



## REPORT OF THE ADJUDICATOR

|                                           |                                                                   |
|-------------------------------------------|-------------------------------------------------------------------|
| <b>Complaint reference number:</b>        | 15268                                                             |
| <b>WASPA member(s):</b>                   | Mobile NOBO (IP) (1091) / Tanla Mobile (SP) (0118)                |
| <b>Membership number(s):</b>              | Above                                                             |
| <b>Complainant:</b>                       | Public                                                            |
| <b>Type of complaint:</b>                 | Subscription Services and Promotional Competition                 |
| <b>Date complaint was lodged:</b>         | 2011-10-19                                                        |
| <b>Date of the alleged offence:</b>       | 27 and 28 April 2011                                              |
| <b>Relevant version of the Code:</b>      | 10.0                                                              |
| <b>Clauses considered:</b>                | Clause 3.2.1, 9.1.2, 9.1.4, 9.1.5, 11.2.1, 11.2.2, 11.2.3, 14.4.1 |
| <b>Relevant version of the Ad. Rules:</b> | Not applicable                                                    |
| <b>Related cases considered:</b>          | 12756; 9978; 7505; 7435; 13766                                    |

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### Complaint

The Complainant complains that he entered a competition and won the prize but is struggling to get the prize given to him. In addition, as part of claiming the prize, he was automatically subscribed to a subscription service. No monies were deducted.

The Complainant addressed his complaint not directly to WASPA but to the Office of the Consumer Protector, who in turn referred the matter to WASPA.

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### Service provider's response

The Service Provider (SP) referred the matter to the Information Provider (IP). The SP stated that the IP had signed the WASPA standard agreement and furthermore that the relationship between the IP and the SP had been terminated.

The IP responded by stating that the Complainant had entered the competition to win a mobile phone. That WASPA Code compliant terms and conditions had been made available to the Complainant at the time of so entering the competition and as such the Complainant was aware of the nature of the subscription service and the competition. Notwithstanding, no monies had actually been deducted for any subscription services from the Complainant. With regards to the prize that the Complainant won, the IP stated that they attempted 5 (five) times to contact that Complainant but were unable to and as such awarded the prize to someone else.

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### **Sections of the Code considered**

3.1.2. Members are committed to lawful conduct at all times.

9.1.2. Any promotional material for a competition service must include details of how the competition operates.

9.1.4. Promotional material must clearly state any information which is likely to affect a decision to participate, including:

- (a) the closing date;
- (b) any significant terms and conditions, including any restriction on the number of entries or prizes which may be won;
- (c) an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes;
- (d) any significant age, geographic or other eligibility restrictions;
- (e) any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item;
- (f) the entry mechanism and workings of the competition.

9.1.5. The following additional information must also be made readily available on request, if not contained in the original promotional material:

- (a) how and when prize-winners will be informed;
- (b) the manner in which the prizes will be awarded;
- (c) when the prizes will be awarded;
- (d) how prize-winner information may be obtained;
- (e) any criteria for judging entries;
- (f) any alternative prize that is available;
- (g) the details of any intended post-event publicity;
- (h) any supplementary rules which may apply;
- (i) the identity of the party running the competition and responsible for the prizes.

### **11.2. Subscription process**

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, it must be clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

14.4.1. An adjudicator finding prima facie evidence that any member may have breached clause 3.1.2 of the Code of Conduct must request that WASPA refer the breach to the relevant statutory or regulatory authority, unless that authority has already made a ruling on that particular case. If the relevant authority has already made a ruling on that particular case, then the adjudicator may find a breach of clause 3.1.2.

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## Decision

3.1.2. Members are committed to lawful conduct at all times.

- **The IP breached the Consumer Protection Act regulation 11 relating to the running of promotional competitions.**

The competition rules complied with the promotional competition requirements set out in clauses 9.1.2 and 9.1.4 of the Code. The details required in clause 9.1.5 are only required to be provided on request and no request was made.

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- **Breached as the Complainant was subscribed and received a welcome message after clicking to accept his prize.**

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participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, it must be clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

- **The competition was not ancillary to the subscription services as the Complainant was entered into the competition before he subscribed or received any welcome message. The welcome message was received after notification of being awarded the prize.**

- **Automatic subscription occurred in accepting prize.**

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- **Breach of 3.1.2.**

In this instance and based on the facts before me I find the Service Provider in breach of the Code.

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### **Sanctions**

The IP is fined R25 000 payable within 7 (seven) days of this ruling.

WASPA Secretariat must forward the matter back to the Office of the Consumer Protector c/o email: [lcbrown@pgwc.gov.za](mailto:lcbrown@pgwc.gov.za) tel: +27 21 483 5497: +27 21 483 5872.

The WASPA adjudicator only has jurisdiction to make rulings on breaches of the WASPA Code and not on breaches of the Consumer Protection Act, which jurisdiction lies with the Consumer Commission.