



Wireless Application Service Providers' Association

Report of the Adjudicator

Dated: 31 July 2016

Complaint number	29776
Cited WASPA members	Allied Pacific Investments Ltd (1448)
Notifiable WASPA members	Smartcall Technology Solutions (Pty) Ltd (0060)
Source of the complaint	WASPA Media Monitor
Complaint short description	Misleading promotion of subscription services
Date complaint lodged	10 March 2016
Date of alleged contravention	10 March 2016
Applicable version of the Code	v 14.3
Clauses of the Code cited	4.2., 5.4., 5.5., 15.4., 15.5.
Related complaints considered	26921; 27464; 29709; 29777; 29804
Fines imposed	n/a

Other sanctions	6 month suspension of WASPA membership
Is this report notable?	No
Summary of notability	n/a

Initial complaint

1. This complaint was lodged against Allied Pacific Investments Ltd (“the member”) by the WASPA Media Monitor.
2. The complaint relates to a promotional campaign used by the member to promote its Win24 subscription service.
3. The member’s Win24 service offers subscribers the opportunity to be entered into 200 prize draws or competitions every month.
4. To promote the service, the member advertises the chance to win a R12 000 voucher to purchase Apple products.
5. The complainant provided screenshots of the landing page for the promotion on the web, as well as screenshots of the various opt-in and welcome SMS’s sent to their mobile phone during the subscription process.
6. On the landing page, the words “**WIN R12000 Apple Vouchers**” are displayed prominently at the top with images of various Apple products and a graphic of a R12 000 voucher.
7. Below these images, are the words: “**Your reward expires at**”, followed by a digital timer counting down from a predetermined number to zero. According to the complainant, this predetermined time was 2 minutes.
8. The complainant entered their mobile number and pressed the “**Continue**” call-to-action button within the designated time period. After receiving a passcode through their network operator’s double opt-in process, the complainant was subscribed to the member’s Win24 subscription service.
9. The member then logged in to the member’s website at the URL: www.win24.me and was required to complete an online form with their details and types of rewards they wanted to win.

10. The complainant states that it was not clear from the member's website how the complainant could apply for the advertised R12 000 Apple voucher. But the complainant eventually found the relevant page, completed the necessary steps, and pressed the "Apply" button provided.
11. The complainant was then advised that:

"You have successfully completed the claim process. You will be contacted by our Customer Support via email".
12. The complainant then submitted an unsubscribe request and they were successfully unsubscribed from the service.
13. The complainant believes that this promotion is misleading and deliberately so in that it tries to "hook" participants into subscribing to the member's subscription service by promoting the winning of a reward / prize.
14. The complainant alleges that the member, in conducting these types of promotions, is contravening clauses 4.2, 5.4, 5.5, 15.4, and 15.5 of the WASPA Code of Conduct.
15. The complainant states further that there has been a continuous pattern of contraventions of the WASPA Code by the member by the way that it promotes its subscription services.
16. The complainant referred in this regard to two previous complaints against the member for similar conduct which were upheld through the formal adjudication process. (See complaints 29709 and 27464).
17. The complainant also states that, in addition to these previous complaints, the media monitoring team has engaged with the member on a number of occasions via the informal "Heads Up" process about the misleading nature of its promotions, and has repeatedly explained the requirements of the Code to the member.
18. The complainant believes that these types of campaigns pose a real threat to consumers and are bringing the industry as a whole into disrepute.
19. Before being referred to formal adjudication, this complaint together with two other similar complaints, i.e. 29777 and 29804, were referred to an emergency panel hearing. However the member took down all three campaigns after receiving notice of the emergency hearing, thereby removing the need for emergency relief.
20. All 3 complaints were then referred to formal adjudication and are before this adjudicator.

Member's response

21. In its response, the member acknowledged that its previous marketing campaigns for its service were not compliant with the WASPA Code of Conduct. However it stated that these campaigns were suspended and the reported issues have been resolved.
22. The member believes that the landing page for this promotion is according to the WASPA Code. It is clearly stated below the "**Continue**" call-to-action button that this is a subscription service at R7/day, and the terms and conditions and how the service works is at the bottom of the page.
23. The terms and conditions describes the subscription service as follows:

Win it will register each subscriber into 200 prize draws every month. The prize draw is open to subscribed users aged 18 and over who complete the form on the website. The only cost is a subscription.

