

Report of the Adjudicator



Wireless Application Service Providers' Association

Complaint number	#26724
Cited WASPA members	Smartcall Technology Solutions (0090)
Notifiable WASPA members	N/A
Source of the complaint	WASPA Monitor
Complaint short description	Alleged competition irregularities
Date complaint lodged	2015-06-25
Date of alleged breach	2015-06-25
Applicable version of the Code	13.9
Clauses of the Code cited	5.1, 5.2, 8.4, 15.17, 15.18, 15.18, 15.26, 15.31, 18.2
Related complaints considered	N/A
Fines imposed	N/A
Other sanctions	N/A
Is this report notable?	N/A
Summary of notability	N/A

Initial complaint

The Complainant in this matter stated that competition services offered by the Respondent are considered highly non-compliant. The Complainant went further to state that there is no mobile content subscription offering which would justify charging a R7/day pricepoint and suggested that the service is not a promotional competition that can be considered as an additional benefit to a mobile subscription service.

It further stated that competition entries may not be charged more than R1-50 which is a requirement set not only by WASPA, but also by the CPA.

Member's response

The Respondent initially asked for an extension which was subsequently granted by the Secretariat.

Complainant's response

N/A

Member's further response

The Respondent provided a detailed response which will be replicated here in full:

"As per the above there were only 2 main issues in this complaint. We do however feel that this complaint could have been dealt with informally as this was a first time offence for this service with STS and STS could have provided a prompt response as per the code. There was also a problem with the Vodacom confirmation and a retest request could have resolved the issue.

Please find below response to the above complaint:

1. Cost:

Clause 8.4 and 18.2 does not apply to this service as this is not a promotional competition.

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

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".

The service is a subscription service whereby the subscriber will be entered into over 200 online promotions. The details of these promotions are readily available to the user and when the client signs up to the service the information, methodology and cost are clearly visible to the user. The service Winaprize is not a single entry into a competition service and therefore the user is not billed for a single entry into a competition, therefore the R1.50 per single entry into a competition does not apply to this service.

2. Vodacom subscription test:

When the test was performed on the Vodacom network, the tester received the DOI message from Vodacom and then responded to confirm the subscription. STS did not receive the confirmation from Vodacom to activate the subscription.

The user was still pending confirmation thus there was no Welcome message sent to the user. STS queried the logs with Vodacom and they confirmed that there was an issue with the network and that the confirmation was not sent to STS.

Following the confirmation the tester then sent a stop message to unsubscribe from the service. Due to no active subscription available on the service the user did not receive a confirmation of termination as the user did not exist on the active subscriber database.

This was a Vodacom error as per attached confirmation from Vodacom. (See email attached)

5.1. Members must not offer or promise services that they are unable to provide. (Vodacom network)

This was due to a Vodacom technical error and not controlled by STS.

5.2. Services must not be unreasonably prolonged or delayed. (Vodacom network)

This was due to a Vodacom technical error and not controlled by STS

15.17. Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. This message is referred to as the "welcome message". The customer must not be charged for the welcome message.

STS did not receive the confirmation of subscription from Vodacom and therefor the user was never activated. The welcome messages are only sent to active subscribers on confirmation.

15.18. The welcome message must be a single message and may not contain any line breaks or carriage returns. The welcome message must begin with the word "welcome" and then contain only the following additional information: (a) the name of the service, (b) the pricing information, (c) a customer support number, (d) instructions for terminating the service, and (e) (optionally) a link to a WAP landing page or a web page describing the service.

STS did not receive the confirmation of subscription from Vodacom and therefor the user was never activated. The welcome messages are only sent to active subscribers on confirmation.

15.26. If a member is unable to immediately act on a service termination request received from a customer, the customer must be informed. (Example: "This may take up to 24 hours to be processed.")

There was no active subscription and therefor the termination message was not sent

15.31. Once a customer has terminated a service, a message confirming this must be sent to that customer. This message must specify the service the customer has terminated, and the customer must not be charged for this message.

