



**Wireless Application Service Providers' Association**

Report of the Adjudicator

Complaint number	#29641
Cited WASPA members	Tristar Trading LTD (1452)
Notifiable WASPA members	ALL
Source of the complaint	Public
Complaint short description	Misleading marketing / promotion and subscription service
Date complaint lodged	29 February 2016
Date of alleged breach	Unknown
Applicable version of the Code	14.3
Clauses of the Code cited	4.2 , 5.4, 5.5, 8.8, 15.4, 15.5, 15.9, 15.13 (a,b,c,d,e), 15.18 (a,b,c,d,e)
Related complaints considered	#26723 #27644 #25719
Fines imposed	<ul style="list-style-type: none"> <li>• R 500 000.00 fine for breach of all clauses breached payable within one week of receipt of adjudication</li> <li>- Clause 4.2 R 50 000.00</li> <li>- Clause 5.4 R 50 000.00</li> </ul>

	<ul style="list-style-type: none"> <li>- Clause 5.5 R 80 000.00</li> <li>- Clause 15.4 R 25 000.00</li> <li>- Clause 15.5 R 20 000.00</li> <li>- Clause 15.9 R 45 000.00</li> <li>- Clause 15.13 , Clause 15.18 and Clause 15.19 R 230 000.00</li> </ul>
Other sanctions	<ul style="list-style-type: none"> <li>• Must provide complainant with a full cash refund into the banking account of the complainant within one week of receipt of the Adjudication [ refund must be calculated from 23.04.2014 to 29.02.2016]</li> </ul>
Is this report notable?	Notable
Summary of notability	The prominence of members not removing /or suspending campaigns is potentially detrimental to the functioning of the organisation. Members must adhere to the fines and / or sanctions imposed.

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### Initial complaint

Initial complaint that was received from the complainant, was that he had no knowledge of the subscription service and that there was a significant amount of money that was deducted from his account.

The secretariat indicated that the complainant received a directly marketed message and requested that the source of the information be provided.

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### Member's response

On the 22 January 2016 member responded

We are sending proof of subscription attached.

Please note the following things:

1. Your number subscribed regularly on the 23.04.2014.
2. Your number exited the service on 30.12.2015.

The refund has been declined.

Kind Regards

### **Complainant's response**

On the 01.02.2016

Hi , are they reimbursing me for the deductions as requested, as I have proof they have been deducting money from me for the last year, what is concerning if I never subscribed to them why was money deducted from my Vodacom account over the last year thanks.

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### **Member's further response**

To the WASPA Adjudicator,

Tristar Trading would like to submit to you the following information regarding WASPA Complaint 29641.

On the 23rd of April 2014, [REDACTED] or someone in possession of [REDACTED] mobile device subscribed to the Picslan subscription service. [REDACTED] remained as one of our subscribers for over year until the 21st of October 2015. During this time we sent [REDACTED] a total of 10 reminder messages regarding his subscription and with instructions on how to cancel it. The logs for our reminder communications are attached.

WASPA required that we, in this matter do the following;

- 1 – Unsubscribe the customer
  - 2 – Send an unsubscribe message via SMS to the customer
  - 3 – Provide proof of subscription
  - 4 – Contact the customer regarding a refund
- SP requested to unsubscribe customer
  - SP requested to send an SMS confirming this unsubscribe
  - SP requested to provide proof of subscription
  - SP requested to contact customer regarding a refund

We immediately unsubscribed [REDACTED] and sent the requested SMS communication to [REDACTED] along with the proof of subscription which was sent to [REDACTED]. We determined that the subscription was valid and that a refund would not be in order in this particular matter.

Clauses of the WASPA 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.*

Regarding the above clauses, we feel we have never been in breach of 4.2, 5.4 and 5.5 of the WASPA code.

*8.8. Content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service.*

*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".)*

*15.9. The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.*

*15.13. A confirmation message must contain only the following information, in this order:*

*(a) the name of the service,*

*(b) the pricing information,*

*(c) a customer support number,*

*(d) instructions for confirming the initiation of the subscription service, and*

*(e) (optionally) additional information about the service.*

*15.18. The welcome message must be a single message and may not contain any line breaks or carriage returns. The welcome message must begin with the word "welcome" and then contain only the following additional information:*

*(a) the name of the service,*

*(b) the pricing information,*

*(c) a customer support number,*

*(d) instructions for terminating the service, and*

*(e) (optionally) a link to a WAP landing page or a web page describing the service.*

At the time [REDACTED] Subscribed to our services, we were acting under the direction of a previous code of conduct, we feel that our conduct in this regard was in no way in contradiction of the WASPA code 12.4 found here <http://waspa.org.za/coc/12-4/>

Our company did not feel it necessary to refund [REDACTED] but now that this matter has been brought to the attention of our senior management, we have taken the decision that should Mr. Smith still require a refund from us, we will comply with his wishes in that regard.