(See: <http://win24.me/index.php?page=terms>)

24. The member states further that it has followed all the requirement of the Code for the subscription process, and it is fully compliant with the Code in this regard.
25. Regarding the complainant's allegations of specific contraventions of the WASPA Code, the member responded as follows:
 - 25.1 *Re. clause 4.2* – The member denied that it had contravened this clause and argued that it had conducted itself in a professional manner and complied with the provisions of the Code.
 - 25.2 *Re. clause 5.4* – The member denied that it had contravened this clause and stated that the complainant had initiated the interaction with its services and provided confirmation of their MSISDN.
 - 25.3 *Re. clause 5.5* – The member denied that it had contravened this clause and stated that the subscription service offers various competitions and prizes and some of the prizes are only available for a limited time period.
 - 25.4 The intention of the landing page banner was not to mislead the subscriber but to inform the user of the prizes on offer and when that specific prize competition would end.

- 25.5 The member stated that the complainant may have misread the end date of the prize availability. However all products were available on offer once the user entered the service.
- 25.6 *Re. clause 15.4* – The member denied that it had contravened this clause and stated that the service is advertised as the Win 24 service and that users could win the prizes on offer. The landing page of the service had a banner that had the prize on offer for a limited period of time.
- 25.7 *Re. clause 15.5* – The member denied that it had contravened this clause and stated that the service was advertised as the Win 24 service and that users could win the prizes on offer.
- 25.8 The member states that the subscription process and cost thereof was made clear to the user and once they selected the product and completed the application form, the user would then be contacted by the support team. The service would enter the subscriber into 200 prize draws every month.
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Sections of the Code considered

26. The following clauses of the WASPA Code of Conduct were considered:
- 26.1 Clause 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.
- 26.2 Clause 5.4: Members must have honest and fair dealings with their customers.
- 26.3 Clause 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.
- 26.4 Clause 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”.)
- 26.5 Clause 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”.)

Decision

Assessment of the evidence

27. The basis for this complaint is the manner in which the member's Win24 service is being promoted, and not about the service itself or the subscription process.
28. The member is employing a tactic to market its service that is commonly known as "bait and hook" marketing. The member promotes its service by offering potential subscribers the chance to win a particular high-value reward, which in this case is a R12 000 voucher to purchase Apple products, only then to offer them a chance to win a range of other promotional rewards or prizes once they have subscribed.
29. It is noted that the member uses different names for its subscription service interchangeably. The service is referred to as the "**Win24**" service on the member's website, but in the various SMS messages sent, it is referred to as "**WinaPrize**" or "**WIN YOUR REWARD**", or the "**Win Apple Voucher**" service.
30. The member's promotional landing page creates the impression that the user will be entered into the draw for the Apple voucher by simply entering their mobile number and pressing "Continue" within the designated time period.
31. The true position is that the user is then subscribed to the service at R7/day, which only then allows them to be entered into 200 prize draws per month, one of which the member alleges is the promotional draw or competition to win the advertised R12 000 Apple voucher.
32. It is also noted that the use of the digital timer counting down from a predetermined time before that particular prize draw ends, creates a sense of urgency on the part of the user to sign up.
33. Use of the possessory pronoun in the phrase, "**Your reward**", lends further weight to the impression created by the landing page that the user simply has to enter their mobile number within the designated time period to become eligible to win the advertised prize.
34. I accept that the member has included the wording "**Subscription service R7/day**" below the call-to-action button as required by the Code, but they have used much smaller font and this is certainly not the dominant feature of the landing page.

35. I also believe that it would be a simple matter for the member to state on the landing page that the Apple voucher, or whatever other high value reward or prize it advertises in its campaigns, that this is one of many different prizes that can be won.
36. When promoting its services, the member must not only comply with the provisions of the WASPA Code, specifically clause 4.2, 5.4 and 5.5, but also with the requirements of sections 29 and 41 of the Consumer Protection Act 68 of 2008.
37. The member is subject to the same standards of honesty, fairness and professionalism expected of it when promoting its services as it is in all its other dealings with its customers, existing and prospective.
38. The member cannot, by its words or conduct, deceive or mislead customers, or do or say or fail to do or say anything that creates a reasonable likelihood of customers being deceived or misled.
39. This type of promotion also falls squarely within the definition of a "promotional competition" as defined in clause 18.1 of the WASPA Code, read together with section 36 of the Consumer Protection Act.
40. The advertised reward, i.e. the Apple Voucher, is clearly being used to promote the member's subscription service, and can be won by participants entering their mobile number and completing the online form on the member's website. I.e. the advertised reward can be won without any skill or ability being demonstrated and is awarded by lot or chance.
41. Promotional competitions are open to abuse and pose serious threats to unsuspecting consumers who are lured into buying goods and services by the chance to win a prize or reward without much effort or cost on their part. It is for this reason that promotional competitions have been specifically regulated in section 36 of the Consumer Protection Act, as well as in clause 18 of the WASPA Code.
42. The complainant has not specifically referred to clause 18 in their complaint, nor have they alleged that the member has contravened this clause. I am therefore not in a position to take this any further. However, there are a number of areas of concern that I have regarding the nature and mechanics of the member's subscription service and I have recommended that certain issues be referred back to WASPA for further investigation (see below).
43. I turn now to the specific clauses of the Code that the member is alleged to have contravened.

