



REPORT OF THE ADJUDICATOR

Complaint reference number:	22972
WASPA member(s):	Gogogy (IP); Opera Telecom (SP)
Membership number(s):	1338; 0068
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	10 January 2014
Date of the alleged offence:	Unknown
Relevant version of the Code:	12.4
Clauses considered:	4.1.1; 11.1.1; 11.1.2
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	17831, 20817

Complaint

The complainant lodged a formal complaint against the IP on 10 January 2014 which was described by the complainant as a “code of conduct” complaint and not an unsubscribe request.

The complainant alleges that the IP is using a “bait and hook” method to entice people into subscribing to its content service. The complainant alleges that fake winners of prizes have been used.

The complaint also alleges that the promotional page which publishes the “fake winners” also does not display the pricing information correctly. The pricing is only visible in small grey font at the bottom of the page once a reader scrolls down.

The complaint also alleges that the pricing information is confusing in that the price of subscription is R6 per day, whereas another page states that it is R5 per day.

The complainant alleges that the promotion contravenes 4.1.1, 11.1.1 and 11.1.2 of the WASPA Code of Conduct.

IP's response

The IP confirmed that the complainant's number was not found on its database and it did not have any record of a subscription using the MSISDN in question. Accordingly no logs were provided.

The IP stated that its service is only promoted online. It contracts with affiliate partners who place banner adverts on the internet. An example of the wording used in a banner is: *"you have a chance to win an Iphone 5s"*.

Once a user clicks on the banner, they are directed to the IP's landing page. On this landing page the user is asked to either answer a question or to pick the color of the prize they wish to compete for.

The next step is that the user is asked to enter their mobile number. The pricing information and minimum terms and conditions are displayed throughout this process.

Once done (depending on the operator), the user is requested to either enter an unique pin code that was sent to them via text message or to send a text message with YES to the advertised shortcode.

The user will then receive a welcome message with all the required information. They then stand a chance to win the prize for the advertised period as a subscriber to the service.

The IP could not verify what kind of promotional material was shown to the complainant as they have no record of the MSISDN.

The IP then referred to the pre-landing page which the complainant alleged that they were directed to after clicking on a banner advert as per the screenshot provided by the complainant. The IP confirmed that the pricing on the banner and the pre-landing page was stated incorrectly but the pricing on the IP's landing page for the service was correctly stated as R5 per day.

The IP also stated that the pre-landing page was hosted by a 3rd party marketing affiliate. In terms of the IP's contract with the affiliate, the affiliate is required to submit all marketing material to the IP for approval before it goes live.

In this instance, the pre-landing page which contains the "fake winner" information and incorrect pricing was not sent to the IP for approval and the IP did not know that the page was being used by the affiliate until it received the complainant's complaint.

Upon receipt of the complaint, the IP states that it immediately contacted the affiliate in question and instructed them to remove the pre-landing page. However the page was not taken down and the IP then took their own page offline so that no more traffic could be directed to it.

The IP also states that its dealings with its customers are honest and fair. The pricing information for the service was clearly displayed in the top right corner and the full terms and conditions as well as a link to the WASPA website are at the bottom of the page. The wording further makes it clear that the competition is *ancillary* to the subscription service.

Sections of the Code considered

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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.

Decision

The IP has stated that complainant did not actually subscribe to the service in question. I do not believe that a complainant needs to show that they took positive action in response to a promotional campaign which is alleged to be misleading before they are entitled to lodge a complaint.

Regarding the merits of the complaint, the IP has acknowledged that the banner advert and pre-landing page do not reflect the correct pricing for the service.

It also distances itself from the web page which contains fake references to previous winners of the advertised prizes by stating that this page was used by one of its 3rd party marketing affiliates without the IP's knowledge or approval.

However, despite the IP's assertion in this regard, I am of the view that the IP cannot distance itself from the conduct of its contracted affiliate and the IP is ultimately responsible for the conduct of its affiliate in these circumstances.

The IP has a contractual relationship with the affiliate and is therefore the only party who is in a position to prevent and/or penalise the incorrect and misleading representations being made regarding pricing and previous winners of the advertised prizes.

I therefore find that the IP is responsible for the contravention of 4.1.1; 11.1.1 and 11.1.2 of the WASPA Code of Conduct with reference to the pre-landing page used by the affiliate.

Sanctions

"Bait and hook" marketing has been highlighted in the Consumer Protection Act, 2008 as an unfair and/or irresponsible marketing practice. The potential harm to consumers is even greater when incorrect and/or misleading information is used in promotional material.

However, I must accept the IP's version that it was not aware of the use of the infringing webpage and, in particular, the fake references to previous prize winners.

I have also taken into account that the IP took reasonable steps to alleviate any potential harm to consumers by taking down its own landing page when the affiliate refused to comply with a request to take down the infringing page.

I am therefore satisfied that no further sanctions need to be handed down.

However, I encourage the IP to make sure that its affiliate contracts contain a suitable indemnity clause if they do not do so already because should there be any subsequent infringements of a similar nature, the IP will not enjoy the same consideration.