



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	29709
Cited WASPA members	Allied Pacific LTD (1448) (First Respondent)
Notifiable WASPA members	Smartcall Technology Solutions (0090)
Source of the complaint	Media Monitor
Complaint short description	Misleading marketing of promotional competition linked to subscription service.
Date complaint lodged	7 March 2016
Date of alleged breach	7 March 2016
Applicable version of the Code	14.3
Clauses of the Code cited	4.2, 5.4, 5.5, 15.4 and 15.5.
Related complaints considered	26921
Fines imposed	R50 000.00 for a breach of sections 4.2, 5.4 and 5.4. R50 000.00 for a

	breach of 15.4.
Other sanctions	None
Is this report notable?	No
Summary of notability	n/a

Initial complaint

Complaint 29709 is the formal complaint due to the First Respondent engaging in alleged misleading marketing practices contrary to the Code of Conduct.

Below is a list of all correspondence and documentation submitted and considered:

- Complaint lodged with WASPA via the WASPA website.
- Complaint sent to all respondent and aggregator on 2016-03-07.
- Emergency panel hearing notice sent to respondent on 2016-03-07.
- Respondent provided a response to emergency panel hearing on 2016-03-07.
- WASPA confirmed cancellation of emergency panel hearing on 2016-03-08
- Respondent provided a response to the complaint on 2016-03-23.
- Responses sent to complainant for a response on 2016-03-29.
- Complainant provided a response on 2016-04-06.
- Complainant's response provided to the respondents on 2016-04-06
- Respondent requested an extension on 2016-04-13.
- WASPA confirmed the granting of an extension on 2016-04-13.
- Respondent provided a further response on 2016-04-20.

The Complainant set out a summary of their complaint:

The media monitoring team ran a test on a "Win a phone" subscription service promoted by The First Respondent. The marketing of this service focused on winning a phone and not on the Win24 subscription service as a whole. This marketing hook creates an urgency to enter the subscription service and could cause the average consumer to overlook the fact that it is subscription service at R7/day. In our view, the consumer's interest would be to win a phone (because there are only 5 i.e. quickly), and not to enter a subscription service for R7/day. Coupled with receiving a DOI message that reads: "Confirm your request to get an iphone 6". The marketing strategy adopted the First Respondent is a marketing strategy that has NOT been permitted for years at WASPA. We have repeatedly and consistently requested the

removal of such campaigns. Allied appears to ignore our requests and this is of great concern to the media monitoring team.

These campaigns put our industry into disrepute as can be seen by the increase in complaints in our Complaints department. In order to stop immediate harm to our consumers, I would like to request an EMERGENCY PANEL complaint please.”

They then provided a detailed account of the process followed and provided screenshots (which I have not attached as they were made available to all parties). The process they followed which lead them to determine that they felt the marketing was misleading and contrary to the Code of Conduct was as follows:

“Whilst browsing the internet, the user was directed to a landing page promoting the Winstream subscription service for R7/day. The page also offered the user to “Win iPhone 6” and there is “Only 5 left” and proceeded to enter his Vodacom mobile number and clicked on the “Continue” call to action button.

The user then received the Vodacom double opt-in SMS and subsequently replied with the keyword “Yes”. The user then received the Welcome SMS and proceeded to open the URL provided. The user was then directed to the login page for Winstream and proceeded to login with the provided credentials. The user was then logged into the Winstream service and was able to locate the iPhone 6 offer and continued to apply for the device. The user was then presented with a form that needed to be filled out and proceeded to do so. The user then completed the form as required and accepted the terms and conditions. The user was then notified that he will be contacted via email by customer support.

The user then elected to cancel the subscription by replying with the keyword “Stop” to the Welcome SMS and received an SMS informing him that his subscription has been cancelled.”

The case was first referred to an Emergency Panel process in terms of the Code of Conduct.

The First Respondent sent through proof that the marketing message had been amended and was now compliant and requested that the Emergency Panel process be amended to that of a Formal Adjudication. WASPA confirmed that the emergency had been alleviated and downgraded the process to Formal Adjudication in terms of which the First Respondent responded as set out below.

Member’s response

The First Respondent initially provided a limited response to certain of the specific sections of the Code of Conduct cited in the complaint.

They stated with regards to the following cited sections as follows:

With regards to 4.2, that they always pride themselves in their dealings with their customers and provide high quality mobile applications and competitions for them to take part in and make use of.

With regards to 15.4, that they notified the users in the first line of their terms and conditions that the prize draw is not connected to the subscription service and provided contact details wherein the user could have verified this.

Finally, they responded with regards to 15.5, that this section does not apply in this instance as the user was automatically entered into the prize draw without the need of having to subscribe to their service.