Contravention of clause 5.5 of the WASPA Code

44. Clause 5.5 of the WASPA Code prohibits members from misleading consumers by inaccuracy, ambiguity, exaggeration or omission.
45. This prohibition extends to the manner in which a member promotes their services.
46. The provisions of clause 5.5 mirror the relevant provisions of the Consumer Protection Act, which are also applicable to the member.
47. Section 4(5) of the Consumer Protection Act prohibits the member, in their dealings with a consumer, from engaging in any conduct which is misleading or deceptive, or that is reasonably likely to mislead or deceive.
48. In the context of marketing goods and services, section 29 prohibits members from marketing their services in a manner that is misleading, fraudulent or deceptive in any way.
49. Section 41 states that the member can, either by their words or conduct, mislead consumers in a number of ways in relation to the marketing of their services, including:
 - a) using exaggeration, innuendo or ambiguity as to a material fact; or
 - b) failing to disclose a material fact if that failure amounts to a deception; or
 - c) failing to correct an apparent misapprehension on the part of a consumer, which amounts to a false, misleading or deceptive representation.
50. I have closely examined the member's landing page, including the wording and visuals used, and I am not satisfied that an ordinary consumer of the class of persons for whom this promotional page is intended, with average literacy skills and minimal experience as a consumer of mobile application services, could be expected to understand the content, significance and import of this landing page without undue effort.
51. Even if the member's version is accepted that it has made it clear to users that this is a subscription service and that only subscribers will stand a chance to win the promoted prize; there is still a great deal of ambiguity around the offer contained in the landing page and/or in the promotion when viewed as a whole.
52. The member has not made it clear that the promoted reward is merely one of the many prizes or rewards that the user could stand a chance of winning after subscribing to the service.
53. From the wording on the landing page, i.e. "**Your reward...**" and from the name used for the service in the welcome message sent to new subscribers, i.e. the "**WIN Apple Voucher service**", the impression is created by the member that the advertised prize is the only prize to be won.

54. The impression is also created by the landing page that the user will only be competing with other subscribers who have signed up to the Win24 service within the designated time period.
55. This is confirmed in the member's terms and conditions where it is stated that **"The prize draw is open to subscribed users aged 18 and over who complete the form on the website"**.
56. However, the true position is that the user will be competing with an undefined number of entrants who may enter the same draw from various other channels on the internet or elsewhere.
57. Furthermore, and perhaps of more concern, are the various statements and claims made by the member on its website concerning its service.
58. In its terms and conditions and under the **"Frequently Asked Questions"** section of its website, the member states the following:
 - 58.1 ***"WIN24 increases users chances using specialist algorithms and monitoring analytics a system that is mathematically proven to get results."***
 - 58.2 ***"WIN24 is always searching for the most valuable Top 200 prize draws in the internet every month. "***
 - 58.3 ***"More than 3000 Winners have already successfully claimed their winnings with the help of WIN24 several Computers, HD-TV's, Smartphones, newest technology headphones, and many more."***
 - 58.4 ***"You don't have to worry about anything, everything is done for you by our team of specialists each and every month."***
 - 58.5 ***"We use a secure system and trusted services to verify every single Prize Draw that we enter you into."***
59. These claims greatly exaggerate a subscriber's prospects of winning a prize, which is expressly prohibited by the Consumer Protection Act.
60. It would also appear that, since promotional competitions and draws of this nature are based entirely on lot or chance, some of these statements are blatantly false.

61. Based on the wording and dominant impression created by the member's landing page, and the statements and claims made by the member about the service itself on its website, I am satisfied that there is a reasonable likelihood that consumers could be deceived or misled into subscribing to the member's Win24 service, and/or by the nature and promoted benefits of the service itself.
62. I therefore find that the member has contravened clause 5.5 of the Code and the complaint is accordingly upheld in this regard.

