the basis for sending any commercial communications

DVB-H

Digital Video Broadcast Handheld

EBB

"Event Based Billing," an alternative to a fixed band, premium rated tariff, and refers to a mechanism which allows MTN Customers to be "reversed billed" any amount up to a defined maximum. See *also* OBS.

Event

In the context of use of Access Channels only and any advertising thereof, an event is any situation, suspensive condition, or otherwise foreseeable state of affairs.

EC Act

Electronic Communications Act 36 of 2005, as may be amended from time to time, and including any regulations issued pursuant thereto. [See www.polity.org.za/attachment.php?aa_id=2685]

ECT Act

Electronic Communications and Transactions Act 25 of 2002, as may be amended from time to time, and including any regulations issued pursuant thereto. [See http://www.acts.co.za/ect_act]

Films and Publications Act 65 of 1996

The Films and Publications Act 65 of 1996 as may be amended from time to time, and including any regulations issued pursuant thereto.

See <http://www.polity.org.za/html/govdocs/legislation/1996/act96-065.html>

As amended by the Films and Publications Amendment Act 18 of 2004.

See <http://www.polity.org.za/pdf/Films&PublicationAct18.pdf>

Gambling

Gambling activity as defined in terms of section 1 of the National Gambling Act No. 7 of 2004 as amended. The phrase gambling services shall be construed accordingly.

Game Show

Interactive TV-type (ITV) competition type programming where viewers are able to use any Access Channel to interact with the program to enter a competition and/or a series of competitions or competition segments and/or games of skill where money or any other prizes or compensation are offered to entrants.

General Media:

Media that is *not* classed in terms of the Films and Publications Act 65 of 1996 as amended by Act 18 of 2004 as being restricted for viewing and distribution to classes of persons.

GPRS

General Packet Radio Service, a bearer service for GSM that applies a packet radio principle to transfer user data packets

GSM

Global System for Mobile Communications, as defined in the European Telecommunications Standard Institute structure of technical specifications, and which may be amended from time to time.

Human

Any natural person.

Infomercial:

A TV commercial typically 90 seconds or more in length designed to supply information about a product or service as opposed to a specific sales message

Information Provider

An "information provider" is any person on whose behalf a wireless application service provider may provide a service, and includes message originators.

ITV

Interactive Television. TV programming where viewers are invited to and are able to interact with the programming in a live or near-realtime manner.

Internet:

The interconnected system of networks that connects computers around the world using various technologies, including but not limited to the TCP/IP and future versions thereof;

In-Vue Ads:

Internet Web site-based advertisements that appear in small image boxes on the screen when a particular web page is accessed, and which move across the web page and come to rest in the center of the page

ISO:

International Standards Association

IVR:

Interactive Voice Response, which may include Premium Rated Voice Access Channels

Keyword

A "keyword" is any word used in an SMS or MMS sent by a customer to request a service.

Licence

In the context of Access Channels only, a national Mobile Cellular Telecommunications Service licence, granted and issued to a mobile operator in terms of the Telecommunications Act 103 of 1996, or any other Network Services license issued through provisions of the Electronic Communications Act of 2005 as amended and/or substituted from time to time.

Licencee

Any license issued through provisions of the Telecommunications Act 103 of 1996, or any other Network Services license issued through provisions of the Electronic Communications Act of 2005 as amended and/or substituted from time to time.

Live:

In relation only to Contact-type services using Access Channels, live means real-time or near-real-time

Live Chat:

In relation only to Contact services provided as a Content Service by a WASP, Live Chat means communication between two humans in real-time or near real-time, either directly or through an intermediary using any Access Channels.

Lotteries Act:

Lotteries Act 1997 as amended [See www.up.ac.za/publications/gov-acts/1997/gov-acts-1997.html]

Mandatory:

Compulsory. Any rule or instruction in this document preceded by the term mandatory shall be deemed to be a compulsory act.

Media:

Any medium or technology that produces any visual, aural or textual result or combination thereof, including but not limited to TV broadcasts, print, radio broadcasts, cinema, email, SMS, MMS, USSD, Internet Web, WAP, DVB-H, Internet, or any other device or technology capable of receiving, viewing, displaying, or playing such result.

Member

A "member" is a member in good standing of WASPA.

Message

In relation to Access Channels only, any communication sent or received by a Customer

Message Originator

A "message originator" is the entity sending a commercial message and can be any person with a commercial arrangement with a WASP to send commercial messages, or a WASP directly.

MO

Mobile Originating. In relation to SMS and MMS messages only, messages that are sent by a mobile user from their handset.

Mobile Network (or Mobile Network Operator):

Any entity operating a mobile network, virtual mobile network, or fixed-mobile network pursuant to any license issued by a competent Authority in terms of any law or regulation authorizing such license.

MMS

Multimedia Messaging Service, comprising of a combination of rich media including text, sounds, images and video in an integrated way.

MT

Mobile Terminating. In relation to SMS and MMS messages only, messages that are received by a mobile user on their handset.

MTN

Mobile Telephone Networks (Pty) Ltd, registration number 1993\0011436\07.

