



REPORT OF THE ADJUDICATOR

Complaint reference number: 25632

WASPA member(s): Joyspring Trade & Invest 19 (IP) (1316) / Worldplay (Pty) Ltd (SP) (0015)

Membership number(s): See above

Complainant: Competitor

Type of complaint: False and misleading services

Date complaint was lodged: 2014-12-19

Date of the alleged offence:

Relevant version of the Code: 13.1

Clauses considered: 4.2, 5.4, 5.5, 8.5, 8.6, 17.1, 20.1 and 21.1.

Relevant version of the Ad. Rules:

Related cases considered:

Complaint summary:

Complaint #25632 is formal complaint concerning unsolicited subscription.

The formal complaint was sent to the WASP (SP) on 2015-01-14 (SP handled complaint on behalf of IP) and they responded on 2015-01-22.

The SP responded twice again on the 2015-01-23.

The WASPA secretariat informed SP of complaint going to adjudication on the 2015-01-28.

The SP replied informing that the complaint should include the IP on the 2015-01-28.

The SP replied on the 2015-02-05 and 2015-02-10, advising of complainant withdrawal of complaint.

The SP emailed the complainant on the 2015-02-10 about the withdrawal of the complaint.

The WASPA secretariat emailed the WASPA Head of Complaints on the 2015-04-01 about the withdrawal of the complaint.

The WASPA Head of Complaints responded on the 2015-04-01 requesting information from WASPA media monitor.

The WASPA secretariat emailed the WASPA media monitor on the 2015-04-01 as requested by the WASPA Head of Complaints.

The WASPA media monitor responded on the 2015-04-01, advising the complaint should not be withdrawn.

The WASPA secretariat emailed the WASPA Head of Complaints on the 2015-04-07 and the WASPA Head of Complaints responded on the 2015-04-20 advising that the complaint should not be withdrawn.

Initial Complaint

I received a missed call on my mobile phone from what appeared to be a landline. I called the landline number back, [deleted]. The call was immediately answered by an IVR system, calling itself we love and instructing me to press a number to confirm my subscription. I immediately hung up. My complaint is that the call to me was unsolicited and the IVR system that answered was primed to activate some sort of subscription service called or by the brand winlove. Who knows what the actual service is. I also don't know if the number itself was a premium number on a high price band either.

WASP Response

The SP responded on behalf of the IP. The initial response provided by BMI (Pty) Ltd stating that they are a Direct Marketing Association Centre of Excellence.

They then as part of their initial response also dealt with the specifics of the complaint as follows:

1. The number to which the complainant called back on was not a premium rated IVR at all.
2. All pricing information was provided for the Winlove service.
3. No subscription took place, an AVM campaign simply provides the 1st step in the DOI process – having said this I once again point out that the recording which the complainant heard triggered no action what so ever.

The complainant suggested the following clauses of the code had been breached;

Unsolicited marketing and forcing a subscription service without providing price and service.

- 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.

Response

Data is provided by an accredited data provider and a member of the Direct Marketing Association – the rules set out in section 16 of the code are strictly adhered to .All service information is clearly provided in all outgoing correspondence.

The network DOI process protects a customer from ever being “forced” into any form subscription without the customer’s knowledge. An AVM is simply the advertising medium.

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

Response

All particulars about the service are readily available to the user. The name of the company providing the service has also been included in the AVM along with the price and billing frequency. These are then again provided in the network confirmation step. The Winlove offering can also be found online with a simple search - Full terms and conditions and customer care contact details are also provided on this page. 8.5. For a contact and/or dating service, the "pricing information" consists of the cost to the customer for using the service. Examples of pricing information: "R1/message", "R5/month subscription".

This is a standard subscription service rule – the price is clearly stated as such in the AVM, and once again in the network confirmation step. 8.6. For a service not covered above, which is billed on the basis of time or sessions of a particular length of time, the "pricing information" consists of the cost to the customer for using the service plus the time interval at which costs are incurred. Example of pricing information: "R1.80 per 30 seconds or part thereof"

Response

This is not an IVR service – an AVM campaign is merely the medium for advertising which promotes a product offering to a potential customer. The WASP bears the cost of the outgoing call. 17.1. With the exceptions noted below, all subscription services, notification services, contact and/or dating services and other bulk SMS services (such as free newsletters) must have a functional opt-out procedure, including the option to reply 'STOP' to SMS messages.

Response

The AVM clearly provides the user with an option to opt out – stating “press 9 to opt out from all marketing messages” 20.1. Providers of contact and/or dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.

