



Wireless Application Service Providers' Association

Adjudicator's Report

Complaint number	25908
Cited WASPA members	MTN Internal WASP Services (IWS) 0035
Notifiable WASPA members	<i>n/a</i>
Source of the complaint	Public
Complaint short description	Unsolicited marketing message
Date complaint lodged	<i>9 March 2015</i>
Date of alleged breach	<i>February 2015</i>
Applicable version of the Code	13.6
Clauses of the Code cited	<i>The complainant identified the following clauses:</i> 5.1,5.4,5.6,5.7,5.8,5.11,5.12,5.13,5.14,8.1,8.4,8.7,14.1,14.2,14.3,18.2,18.4,18.9
Clauses breached	8.7, 18.2 and 18.7.

Related complaints considered	26103. 26203.
Fines imposed	<ul style="list-style-type: none"> • The campaign is under short code 31014 is suspended; • The WASP is fined R50 000 payable within 7 days of receipt hereof.
Is this report notable?	<i>Notable</i>
Summary of notability	<i>In relation to application of suspended sanction at later date.</i>

Complaint

In essence, the complaint related to an unsolicited SMS competition.

The sms in question read:

An all expenses paid Trip to The Metro awards in Durban Plus R5000 cash could be yours by simply answering the following,
 Who was the 3rd Black president in South Africa?
 sms Answer to 38054
 ,closing date 22 feb 2014 at 12h00 at
 12h00 midnight.to optout from receive this sms please sms stop to 31014

According to the complainant, the SMS cost R10 each, and Metro knew nothing about the competition.

Member's response

Despite notification at both informal and formal levels, the Member did not respond.

Clauses

The complainant identified the following clauses of the Code as relevant:

5.1

5.4

5.6

5.7

5.8

5.11

5.12

5.13

5.14

8.1

8.4

8.7

14.1

14.2

14.3

18.2

18.4

18.9

Decision

The complainant has cited a number of clauses and I am therefore tasked to consider each one. However, I start by noting that this Member has a history of non-responsiveness to WASPA matters. In matter 26203, for example (and not the only one), the Member admitted in April 2015 that it had not been responding to complaints as it should. That matter arose after this one, in March 2015.

In this matter, the Member is still failing to respond to complaints in June 2015 – two months after telling WASPA that this problem was being resolved. I will revert to this issue.

As a result of the failure to respond, I have only the complainant's version of events before me and am forced to accept them as *ex facie* correct. However, the complainant did not apparently complete the process of entering the competition. I also cannot make presumptions about what might have happened had she done so.

I now turn to the merits of the matter:

5.1. Members must not offer or promise services that they are unable to provide.

The sms promises entry into a competition and I have no evidence before me to show that this would not occur. This clause is therefore not *ex facie* breached on the facts before me.

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

The complainant is not, *ex facie*, a customer of the Member and this clause does not apply.

5.6. Each member must provide contact details on their main corporate web site, which must include the member's registered company name, telephone number, email address and physical address.

5.7. A web page containing the full terms and conditions of a service must be readily available to current and potential customers of that service.

5.8. The full terms and conditions for any service provided by a member must contain: . .

.

There is nothing before me to suggest that the complainant consulted the Member's website and found these details lacking. I therefore do not consider the clauses relevant to the complaint.

5.11. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to. (Example: support should not be limited to email if a significant number of customers do not have access to email).

5.12. Telephonic support must be provided via a South African telephone number and must function effectively. Customer support must be provided via standard rated numbers, and may not be provided via premium rated numbers. Should the member be

unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers must not forward to full voice mailboxes.

5.13. The option of speaking to a call centre consultant (or leaving a message for a call centre consultant) should be obvious to the caller.

5.14. Members must have a procedure allowing consumers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

There is nothing before me to suggest that the complainant was not able to access customer support (or that she attempted to do so) or attempted and failed to lodge a complaint directly. This clause is therefore similarly not triggered on the facts before me.

8.7. Pricing information must not be misleading. The price must be the full retail price of the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.

Relevant to this clause are cited clauses 8.1 and 8.4, containing definitions of “pricing information”.

The relevant sms *ex facie* contains no pricing information at all.

This is misleading and the Member is therefore in breach of Clause 8.7.

14.1. For all ad hoc transactions the member must keep a record of the source of the transaction request, and provide that information to the customer, on request. Records must be kept for a period of at least three years after the date of the transaction.

14.2. For all ad hoc transactions that are service-provider initiated, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

(i) The customer’s mobile carrier may implement the confirmation step.

(ii) The member can present the customer with a confirmation step.

14.3. The confirmation step for any any ad hoc transaction must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

There is nothing before me to suggest that no records would be kept or that relevant confirmation steps would have occurred. These clauses are therefore not triggered by the facts before me.

18.2. The cost for a single entry into a promotional competition must not exceed R1.50.

The cost of entry is *ex facie* R10 and this is in clear **breach of Clause 18.2.**

18.4. An offer to participate in a promotional competition must clearly state:

- (a) the competition to which the offer relates;**
- (b) the steps required by a person to participate in the competition;**
- (c) the full cost to enter the competition;**
- (d) the basis on which the results of the competition will be determined;**
- (e) the closing date for the competition;**
- (f) how the results of the competition will be made known;**
- (g) how a person can obtain a copy of the competition rules; and**
- (h) how the successful participant can obtain the prize.**

I note that 18.4 cannot be read without reference to 18.5 which explicitly allows, in the case of an sms, that the entrant be referred to the relevant website.

That being said, in the sms at hand, the details required by 18.4 are not all present and there is no reference to a website that might provide the information.

There is therefore a breach of Clause 18.4.

18.9. Promotional competitions 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.**

The sms states that the prize "could be yours" and includes a closing date. I do not think that the hypothetical reasonable consumer would be misled into thinking that they had definitely won the prize and that they had an exaggerated chance of winning. I therefore do not find a breach of Clause 18.9.

In summary, the Member has breached clauses 8.7, 18.2 and 18.7.

Sanction

The campaign in question is fundamentally non-compliant with WASPA rules. Clauses 8.7, 18.2 and 18.7 are all clear requirements that the Member has made no effort to apply and no effort to defend, despite having informed WASPA that it is aware of the problems of its responses.

It also appears to be part of a pattern of similar campaigns, all run at or around the same time.

I therefore apply the following sanction:

The sanctions are therefore as follows:

- The campaign is under short code 31014 is suspended;
- The WASP is fined R50 000 payable within 7 days of receipt hereof.

The suspended fine of R100 000 imposed in matter 26103 is not imposed as these matters appear to have occurred concurrently, and this can therefore not be regarded as a further breach. However, as with matter 26203, the WASP is advised that this ruling will be taken into consideration if there are future breaches.