



Wireless Application Service Providers' Association

Adjudicator's Report

Complaint number	High Gable Limited (1486)
Cited WASPA members	Smartcall Technology Solutions (0090)
Notifiable WASPA members	<i>na</i>
Source of the complaint	WASPA Media Monitor
Complaint short description	Misleading sms campaign offering guaranteed "win"
Date complaint lodged	23 June 2016
Date of alleged breach	
Applicable version of the Code	14.4
Clauses of the Code cited	4.2, 4.5, 5.1, 5.4, 5.5, 8.8, 12.2, 15.4, 15.5, 15.13 (a,b,c,d)
Related complaints considered	26723, 27644

Fines imposed	5.4, 5.5, 15.4, 15.5 – R 50 000 12.2 – R 25 000
Is this report notable?	Not notable.
Summary of notability	<i>na</i>

Initial complaint

The complaint was essentially that the marketing material and more particularly the landing page, were misleading. The monitor said, *inter alia*:

The consumer journey in testing this service is considered highly misleading by the Media monitoring team. Problem areas include:

- 1. Landing page: "complete to get your voucher" copy, with a timer, suggests a guaranteed winning*
- 2. Landing page: Pricing is illegible*
- 3. Possible infringement of intellectual properties*
- 4. Misleading marketing: it is not permitted to promote a sub service via a "claim your voucher" promo. This IP is very aware of this clause and seems to intentionally mislead consumers.*
- 5. Non-compliant DOI message: no the name of the service, no pricing information, no customer support number, no instructions for confirming the initiation of the subscription service, (it only reads "confirm your request to win your vouchers")*
- 6. Once the user hits the Bundle up pages, copy then changes to "Apply now". The guaranteed prize seems not so guaranteed anymore. (Post paying for a subscription service)*

The Monitor provided a full report with screenshots. The essence of the complaint lies in the fact that all the initial material appears to offer a guaranteed prize, but after subscribing it appears that the prize is in fact not guaranteed.

Member's response

The response confirmed that the prize is not guaranteed. The member stated, *inter alia*, that, “User is joining the subscription service where she/he claims the possibility for an existing reward”.

The member addressed each alleged breach which I will consider below.

Clauses

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.

4.5. Members must respect the intellectual property rights of their clients and other parties and must not knowingly infringe such rights.

5.1. Members must not offer or promise services that they are unable to provide.

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.

12.2. There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated. It must not be a requirement that the viewer of an advert has additional software installed in order to see pricing information in the advert.

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”.)

15.13. 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

Decision

The Monitor has clearly identified the actions that they consider to be a breach, and has also clearly identified the clauses of the Code that may be breached. Unfortunately, they have not indicated which breach has allegedly triggered which clause, leaving me slightly at sea in my interpretation of the more general clauses.

I will therefore be guided by the format that both the Monitor and member have favoured of considering the matter breach by breach. I will in doing so consider which clauses are relevant to that breach, and then consider the applicability of any remaining clauses at the end.

Ground 1: *Landing page: "complete to get your voucher" copy, with a timer, suggests a guaranteed winning* and Ground 4: *Misleading marketing* and Ground 6: *The guaranteed prize is no longer guaranteed*

I consider these grounds to be fundamentally the same complaint and will consider them together.

The member has submitted that a "pre-page" clearly states "You have a chance to get a reward". They submit that they did not intend to mislead consumers and are willing to amend the material.

For a start, the member does not put this alleged "pre-page" before me and I am only able to consider what is in fact before me. However, that is not in itself material as it is expected that every step of communication is clear and not misleading. On all the material before me, which appears to start early in the offer, up until the subscription is entered, it is not communicated that there is only a chance of a reward. At every step, the consumer is told things like, "You have been selected to WIN" and "Follow the next step below to WIN" and "Claim voucher" and "Complete to get your voucher". The SMS confirming the transaction – which also confirms the subscription price, still refers to "WIN vouchers" and "Vouchers from STS at R7.00 daily".

In fact, even upon subscription, the consumer is simply told "you applied successfully" and may still not be absolutely clear as to whether they have won a guaranteed prize or not. It is common cause that they have not won a prize.

I consider this communication fundamentally misleading and in breach of the following cited clauses:

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”.)

Ground 2: *Landing page: Pricing is illegible*

The member responded to this saying that they do not believe that the pricing is illegible, not only on the landing page but in the SMS. However, they indicated that they are prepared to make amendments.