Response

This information is clearly provided in our terms and conditions which are available on the Winlove Mobisite. Winlove.mobi/terms

It is not a code requirement that this information be provided in an ad campaign. 21.1. For any interactive voice response service that costs more than R3 per minute, there must be a clear announcement of the cost per minute at the beginning of the call. This announcement must be no longer than five seconds in duration, and must use the following format: "Call billed at X rand per minute".

Response

Once again an AVM call is at the cost of the company running the campaign and is charged at no cost to the potential customer. The fact that the complainant out of his own free will chose to return a call the outgoing campaign number is of no consequence – this however is a standard rated number and not a premium rated IVR.

SP's Further Response

In addition to our response yesterday I would also like to add that the complainants details are available on The Deeds Registry and Cipro which are both public domains. His details are not listed on the DMA "do not contact list" and he has also been a recipient of other campaigns run by BMI in the past where he was given the option to opt out and had not.

The SP then stated that the IP and the complainant had cleared up the matter and wished to withdraw it stating that the Media Monitor had tested the process and was happy therewith.

Media Monitor and Head of Complaints Response

The Media Monitor disputed that they had tested and were happy with the process. The Head of Complaints advised that the matter proceed to formal adjudication.

Sections of the Code considered**Section 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.

Section 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.

Section 8.5:

For a contact and/or dating service, the "pricing information" consists of the cost to the customer for using the service. Examples of pricing information: "R1/message", "R5/month subscription".

Section 8.6:

For a service not covered above, which is billed on the basis of time or sessions of a particular length of time, the "pricing information" consists of the cost to the customer for using the service plus the time interval at which costs are incurred. Example of pricing information: "R1.80 per 30 seconds or part thereof"

Section 17.1:

With the exceptions noted below, all subscription services, notification services, contact and/or dating services and other bulk SMS services (such as free newsletters) must have a functional opt-out procedure, including the option to reply 'STOP' to SMS messages.

Section 20.1:

Providers of contact and/or dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give

clear advice on sensible precautions to take when meeting people through such services.

Section 21.1:

For any interactive voice response service that costs more than R3 per minute, there must be a clear announcement of the cost per minute at the beginning of the call. This announcement must be no longer than five seconds in duration, and must use the following format: "Call billed at X rand per minute".

Decision

Section 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.

- I find no breach.

Section 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.

- Find the IP to be in breach of this clause on the basis that providing a landline number does not in anyway provide the public with information as to who is trying to contact them and does not allow them to choose to accept the call or not, not knowing from where the call is emanating. Nothing in the manner of approach allows the individual to choose to accept or reject a call from Winlove, merely from a Cape Town business number.

Section 8.5:

For a contact and/or dating service, the "pricing information" consists of the cost to the customer for using the service. Examples of pricing information: "R1/message", "R5/month subscription".

- Find no breach. If the Complainant had listened to the call they would have obtained this information. There was no subscription either.

Section 8.6:

For a service not covered above, which is billed on the basis of time or sessions of a particular length of time, the "pricing information" consists of the cost to the customer for using the service plus the time interval at which costs are incurred. Example of pricing information: "R1.80 per 30 seconds or part thereof"

- Find no breach. If the Complainant had listened to the call they would have obtained this information.

Section 17.1:

With the exceptions noted below, all subscription services, notification services, contact and/or dating services and other bulk SMS services (such as free newsletters) must have a functional opt-out procedure, including the option to reply 'STOP' to SMS messages.

- Find no breach. If the Complainant had listened to the call they would have obtained this information. In addition there was no subscription.

Section 20.1:

Providers of contact and/or dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.

- I find no breach. The process never got this far and as such the Complainant cannot complain of things which should have happened post subscription when no subscription had occurred.

Section 21.1:

For any interactive voice response service that costs more than R3 per minute, there must be a clear announcement of the cost per minute at the beginning of the call. This announcement must be no longer than five seconds in duration, and must use the following format: "Call billed at X rand per minute".

- Not an IVR. No breach.

I have an issue with the reliance of the SP and IP with the use of a data list and the fact that the individual was not on the opt-out list. However, due to the fact that South African law still operates on an opt-out rather than opt-in basis I cannot find breach for spam.

Sanctions

The WASP is fined R50 000.00 payable on receipt of this ruling. Further, they must alter their services in such a manner so as to allow people to know that Winlove is trying to contact them as opposed to a Cape Town based business number which could validly be a call the individual needs to accept.