



REPORT OF THE ADJUDICATOR

Complaint reference number:	16382
WASPA member(s):	Buongiorno SA
Membership number(s):	0002
Complainant:	Ms C Cutino
Type of complaint:	Subscription service
Date complaint was lodged:	10 February 2012
Date of the alleged offence:	Unknown
Relevant version of the Code:	11.6
Clauses considered:	2.9; 3.3.1; 4.1.1; 4.1.2; 6.2.4, 6.2.5, 6.2.6, 6.2.7, 9.1.7, 11.1.1, 11.2.1, 11.2.2 and 11.3.1.
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	11863

Complaint

The complainant, who is employed by a competitor of the SP, states that she came across a flashing banner advert when browsing another website. The banner starts with the word “*Congratulations*” and then states: “*Don’t miss your chance to WIN an iPad 2*” and “*Click on the YES button below to try to win before time runs out*”.

At the bottom of the advert is the wording “**T&C’s apply. Subscription service R5/day*”.

The complainant clicked on the *YES* button on the banner advert and was redirected to a landing page which now invited the visitor to enter the "*Spot the Easter Egg*" challenge to win R250 worth of top-up airtime. The challenge basically entailed locating a gold easter egg at the bottom of the page.

There was no reference to winning an iPad 2 as a prize as was previously advertised in the banner advert.

The words "*Subscription Service R5/day*" appears at the top of the landing page and certain thumb nail images of certain musical artists appear on the page. However there is no further information about the subscription service being promoted.

The complainant then entered her cell phone number in order to get the R250 top-up airtime. She received the following SMS text message with a unique pin code:

>> ur CODE is 7608 << enter it on the web confirmation page & Get UR Chance to WIN!!*

The text message did not contain all the required information, including the cost of the subscription service and frequency of charges.

The complainant then entered her pin number onto the web confirmation page, which did contain the following wording:

"By clicking confirm, I agree to subscribe to 35050 GOLD subscription service R5/day. I accept the terms and conditions and confirm I am > 18. For help dial 0214178001"

The complainant clicked the *Confirm* button and was directed to a new landing page promoting a new subscription service, the SP's ZAP ringtone service. The pricing for this subscription service was R6/day and not R5/day.

There was no reference to the previously advertised competition information and/or prize offerings on this page.

The complainant clicked on the *Continue* and *Confirm* buttons on this page. She then received 2 further SMS messages which read as follows:

CONGRATULATIONS! By joining ZAP, U could have a chance to WIN Awesome Daily PRIZES!! PLUS get Cool Games & Unlimited Fun Stuff 4 ur mobile. *T&Cs apply*

*Welcome 2 35050 GOLD U can get UNLIMITED Top APPs, Games Mp2s & PRIZES on UR Mobile 4 Just R5/day go 2 <http://35050.mobi> to unsub dial *120*5133# help 0214068686*

The complainant then proceeded to go to the USSD string to unsubscribe. The string did not display the costing as required.

The complainant alleges that the SP has breached the following sections of the WASPA Code of Conduct:

6.2.4, 6.2.5, 6.2.6, 6.2.7, 9.1.7, 11.1.1, 11.2.1, 11.2.2 and 11.3.1.

SP's response

After a number of requests for extensions of time to lodge its response were granted to the SP by the WASPA Secretariat, the SP eventually filed its response 3 days late.

In its response, the SP set out various reasons for the late filing thereof which I do not believe is necessary to restate here. I am satisfied that good cause has been shown by the SP for me to condone the late filing of its response and same will be considered in the adjudication of this complaint.

The SP confirms that the complaint concerns a promotional campaign for both its 35050 GOLD and 35050 VIP subscription services. The promotional campaign is referred to by the SP as the "Easter Egg" campaign.

The MSISDN provided by the complainant was not the same MSISDN used to test the campaigns. The SP could therefore not provide the MO/MT logs for the complaint. However I don't believe the logs and the information contained therein are necessary for the adjudication of this complaint.

The SP described the promotional campaign as a “cross-sell” campaign. Once subscribed to the initial service advertised (e.g. 35050 GOLD), the customer is then introduced to another one of the SP’s subscription services (e.g. 35050 VIP).

The SP believes that its cross-selling mechanism is in line with the WASPA Code and sets out a number of reasons why the two services are clearly distinguishable from each other.

The SP states that only once a welcome message for the subscription to the first service has been sent, does the SP then direct the user to another service landing page.

