



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	26610
<b>WASPA member(s):</b>	Westbound Direct Limited (IP) / Basebone Pty Ltd (SP)
<b>Membership number(s):</b>	1436 / 1344
<b>Complainant:</b>	WASPA Media Monitor
<b>Type of complaint:</b>	Misleading promotion
<b>Date complaint was lodged:</b>	11 June 2015
<b>Date of the alleged offence:</b>	s/a
<b>Relevant version of the Code:</b>	13.9
<b>Clauses considered:</b>	4.2, 5.4, 5.5, 8.4, 12.1, 15.4, 15.5, 18.4
<b>Related cases considered:</b>	25976, 26003, 26416, 26420,

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### Complaint

1. The complainant accessed and clicked on a banner advert on 10 June 2015 which informed them that they had won an Apple iPhone 6.
2. After the complainant clicked on the banner ad, a pop-up appeared informing them they had been a prize winner before in Malaysia, which was not true.
3. The complainant was then informed that they had won a single prize, and was prompted to click the "OK" call to action button.
4. The complainant was then directed to a page where they could claim their prize. They chose the iPhone6 as it was the only model in "stock".

5. The page stated that the complainant was a winner in South Africa as their number was randomly drawn for the prize.
6. The complainant then clicked the "Redeem" call to action button. Another pop-up appeared informing the complainant that there were 2 devices in stock. The complainant had collected nothing yet.
7. The complainant was then asked to insert their mobile number on the next page (why if the complainant's number was chosen for the prize?). The complainant then clicked the "OK" call to action button.
8. The complainant was then directed to another page where they could win the Apple product of their choice, despite all pages up until this page clearly stating that the complainant was already a winner. The complainant then clicked on the iPhone 6 image.
9. The complainant was then directed to a page requiring the complainant to choose the correct answer and subsequently did so.
10. The page now mentioned a service named Chatpose mobile downloads. The page also now stated "*for a chance to win*" whereas the complainant had already been informed that they already were a winner.
11. The complainant was then directed to a page promoting the Chatpose subscription service at R7/day. The page also promoted the chance to win the new iPhone 6 by using the service.
12. The complainant then elected to insert their mobile phone number and clicked the "CONTINUE" call to action button.
13. The subscription information type was not explicit. Pricing information was also not explicit.
14. The complainant then received the Vodacom double opt-in SMS on their mobile phone and subsequently replied with the keyword "Yes". Shortly afterwards, the complainant received the Welcome SMS.
15. The complainant then clicked on the URL link provided in the SMS. The complainant was then directed to the homepage for the Chatpose subscription service where a number of competitions were running.

16. The complainant was then informed on how to take part in the Apple competition.
  17. The complainant was unable to receive the Apple device free of charge as a prize despite being advised that they could do so.
  18. The complainant then opted to cancel the subscription by replying to the Welcome SMS with the keyword "Stop". The complainant then received an SMS confirming that the service had been cancelled.
  19. The complainant alleges that the promotion contravenes section 4.2, 5.4, 5.5, 8.4, 12.1, 15.4, 15.5, 18.4 of the WASPA Code of Conduct.
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### **IP's response**

20. The IP alleged that the "Waptrick" promotion was run by one of the publishers contracted by an affiliate network who the IP uses to promote its services.
21. The promotion in question was not authorised by the IP.
22. The IP immediately suspended all promotions through the relevant affiliate after it was informed about this misleading promotion.
23. The IP states it enters into contracts with all of its affiliate networks which include contractual remedies that the IP can implement if an affiliate breaches any of the provisions of the contract.
24. However, it cannot take any pre-emptive measures against such unauthorised practices.
25. The IP stated that it had taken all reasonable measures to make sure its affiliates use the assets provided for the relevant campaigns and had no control over other unauthorised campaigns being used.
26. It therefore should not be held responsible for the contraventions of the relevant provisions of the WASPA Code.
27. The IP also referred to the findings of the adjudicator in complaints 25976 and 26003.

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## Sections of the Code considered

28. The following clauses of the Code were considered:

*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.*

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

*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.*

*8.4. For a promotional competition, the "pricing information" consists of the total cost to the customer for an entry into that competition plus the words "per entry". Examples of pricing information: "R1.50 per entry", "R1 per entry".*

*12.1. For any web page, pricing information does not need to be displayed for services which are free, or which are billed at standard rates. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action.*

*15.4. A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: "to claim your prize, join this service".)*

*15.5. A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: "if you join this subscription service, you will be entered into a monthly draw for a prize".)*

*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.*

*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.*

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## **Decision**

29. It is common cause that the promotional campaign in question is misleading and deceptive, and contravenes sections 4.2, 5.4, 5.5, 8.4, 12.1, 15.4, 15.5, 18.4 of the Code.

30. The IP has stated in its response, as has been the case in a number of other complaints of this nature which have been submitted to adjudication, that it uses the services of affiliate networks to promote its services, and, although it takes reasonable steps to ensure that these services are provided in compliance with the requirements of the Code, it cannot take pre-emptive measures to stop misleading campaigns which it has no knowledge of and which have not been authorised by it.

31. The IP also has no contractual relationship with the various publishers used by the affiliate networks and cannot control what promotional materials are used by these publishers.
32. Although version 13.9 of the Code does not deal directly with the responsibility of members for the services provided by contracted third party affiliates, section 3.7 of the Code provides for situations where a member is held responsible for contraventions of the Code committed by customers who are not members of WASPA, and I am of the view that these provisions must be extended by analogy to third party service providers, such as affiliates, who interact with consumers on behalf of the IP and contravene the Code when doing so.
33. The fact that the IP may be adjudged to have taken reasonable steps to ensure that its affiliates comply with the requirements of the Code must be taken into account in mitigation, but does not excuse the IP from responsibility.
34. The IP has confirmed that it enters into contracts with its affiliates and creates positive obligations on its affiliates to comply with the requirements of the Code.
35. These contracts also provide the IP with various remedies which can be enforced if the affiliate breaches its obligations.
36. Therefore, although the IP may not be in a position to take pre-emptive steps to prevent these forms of misleading campaigns, it is best placed to respond to these types of deceptive business practices by enforcing the contractual remedies set out in its contracts with its affiliates.
37. Based on the foregoing, I am satisfied that the IP must be held responsible for the contraventions of the Code.
38. The complaint is accordingly upheld.

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## Sanctions

39. I am satisfied that the IP has taken steps to suspend the relevant campaign within a reasonable time after being notified of the contravention. I have taken this into account in mitigation.
40. The IP is fined an amount of R15 000.
41. It is suggested that this fine, once paid by the IP, can be recovered from the relevant affiliate by the IP in terms of its contract with them.
42. Hopefully once affiliates feel the commercial impact of using publishers who use deceptive and misleading promotional practices, they will in turn stop using those publishers.