



**Wireless Application Service Providers' Association**

## Adjudicator's Report

Complaint number	31195
Cited WASPA members	Media Union Limited (1601)
Notifiable WASPA members	Smartcall Technology Solutions (0090)
Source of the complaint	Media monitor
Complaint short description	Misleading advertising
Date complaint lodged	1 August 2016
Date of alleged breach	
Applicable version of the Code	14.5
Clauses of the Code cited	4.2, 5.1, 5.2, 5.4, 5.5, 12.2, 15.4, 15.5, 15.26, 15.27
Related complaints considered	9502, 31013

Fines imposed	Clause 4.2 – R 20 000
Is this report notable?	<i>Not notable</i>
Summary of notability	

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### **Initial complaint**

The essential complaint relates to the use of a competition to win a phone to mislead the consumer into subscribing. The consumer has no indication of what the subscription service is for, and is led to believe that they are almost certain to win the phone. The Monitor submitted that it is well established that this tactic is unacceptable.

The Monitor also raised:

- The tester was unable to log onto the services;
  - The tester was unable to stop the services;
  - The pricing was not prominently displayed.
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### **Member's response**

The Member submitted that it is not running live subscriptions yet and is simply testing different models to research the market.

It submitted that the Monitor should not have been charged and that it had simply been testing the mechanism.

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### **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.

- 5.1. Members must not offer or promise services that they are unable to provide.
- 5.2. Services must not be unreasonably prolonged or delayed.
- 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.
- 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”.)
- 15.26. If a member is unable to immediately act on a service termination request received from a customer, the customer must be informed. (Example: “This may take up to 24 hours to be processed.”)
- 15.27. The processing of any service termination request must not be unreasonably delayed and must be honored within two working days (48 hours).

## Decision

I note that in matter 31013, very similar advertising was before me. In that matter, the Member began with the same sort of response, but subsequently changed its story to indicate that an affiliate marketer was involved. I raise this because that matter deals with and sanctions the member in respect of the non-compliant advertising and the non-supervised use of the affiliate marketer, as well as the use of a misleading competition “hook” to entice the consumer. I will not reconsider those issues (in so far as they may have been relevant) in this matter as that would amount to double jeopardy in that the advertising campaign is similar, it appeared at around the same time and the decisions will be issued simultaneously.

However, in this matter a new issue is raised – one that the Member chose to abandon in matter 31013 – and that is the question of whether it is a defence to say that the member was “testing the market” and the service was not live.

This is, with respect, completely unacceptable. A similar defence was raised in matter 9502, which was part of a multiple complaint Appeal in respect of which there was a face-to-face appeal, this part of which was heard in May 2015.

In that matter, the Panel noted:

The Appellant submitted that its advertisement was in the testing phase – so while live, it was not generally accessible, and the Appellant expressed confusion as to how the Media Monitor might have accessed it. The Panel finds no reason to determine how it was accessed; the fact is, it was accessible and if a consumer happened upon it, they would be able to subscribe. The complaint is therefore validly before us.

The facts in the matter at hand are that the advertising appeared, it successfully linked to further pages, and it resulted in a subscription in respect of which money was deducted. The fact that this was regarded by the Member as “testing” is completely irrelevant. It was a live page. Testing is something that is conducted on safe sites by mock campaigns. Testing is not something that the public can access. Testing does not result in the deduction of a subscription, and it is this that I find particularly disturbing. In addition, because the subscription was “not live” it could not be cancelled with the required speed.

In addition, I find myself disturbed that this material – which I have noted in matter 31013, is misleading – is being used to “research” the market. It would appear that the Member is, at its own admission, researching which techniques will best lure consumers, using actual consumers. I consider this completely unprofessional.

The Member is therefore in flagrant breach of Clause 4.2 and is ordered:

- To reimburse all affected subscribers;
- To pay a fine of R 20 000 in respect of conducting live, accessible testing.