The SP states that although the pin code is pre-populated, it still clearly, in a high contrast font, tells the potential subscriber: “NOW INSERT THE CODE THAT YOU JUST USED” on the second service’s welcome page.

The SP believes it clearly welcomes the subscriber to the new service by stating “Welcome to ZAP” – which it does not believe can be confused with the first service. If the user subscribes to the second service, he or she would receive a second welcome message which clearly identifies the service as a different service.

For the second service, the SP states that it follows the double opt-in process as required by the WASPA Code, whereby it sends the user an SMS message with the unique code for authentication for the second service. This message reads as follows:

“>> Ur CODE is 3041<< enter it in the web confirmation page & you'll be subscribed to ZAP from Buongiorno at R6/day 4 unlimited games, mp3's and great Rewards!”

If the pin code is used, the following welcome message is sent:

*Welcome 2 ZAP. Go to wap.funfone.co.za on ur mobile 4 unlimited games, mp3's and more! Help: 0214178001 Dial *120*5122# to unsub (R6/day subscription).*

The SP does not believe that the customer would be confused between the two services.

The SP's response to the specific clauses it is alleged to have breached is as follows:

1. Re. 6.2.4 - The SP denies that its pricing is misleading. The price as advertised is the actual price billed to customers. During the subscription process and once subscribed, the customer is not charged any further amount than the advertised subscription amount with respect to obtaining content.
2. The SP also denies that any premium messages are required to be sent from the customer either during the subscription process or in order to obtain content once subscribed.
3. Re. 6.2.5 – The SP denies that any of its services are premium-rated services.
4. Re. 6.2.7 – The SP denies that the user's interaction with the services is via USSD. This section of the Code is therefore not applicable.
5. Regarding the "Spot the Easter Egg" challenge promotion, the SP acknowledges that there is a possibility that the campaign is ambiguous and could lead to the impression that the "*R250 Airtime Top-up*" is obtainable once the Easter Egg was spotted by the person interacting with the campaign. The SP states that this ambiguity was not intentional, and once this possible interpretation of the campaign was brought to its attention by this complaint, it amended it to be in line with the SP's other campaigns.
6. The SP states that there is no prohibition in the Code which states that it cannot advertise its Rewards Program in advertisements such as these. The SP believes that section 11.2.3 of the Code allows for this. Reference has been made to the adjudication report in complaint #11863.
7. The subscription element of the advertisements were at all times - from the banner until the welcome page for the 35050 VIP service – visible and advertised on the relevant pages, as per the Code and the Rules.
8. At all relevant times the participant was referred to the SP's Terms and Conditions which have all the subscription details contained therein, as well

as how to qualify for the Reward Program (specifically linked, by the asterix after "*R250 Airtime Top-Up*, to the Reward).

9. In addition to this, immediately after subscribing through this campaign a customer is referred to a "Welcome" page. This page then immediately follows the confirmation page on each campaign and sets out that:
 - a) the customer is now subscribed to the service in question;
 - b) the cost thereof;
 - c) the helpline details;
 - d) an instruction on how to unsubscribe.
10. Only after taking the positive steps of entering a pin number, which is unique and directed to the phone of that particular potential subscriber; and clicking the CONFIRM button, is the potential subscriber then subscribed to the service(s).
11. The SP believes that there is no prospect that a potential subscriber was unaware that they were interacting with a campaign advertising and leading into a subscription service, and that they could have subscribed without knowing this and intentionally becoming subscribed.
12. Furthermore subscribed customers would have also received receive all the requisite "welcome" and "reminder" messages for 35050 GOLD, which messages all contained the required information.
13. The SP alleges that its Easter Egg campaign and Reward Program advertising was completely separate from the advertising and campaign related to the 35050 VIP subscription service.
14. Re. 11.1.1 – The SP alleges that the promotional material is prominently and explicitly identified in the middle of the pages for 35050 GOLD and most of the left hand-side of the 35050 VIP pages.
15. The SP states that the last sentence of the section 11.1.1 is not applicable to these campaigns.
16. Re. 11.2.1: The SP denies that there is automatic subscription to any of its services.

Sections of the Code considered

2.9. A "competition service" is any competition or game with prizes or entry mechanism into a draw. Where an auction or a reverse auction has the characteristics of a competition service, it is considered to be a competition service.

3.3.1. Members will not offer or promise services that they are unable to provide.

4.1.1. Members must have honest and fair dealings with their customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

6.2.7. For menu-driven services such as USSD, the price for the service must be clearly stated at the top of the first page. Any additional costs associated with specific menu selections must be clearly indicated.