The first mention that this is a subscription service and at what price appears on the third screen before me (and on the member’s version this may in fact be a fourth or fifth step, as they appear to allege that there is a “pre-page”). It appears below the call to action button in a significantly lighter font than the rest of the information. It is particularly egregious as there is nothing in the nature of the offering that suggests this might be a subscription service – it does not, for example, say “Subscribe and stand a chance to win”, nor does it say “Subscribe for daily opportunities to win”.

It is true that the SMS says, “Vouchers from STS at R7.00 daily” (again suggesting that the voucher is guaranteed), but the pricing information is expected to be clearly displayed at every part of the communication. It is not displayed on most of the communications, and where it is it is illegible and, in the case of the SMS, ambiguous.

I consider this in breach of the following clause that is before me:

12.2. There must not be any intervening text or images between the call-to-action and the pricing information. **Pricing information must be legible, horizontal and presented in a way that does not require close examination.** Pricing information must not be obscured by any other information. Pricing information must not be animated. It must not be a requirement that the viewer of an advert has additional software installed in order to see pricing information in the advert. (My emphasis)

Ground 3: *Possible infringement of intellectual properties*

The Monitor did not flesh out this allegation and I am not clear if the alleged infringement relates to the names of the retailers or the use of the Facebook logos.

The member addressed both, saying that it offered vouchers that are valid in the advertised retailers and that the use of Facebook for media sharing is acceptable.

While I would ideally have liked to see some proof of permission to use the intellectual property from the two named retailers, I do not think that the complaint before me is specific enough to warrant a finding in this regard without breaching the principles of natural justice. I certainly question whether any vouchers exist, and whether the retailers have indeed given their permission, but would not be able to pursue this without a more detailed and specific allegation.

For this reason, I find no breaches of Clause 4.5 at this time.

Ground 5: *Non-compliant DOI message: no the name of the service, no pricing information, no customer support number, no instructions for confirming the initiation of the subscription service, (it only reads "confirm your request to win your vouchers")*

The wording of the message is, by common cause:

Reply YES or NO to confirm your request for WIN Vouchers from STS at R7.00 daily. SMS is free

Clause 15.13 (a – d) states:

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

The message arguably has the name of the service – “WIN Vouchers” (which may be argued that it is in itself misleading) and the pricing information. It also has instructions for confirming the initiation – albeit grammatically it is confusing as it appears both “yes” and “no” will confirm the service.

It does not have a customer support number and is therefore in breach of Clause 15.13 (d).

Remaining clauses

The member addressed all the clauses specifically, and in relation to Clause 4.2 and 5.1, allege that they are compliant. There is nothing before me that acts as a trigger for these specific clauses, and while I consider the fundamental breach in this matter to be egregious, the member has responded co-operatively to WASPA and appears *ex facie* to offer the service it thinks it advertises (a subscription that results in the chance to win vouchers).

I therefore have no grounds to find breaches of Clause 4.2 and 5.1.

Sanctions

The member submits that the campaign only resulted in 21 users. It was stopped as soon as the complaint was received. The member says that it is the first time it has had this type of complaint and that it will follow all WASPA suggestions in future.

I was feeling somewhat sympathetic to the plight of this co-operative member but a search shows:

- In matter 26723, the member was found guilty of breaches relating to a misleading sms campaign;
- In matter 27644, the member was found guilty of auto subscription. While this is not relevant to the breach at hand, it indicates that the member is very aware of the Code and is aware of the repercussions of breach.

While neither previous breach is on all fours with the matter at hand, the member is not quite the wide-eyed newbie that it would have me believe.

I consider the breach of Clauses 5.4, 5.5, 15.4 and 15.5 to be egregious. To lure the consumer into a subscription with the promise of a guaranteed win goes to the heart of what WASPA seeks to regulate. For clarity, I note that my sanction is in respect of the breach, and that it would be the same if any one of the clauses had been cited alone.

I fine the member R50 000 in respect of this breach, and order it to refund all subscribers.

The breach of Clause 12.2 is fundamental in the complete failure to show any pricing information on the initial pages. When it is finally shown, it is illegible – but this would be less

serious if it had been consistently shown. The failure to show this information also resulted in the consumer not being aware of the subscription nature of the service until quite far into the process.

I fine the member R 25 000 in this respect.

I do not consider the breach of Clause 15.13(d) to be fundamental in nature, and I therefore will simply warn the member that it needs to revisit the formatting of all its messages and consider the Code carefully in this respect. A future breach will not be regarded lightly.