Complainant's response

The Complainant responded that inserting a copy line "The promotional draw is ancillary to the subscription service" in the text below the visual of the promotional competition did not make the marketing compliant when the visual of the promotion only spoke about winning an iPhone 6.

They stated further that another copy line used by the First Respondent, namely "The subscription services on offer is ancillary to any of the products or brands displayed in the marketing communications" made no sense to them and as such how would an ordinary consumer understand what this means.

Finally, with regards to the First Respondent's contention that you didn't have to subscribe to the service to be entered into the draw, the Complainant felt that the First Respondent was being dishonest as there was no way to win any product if you were not subscribed to the service.

The Complainant also referred generally to the non-compliant practices of the First Respondent in other matters.

Member's response

The First Respondent in their final response alleged that the Complainant was trying to malign them by bringing up matters not related to this adjudication. They further rebuffed any contention the Complainant had regarding the clarity of their terms and continued to state that you could win a prize without being subscribed to the service.

Sections of the Code considered

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

5.4. Members must have honest and fair dealings with their customers.

5.5. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

15.4. A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: "to claim your prize, join this service".)

15.5. A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: "if you join this subscription service, you will be entered into a monthly draw for a prize".)

24.34. If the adjudicator determines that there has been a breach of the Code, then the adjudicator must determine appropriate sanctions. In determining any appropriate sanctions, the adjudicator must take into consideration:

- (a) any previous successful complaints made against the respondent in the past three years;
- (b) any previous successful complaints of a similar nature;
- (c) the nature and severity of the breach;
- (d) the loss suffered by the complainant;
- (e) any efforts made by the respondent to resolve the matter; and
- (f) any other factors that the adjudicator considers material.

Decision

I will first deal with the issue raised by the First Respondent that the Complainant was attempting to malign them by raising other matters not related to this adjudication. In this regard I refer the First Respondent to the following clause in the Code of Conduct:

24.34. If the adjudicator determines that there has been a breach of the Code, then the adjudicator must determine appropriate sanctions. In determining any appropriate sanctions, the adjudicator must take into consideration:

- (a) any previous successful complaints made against the respondent in the past three years; (b) any previous successful complaints of a similar nature;

- (c) the nature and severity of the breach;
- (d) the loss suffered by the complainant;
- (e) any efforts made by the respondent to resolve the matter; and (f) any other factors that the adjudicator considers material.

Therefore, although the other matters raised relating to the behavior of the First Respondent will not be considered by me in determining whether there was a factual breach of the Code of Conduct in this instance, the related behavior is certainly relevant if I was to find a breach of the Code of Conduct in determining my sanctions. As such I cannot agree with the statement of the First Respondent in this regard and feel this was relevant information provided to the adjudicator in the adjudication process.

After reviewing all of the case files and information provided to me, I will now deal with sections 4.2, 5.4 and 5.5 of the Code of Conduct.

I have looked at the screenshots of the landing pages and information provided to the consumer and although I can see that the First Respondent has stated in their terms and conditions that the promotional draw is ancillary to the subscription service, due to the layout and visuals provided I must agree with the Complainant that this does not comply with the Code of Conduct. The copy line feels like an afterthought intended to remedy defective marketing as opposed to enhancing clarity of the marketing itself. In particular, I feel that when one views the revised version of the visual provided by the First Respondent, the original visual stands out as being in contravention of the Code. I therefore find the First Respondent to be in breach of sections 4.2, 5.4 and 5.5 of the Code of Conduct.

With regards to breaches of 15.4, I feel that part of the campaign breaches the Code and part doesn't. The original landing page I do not feel is in breach of this clause, not because (as the First Respondent claims) you can win a prize without subscribing to the service but because 15.4 talks about claiming an "existing reward...". The landing page screenshot talks about winning an iPhone 6 which in my mind talks to the possibility of a reward being allocated and not an existing reward. However, on the following page the screenshot states "claim your iPhone 6" which in my view then takes this campaign into offering an existing reward. This coupled with the fact that I do not agree with the First Respondent that you can be entered into the promotional draw without subscribing means I find a breach of 15.4.

Finally, with regards to 15.5, although I think the First Respondent is paying lip service to compliance through their use of correct copy with misleading marketing visuals, I think it can be argued that it is clear that the promotional competition benefit only applies once you have joined the service. I therefore find no breach of 15.5.

Sanctions

I sanction the First Respondent as follows:

1. For a breach of sections 4.2, 5.4 and 5.4 I fine the First Respondent R50 000.00
2. For a breach of 15.4 I fine the First Respondent R50 000.00.

Please note that the quantum of the fines is based not on this campaign alone but the previous rulings against the First Respondent relating to non-compliant campaigns and behavior as allowed by section 24.34 of the Code of Conduct.

Matters referred back to WASPA

None.