Contravention of clause 15.4

63. I am satisfied that the member has not, at any point in this promotion, claimed that the user has already won the advertised prize or that they would otherwise become entitled to receive the an existing prize by subscribing to the service.
64. The member has therefore not contravened clause 15.4 of the Code and the complaint is accordingly dismissed in this regard.

Contravention of clause 15.5

65. Clause 15.5 of the WASPA Code permits the use of this type of promotional activity, provided that the member makes it clear to potential subscribers that the reward will only apply once they have subscribed.
66. I am satisfied that the member has stated on the landing page and in its terms and conditions that the chance to win the advertised reward will only be available to subscribers to the Win24 service.
67. The member has not contravened clause 15.5 of the Code and the complaint is accordingly dismissed in this regard.

Contravention of clauses 4.2 and 5.4

68. When viewing the member's promotional tactics as a whole, and based on my finding that this particular campaign is reasonably likely to deceive or mislead consumers, I believe the member's conduct falls far short of the standards of professionalism, honesty and fairness expected of a WASPA member.
69. It is exactly this type of conduct that poses a risk of widespread harm to consumers and potentially brings the WASP industry as a whole into disrepute.
70. I therefore find that the member has contravened both clause 4.2 and 5.4 and the complaint is accordingly upheld in this regard.

Sanctions

71. The Media Monitor and the Emergency Panel both alerted me to the possibility of a pattern of continuous contraventions of the Code by the member.
72. I have reviewed the contents of the reports by the independent adjudicators for complaints 27464 and 29709, including the response provided by the member to both those complaints.
73. I have also reviewed the promotional landing pages which are the subject of the two other complaints which have been referred to me for adjudication, i.e. 29777 and 29804.
74. I also accept the Media Monitor's unchallenged statement that they have engaged with the member on numerous occasions to alert it to the misleading nature of its promotions and to assist the member in understanding the requirements of the Code that need to be complied with.
75. Despite the clarification and assistance that has been provided to the member, and the previous complaints that have been upheld against it, the member continues to promote its service in a misleading manner.
76. When challenged, the member takes the offending campaign down, only to replace it with a new but equally misleading promotion.
77. I am therefore satisfied from the foregoing that it has been shown that there is a pattern of continuous breach of the WASPA Code by the member in the manner in which it promotes its services, despite being made aware of the requirements that need to be met.
78. There is a very real threat of harm to consumers if these misleading campaigns are permitted to continue, and conduct of this nature is damaging to the reputation of the industry as a whole.
79. The sanctions that have previously been imposed against the member have failed to act as a deterrent.
80. Therefore, taking the above aggravating factors into account, I find that the only appropriate sanction to be handed down in the circumstances is to suspend the member's membership of WASPA for a period of 6 (six) months, commencing from the date of this report.

81. Smartcall Technology Solutions, and any other member who provides aggregation or other services to the member, are directed to suspend all such services to the member with effect from the date that this report is published and for the duration of the member's suspension.

Matters to be referred back to WASPA

82. Although the complainant did not allege that the member has contravened clause 18 of the Code in respect of the Win24 subscription service itself, I believe there are grounds which warrant further investigation by WASPA into whether the member's Win24 subscription service is meeting the requirements of clause 18 of the WASPA Code, as well as the requirements of section 36 of the Consumer Protection Act, read together with regulation 11 of the Consumer Protection Regulations.
83. In particular, the following aspects of the service need to be investigated:
- 83.1 Does the member use *specialist algorithms and monitoring analytics* that are "*mathematically proven to get results*"?
 - 83.2 Has the Win24 service already created "*more than 3000 Winners*"? Can the member provide a list of names of winners as well as a list of the prizes that have been won and awarded?
 - 83.3 Can the member provide an acknowledgment of receipt of the prize signed by each prize winner and his or her identity number, and the date of receipt of the prize, or where this is not possible, proof by the promoter of the relevant competition or draw that the prize was sent by SMS to the winner using his or her provided details?
 - 83.4 Does the member employ "*a team of specialists*" to attend to the subscribers entries into the various competitions and draws?
 - 83.5 Does the member use "*a secure system and trusted services to verify every single Prize Draw that we enter you into*"?
 - 83.6 Does the member provide subscribers with a guaranteed voucher reward valued at R1 000 if they don't win a prize or reward within a 3 month period?
 - 83.7 Does an independent accountant, registered auditor, attorney or advocate oversee and certify the conducting of the competition?
84. These matters are therefore referred back to WASPA for further investigation.