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## 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.

8.8. Content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service.

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”.)

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- (b) the pricing information,
- (c) a customer support number,
- (d) instructions for terminating the service, and
- (e) (optionally) a link to a WAP landing page or a web page describing the service.

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## **Decision**

I start by noting that the Secretariat requested a copy of the marketing message and / or message that the complainant received that ensured his subscription and the following is an interaction between the secretariat and Tristar.

***Tristar Trading sent email on 2016-02-22: Good day Brandon, Customer received following message:***

***Your WhatsApp wall for [REDACTED] needs an UPGRADE! Open [www.m2u.me/p2/h.php?m=833307707](http://www.m2u.me/p2/h.php?m=833307707) and Click ACCEPT (FREE MSG) 44834, 2 optout sms Stop.***

***After clicking on the link, user then clicked on activation button on the landing page and received DOI message.***

***Please let us know if you need further information.  
Kind regards,  
Tristar - Help desk***

Secretariat requested info from Tristar on 2016-01-25:

***Good day Tristar,  
Thank you for the below.  
The message that was received by the complainant is a directly marketing message.***

***Please provide proof where you obtained the complainants information and where the complainant gave consent to receive this message.***

***Your assistance is greatly appreciated.***

Tristar sent mail on 2016-02-24:

***Good day,***

***Please find below marketing messages as per your request:***

**1. iSocial - Your WhatsApp wall for [REDACTED] needs an UPGRADE! Open [www.i3y.us/u/a.php?m=723768389](http://www.i3y.us/u/a.php?m=723768389) and Click SUBSCRIBE FREE MSG 44617, 2 opt out sms STOP**

**2. FotoSMS - Somebody sent you a MMS Picture Message for [REDACTED]!**

**Open it on [www.to4.me/g/w.php?m=723768389](http://www.to4.me/g/w.php?m=723768389) and click CONFIRM. to4.me subs@R7/day txt STOP 2opt out**

**Kind regards,  
Tristar - Help desk**

On 2016-02-29 15:58:18 said, Secretariat responded to Tristar on 2016-01-29:

**Dear Tristar,  
We would like to bring to your attention adjudication 25719. <http://waspa.org.za/coc/complaint-report-archive/?id=25719> According to your logs, this service was active until 2015-12-30. Unsubscribe request #6446488 will now be escalated for review by the WASPA head of complaints.**

The above interaction indicates that Tristar was co-operative in the provision of the necessary information required- it however also implicates Tristar in that complaint number 25719, was based on same facts – Tristar did not, as indicated ensure that the service was deactivated and this current complaint is proof of such due to the time frames involved.

With regards to the marketing message sent out to consumers-

**Your WhatsApp wall for [REDACTED] needs an UPGRADE! Open [www.m2u.me/p2/h.php?m=833307707](http://www.m2u.me/p2/h.php?m=833307707) and Click ACCEPT (FREE MSG) 44834, 2 optout sms Stop.**

It is a complete breach of the various code clauses specified above in that, Tristar marketed a subscription and veiled it as the offering of a Whatsapp Wall upgrade. The message itself is deceptive, misleading and non-specific. Clicking on the link will activate the link, which may open up the phone's web browser and may lead to a page with a big green button that says 'continue' and due to the clandestine nature of the campaign the consumer is unaware that the service is a monthly and / or daily subscription service. Tristar by its own admission sent out a directly marketed message which prompts the user/ users to send out text messages / click on links provided to upgrade WhatsApp and it is common cause that WhatsApp can only be updated via the Google Play apps market for Android or the Apple App Store and that the "wall" may be changed in the settings function on the top right hand corner within the app itself.