OBS

"Online Billing System," an alternative to a fixed band, premium rated tariff, and refers to a mechanism which allows Vodacom customers to be "reversed billed" any amount up to a maximum of R50. *See also EBB.*

Outdoor Media

Including but not limited to large outdoor billboards, moving media, TV-type displays in indoor or outdoor public places, cutouts, poster sized billboards or smaller indoor billboards visible to the general public where Access Channels are displayed.

Originating Number

The "originating number" is the number allocated to the WASP by the network operator from which a commercial message is sent.

Periodic

From time to time

Person

A "person" means any natural or legal person.

Pop-Up Ads

Small windows that (suddenly) appear while accessing Internet Web site pages

Premium Rate

In relation to SMS, IVR and USSD Access Channels only, any rate that is not part of an in-bundle free SMS, Voice or USSD data tariff and which may be higher than the standard rate set by the network operator for that particular Access Channel.

PSMS

Premium Rated SMS. In relation to SMS Access Channels only, any rate that is not part of an in-bundle free SMS data tariff and which may be higher than the standard rate set by the network operator for that particular Access Channel. [See also "Premium Rate"]

Reversed Billed SMS (or MMS)

Any SMS (or MMS) message where the receiver is charged for receiving an SMS (or MMS) message.

Scheduled TV Program(s)

Any Television program that has been scheduled by a TV station to be broadcast at a certain time.

Secretariat

"Secretariat" refers to the persons employed by WASPA to handle the administration of the organisation, including the handling of Code of Conduct complaints.

Shortcode:

An access number common to a number of mobile networks.

Spam

"Spam" means unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1 of the WASPA Code of Conduct

SMS

Short Message Service, a mobile data service that allows alphanumeric text of up to 160 characters per message between mobile phones and other equipment

Subscription Reminder Messages

A message that must be sent periodically via SMS to any subscriber to a subscription service in the format described in these Rules.

Subscription service

A "subscription service" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction

Standard Rate:

Any 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.

Subscriber:

Any person that accesses the telecommunications facilities of any mobile network operator.

Subscription Service:

Any service for which a Customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

Title Safe Area:

The section on a TV/Video display monitor approximately a 30% inward area from all four side of the outer video edge. The video associations of the world have established these areas so that images fall within optimal viewing areas once the video signal is played on a standard television.

Trigger

In respect of use of Access Channels only, a trigger is an event that would require display of any information.

T&C:

"Terms and Conditions" - any conditions attached to access to Content Services that a consumer must be made aware of.

User:

Any person that accesses the telecommunications facilities of any mobile network operator.

USSD:

Unstructured Supplementary Service Data, a technology built into the GSM standard for support of transmitting information over the signaling channels of the GSM network

VAS:

Value Added Services - any Content Services or similar which may incur usage charges that may be higher than the Standard Rate set by the network operator for any particular Access Channel.

VAS (Value Added Services) Rate :

In relation to IVR Access Channels only, any rate that is not part of an in-bundle free minute tariff and which may be higher than the standard rate set by the network operator for that particular Access Channel.

Voice:

An announcer in a radio program or in a TV/cinema program/infomercial/advertisement

Voice-over:

An announcer in a radio program or in a TV/cinema program/infomercial/advertisement

VAT:

Inclusive of 14% South African Value Added Tax

Vodacom

Vodacom (Pty) Ltd, registration number 1993/003367/07.

WAP:

Wireless Application Protocol

WASP

A “wireless application service provider” is any person engaged in the provision of a mobile service, including premium-rated services, who signs a WASP contract with a network operator for bearer services enabling the provision of such services.

WASPA

Wireless Application Service Providers Association.

WASPA Web Site

“WASPA web site” refers to the Internet web site located at <http://www.waspa.org.za>.

Watershed Hours (or Watershed Period):

The time window allocated by broadcasting licensees from time to time for broadcast of restricted Content. Watershed Hours as referred to in this document means the period between 21h00 and 05h00. Such time-based restriction applies only to television services. (See also the “Broadcasting Code of Conduct” available at <http://www.bccsa.co.za>)

Winner(s)

The recipient(s) of any reward or consideration based on the results of a lawful competition.

X18 Classification

The Films and Publications Act 65 of 1996 defines X18 as:

- (I) containing a visual presentation, simulated or real, of explicit sexual conduct which, in the case of sexual intercourse, includes an explicit visual presentation of genitals;
- (II) describing predominantly and explicitly any or all of the acts described in the XX category

XX Classification

The Films and Publications Act 65 of 1996 defines XX as:

- (i) containing a visual presentation, simulated or real of:
 - (a) a person who is, or is depicted as being, under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity;
 - (b) explicit violent sexual conduct;
 - (c) bestiality;
 - (d) explicit sexual conduct which degrades a person and which constitutes incitement to cause harm; or
 - (e) the explicit infliction of or explicit effect of extreme violence which constitutes incitement to cause harm;
- (ii) it or any independent part thereof, describes predominantly and explicitly the acts defined in clause (I) above.

Z-CARD

A folded paper product. The standard Z-CARD has credit-card sized outer covers and the insert folds out to approximately A4 size. There are numerous variations in the Z-CARD range for both covers and inserts.