6.2.12. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.

If the transaction is billed at less than R10, the price for the transaction must be clearly indicated as part of, or immediately next to, the link or option that will initiate the transaction and must be visible on the same screen as the link.

If the transaction is to initiate a subscription service, then the price and frequency of the service must be included directly in the text of the WAP link or immediately adjacent to it and must be visible on the same screen as the link.

9.1. Provision of information

9.1.1. The total cost for any entry into a promotional competition shall not exceed R1.50.

9.1.2. Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

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

9.1.4. Interactive competition services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

9.1.5. 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;
- g) how a person may obtain the competition rules.

9.1.6. 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.

9.1.7. Competition services and promotional material must not:

- a) use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants;
- b) exaggerate the chance of winning a prize;
- c) suggest that winning a prize is a certainty;
- d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

9.1.8. Any customer entering an IVR, SMS or MMS competition after the competition has closed must be sent a reply indicating that the competition has already closed. This is in order to prevent a customer from spending unnecessary time on a call or submitting repeated entries for a competition after the closing date or time.

9.1.9. If a competition closes at a specific time of day, then that time must be clearly communicated to all entrants. For live television competitions, an appropriate count down or advanced warning must be provided.

9.3. General provisions

9.3.1. Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.

9.3.2. Prizes must be awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material.

9.3.3. All correct entries must have the same chance of winning.

11. Subscription services

11.1. Promotion of subscription services

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.2. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed, except as provided for in 11.1.3.

11.1.4. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.5. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.1.6. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.7. Promotions for subscription services must not appear in publications or other media specifically targeted at children.

11.1.8. It is acceptable to use the "@" sign in place of "at" in any activation message, welcome message or similar communication. Similarly, "u" may be used in place of "you", "b" may be used in place of "be", and "r" may be used in place of "are".

11.1.9. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

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 reasonably 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.

11.2.4. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

11.2.6. The confirmation message described in 11.2.5 must include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

11.2.7. If the network is already undertaking any of the verification steps required in this chapter of the Code, then it is not necessary for members to repeat those particular steps again.

11.3. Subscription initiated via a browser (web or WAP)

11.3.1. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- a) contain a PIN which is then confirmed or validated on the web page, or
- b) contain the name of the service, an explanation of the confirmation process, and a URL with a unique identifier, which, when clicked, validates the handset number.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:

- a) The name of the service and an indication that it is a subscription service
- b) The price and frequency of billing
- c) A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:

[Application name] has requested that your mobile number be made available.

11.3.5. The information listed 11.3.3 and 11.3.4 must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

11.5. Welcome message

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information, in the following order:

- a) The name of the subscription service;
- b) The cost of the subscription service and the frequency of the charges;
- c) Clear and concise instructions for unsubscribing from the service;
- d) The service provider's telephone number.

11.6. Reminder messages

11.6.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter. The customer may not be charged for these reminder messages.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. SMS HELP [optional keyword] to [short code]/call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

or

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

11.6.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.6.2.

11.6.4. The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

11.6.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

11.6.6. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

11.6.7. The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

11.6.8. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

11.8. Reminder message for WAP services

11.8.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.6.2 or the the following format must be used:

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsub, click here [WAP link].

11.8.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.8.3. The WAP link in the reminder message must begin with "www" to ensure that all phones recognise this as a clickable link.

11.8.4. All of the other requirements set out in section 11.6 of the Code continue to apply to services where the primary means of interacting with the service us via WAP.

11.9. Termination of a service

11.9.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.9.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be "STOP". If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.3. The "STOP" request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.9.4. Where the words "END", "CANCEL", "UNSUBSCRIBE" or "QUIT" are used in place of "STOP" in a request, the service provider must honour the opt-out request as if the word "STOP" had been used.

11.9.5. Where a service is linked to a specific short code in advertisements for that service, then sending a "STOP" request to that short code should result in the

termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.6. If a message sent by a customer cannot be parsed by a WASP, then the resulting response to the customer should contain sufficient information for the customer to be able to unsubscribe from that service, or to be able to contact the service provider's customer support.

11.9.7. For services where the primary means of interacting with the service is via USSD or WAP, and for which the reminder message set out in clause 11.7.1. or 11.8.1. is used, clause 11.9.2. does not apply.