To quote from adjudication # 25719:

1. *Deliberating on the content of the message (SMS communication) in question, I find the content suggests that the (i) service to be provided is an upgrade to a WhatsApp feature, the WhatsApp Wall; and that this service is needed by the user. Both of which are inaccurate and misleading in that the service to be provided by the WASP (Tristar) is a content subscription service (further specifics of which are unknown) and there is no real necessity for a WhatsApp Wall upgrade on the part of the user.*
2. *Whilst a contention that the user has consented to receive direct marketing through a web based platform is forwarded, there are no logs to support the receipt of consent by the WASP (Tristar). Furthermore no evidence of a commercial client relationship between Tristar and the client has been provided.*

Tristar indicated that on the 23rd of April 2014, the complainant or someone in possession of the complainant's mobile device subscribed to the Picsland subscription service and the complainant remained one of their subscribers for over year until the 21st of October 2015. During this time a total of 10 reminder messages regarding the subscription and instructions on how to cancel it were sent. There was no logs provided by the member in this complaint as well as the last which may be indicative that no authentic logs exist and that subscription information is concealed from consumers.

Regarding the issue raised in Tristar's response;

*At the time ██████████ Subscribed to our services, we were acting under the direction of a previous code of conduct, we feel that our conduct in this regard was in no way in contradiction of the WASPA code 12.4 found here <http://waspa.org.za/coc/12-4/>*

*Our company did not feel it necessary to refund ██████████ but now that this matter has been brought to the attention of our senior management, we have taken the decision that should Mr. Smith still require a refund from us, we will comply with his wishes in that regard.*

It must be noted that the submission made is incorrect in that the WASPA Code 12.4 was applicable during 2013-06-26 up to and until 2014-08-25, Members are given time frames in which to adjust their services in accordance with the code that is in current circulation, the code is a dynamic document and members are obligated to ensure that there is compliance with the code when such amendments are done. One may make use of the fact that the member may have subscribed during the life span of a particular code cycle, but the adjudicator has the discretion to take such factors into account or not. In this instance, even under Code 12.4 -I would find Tristar in breach as there was no honesty and pricing information of the services were not clearly and accurately conveyed to the consumer, further Tristar knowingly disseminated information that was false and / or deceptive as the message was inaccurate, ambiguous and omitted to state the true nature of Whatsapp. Further, All commercial messages during the subsistence of the term had



to have contained a valid originating number and/or the name or identifier of the message originator which the above message does not have.

It is clear that Tristar has further failed to align all of their current service offerings with the code in circulation.

I therefore find Tristar to be in breach of the following clauses of the code considered namely;

1. Clause 4.2. In that the manner in which they dealt with the campaign was unprofessional.
2. Clause 5.4. there was honest and fair dealings with their consumers, they continued to market a campaign already found to be in contravention of the code.
3. Clause 5.5. as they knowingly disseminated information that was false or deceptive, or that deceptive as the message was inaccurate ,ambiguous and omitted to state the true nature of Whatsapp
4. Clause 15.4. "Claim a similar benefit" hence I find for a breach of this clause.
5. Clause 15.5. In that the benefit of the Upgrade to the Whatsapp wall is only applicable once the consumer has joined the service.
6. Clause 15.9. The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.
7. Clause 15.13, Clause 15.18 and Clause 15.19 are the most monumental breaches of all, in that the requisite information as specified is completely non-existent.

I find no breach of the following clause;

1. Clause 8.8. Even though the service was misleading and deceptive. I find there to be no breach of this clause as it may well have been that the content that was promoted in the advertising, was the same content that was provided to the consumer as part of the advertised service.

The decision taken to impose such a fine on Tristar is based on the fact that adjudication #25719 was completely ignored as well as the fact it is unknown as to how many subscribers have been effected by this campaign as well as the possible significant revenue generated by the member during the entire subsistence of this campaign.

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## **Sanctions**

R 500 000.00 fine for breach of all clauses breached payable within one week of receipt of adjudication

- Clause 4.2 R 50 000.00
- Clause 5.4 R 50 000.00
- Clause 5.5 R 80 000.00
- Clause 15.4 R 25 000.00
- Clause 15.5 R 20 000.00
- Clause 15.9 R 45 000.00
- Clause 15.13 , Clause 15.18 and Clause 15.19 R 230 000.00

Must provide complainant with a full cash refund into the banking account of the complainant within one week of receipt of the Adjudication [refund must be calculated from 23.04.2014 to 29.02.2016]

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## **Matters referred back to WASPA**

*None.*

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