11.9.8. Members must ensure that the termination mechanism is functional and accessible at all times.

11.9.9. For USSD services, the unsubscribe option must be listed on the top-level menu, under the heading "UNSUBSCRIBE".

11.9.10. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. You'll then be resubscribed at [cost of service and frequency of billing].

11.9.11. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use or has been recycled.

11.9.12. If a user ports their number from one operator to another, that number must be removed from all subscription services.

11.9.13. If a customer sends an unsubscribe request directly to a member, and the request cannot be acted on immediately, the customer must be informed (for example, via a notification of the form "This may take up to 24 hours"). In any case such a request must be acted upon with two working days (48 hours).

11.9.14. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

11.10. Subscription service directory and logs

11.10.1. Members must register all subscription services with WASPA, by providing the following information:

- a) the name of the service;
- b) the short code or access method (e.g. WAP) the service uses;
- c) the price and frequency of billing for that service;
- d) the customer support number associated with the service; and
- e) unsubscribe instructions for the service.

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- a) proof that the customer has opted in to a service or services;
 - b) proof that all required reminder messages have been sent to that customer;
 - c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
 - d) any record of successful or unsuccessful unsubscribe requests.
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Decision

I have considered the complaint with regard to the sections of the WASPA Code of Conduct referred to by the complainant, as well as to certain other sections of the Code which are relevant to the SP's promotional campaign.

The complainant has alleged that the SP has contravened sections 6.2.4, 6.2.5, 6.2.6, 6.2.7, 9.1.7, 11.1.1, 11.2.1, 11.2.2 and 11.3.1 of the WASPA Code. I will deal with each of these alleged contraventions individually:

1. Re. 6.2.4: There is no evidence that the pricing contained in the SP's advertisements was misleading. It is clear from the process used and information provided by the SP that the two different prices quoted are in respect of two different services. I don't agree that the pricing is misleading.
2. Re. 6.2.5 and 6.2.6: The services in question are not premium-rated services.
3. Re. 6.2.7: The price for the service has been clearly stated at the top of the page as required.
4. Re. 9.1.7: There is no evidence that the SP is offering a competition service. Instead, this is a promotional campaign for its subscription service in terms of which subscribers may win certain rewards as an added benefit of their subscription.
5. Re. 11.1.1: The SP has prominently and explicitly identified the services being promoted as "subscription services".
6. Re. 11.2.1 and 11.2.2: The subscription process used by the SP is in compliance with the WASPA Code and it is unlikely that customers would be automatically subscribed to the services. Similarly, the process used by the SP ensures that any request from a customer to join the services promoted would be an independent transaction with the specific intention of subscribing to the service.
7. Re. 11.3.1: I am satisfied that a separate confirmation message with the required wording is sent to subscribers as part of the subscription process.

The WASPA Code does not explicitly prohibit the use of promotional draws / competitions to promote subscription services, provided that potential subscribers are clearly informed of the difference between entering the promotion/competition and subscribing to the service itself.

The SP's double opt-in subscription process ensures that customers are not misled and that they have a clear appreciation of the fact that they are joining a subscription service. (See also the adjudicator's report for complaint #11863).

Based on the grounds of complaint raised by the complainant, I am satisfied that the SP has not contravened the provisions of the Code.

However, a key issue which appears to have been overlooked in this complaint is the import and effect of the initial banner advert used by the SP. This banner advert advertises the chance to win an iPad2. However, when an interested participant clicks YES on the banner advert, they are redirected to the SP's "Spot the Easter Egg" promotion where the option of winning the iPad2 appears to be no longer available.

"Bait and hook" marketing has been highlighted in the Consumer Protection Act, 2008 as an unfair and/or irresponsible marketing practice. The SP cannot advertise the possibility of winning an iPad to entice parties to the next leg of its promotion where this prize is replaced by another, i.e. top-up airtime.

If the iPad2 is one of a number of potential rewards that can be *earned* by subscribers, this needs to be clearly stated.

In this regard, I am of the view that the SP has contravened sections 3.3.1, 4.1.1 and 4.1.2 of the WASPA Code in that the banner advert, when viewed in conjunction with the rest of the promotional campaign, is misleading and promotes the SP's services in a dishonest manner.

Sanctions

The SP is ordered to remove all banner advertising where reference is made to the chance to win an iPad2, where the SP has no intention of awarding this prize to potential subscribers.

The SP is issued with a formal warning to ensure that all promotions for its subscription services comply with sections 3.3.1, 4.1.1 and 4.1.2 of the WASPA Code.