There was no active subscription and therefor the termination message was not sent

Sections of the Code considered

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

5.2. Services must not be unreasonably prolonged or delayed.

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.

15.17. Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. This message is referred to as the welcome message. The customer must not be charged for the welcome message.

15.18. The welcome message must be a single message and may not contain any line breaks or carriage returns. The welcome message must begin with the word welcome and then contain only the following additional information: (a) the name of the service, (b) the pricing information, (c) a customer support number, (d) instructions for terminating the service, and (e) (optionally) a link to a WAP landing page or a web page describing the service.

15.26. If a member is unable to immediately act on a service termination request received from a customer, the customer must be informed. (Example: This may take up to 24 hours to be processed)

15.31. Once a customer has terminated a service, a message confirming this must be sent to that customer. This message must specify the service the customer has terminated, and the customer must not be charged for this message.

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

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the Respondent's subsequent replies.

The first matter at hand that needs some clarification is the question of whether the Respondent is providing a subscription service or whether it directly or indirectly, promotes, sponsors, organizes or conducts a promotional competition, or whether the competition is promoted, sponsored, organized or conducted for its benefit.

The definition afforded to a "promotional competition" by the Code of Conduct and section 36 of Consumer Protection Act means any competition, game, scheme, arrangement, system, plan or device for distributing prizes by lot or chance.

The Adjudicator is of the opinion that the services offered by the website of the Respondent falls within this definition and can at least be seen as a system, plan or device for distributing prizes.

A “promoter” of a promotional competition is defined as a person who directly or indirectly promotes, sponsors, organizes or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organized or conducted.

The Act also goes further and provide certain limitations on what promoters are allowed and not allowed to do.

Section 36(3)(a) states that a promoter must not require any consideration to be paid by or on behalf of any participant in the promotional competition, other than the reasonable costs of posting or otherwise transmitting an entry form or device.

In interpreting section 36(3)(a) section 36(4)(a) inter alia states that a promoter must be regarded as having required or received consideration in respect of a promotional competition if a participant is required to pay any consideration, directly or indirectly, for the opportunity to participate in the promotional competition, for access to the competition or for any device by which a person may participate in the competition.

In respect of the WASPA Code of Conduct, section 18.2 sets the limit for reasonable costs which limit is R1-50 per entry.

In its review of the WinaPrize website’s homepage, the Adjudicator is of the opinion that the Respondent in this matter can be seen as a person who indirectly promotes competitions and can therefore be classified as a “promoter”.

By receiving a subscription fee of R7 a day, it could therefore be assumed that the Respondent is in breach of section 36(3)(a) read with section 36(4)(a), due to the fact that it receives a consideration from the participant for access to or for the opportunity to enter the various competitions at a price that is higher than what is allowed by section 18.2 of the Code of Conduct.

The question however still remains as to whether the additional R5-50 per day could justify the subscription services offered, meaning, providing the subscriber with options to enter into various competitions, totaling up to 200 online competitions and making a portal for such entries available.

The opinion of the Adjudicator that this question is subjective and for the user / subscriber to decide.

The Adjudicator is of the opinion that the Respondent has provided the would-be subscriber with ample opportunity and information to make up his / her own mind to ascertain whether the subscription service justifies the additional costs.

Even though the subscriber is only entered into one competition per day, the Respondent still provides a platform with updated competitions, categorized according to product specifics, which in itself can be viewed as a service and can be seen as the subscription service.

Section 15.5 of the Code states that 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”.)

The Respondent stated on its website that it enters subscribers into competitions acting on their behalf.

The Adjudicator subscribed to the service and chose the product. A sms was received indicating that only one prize entry was allowed per day at R7 / day subscription.

Section 18.9 is very clear that words such as “win” or “prize” are not allowed to describe products.

This was however not raised by the Complainant and will not be considered here.

Following the process, the Adjudicator was never given the opportunity to review any of the competition rules, closure dates etc. of the selected product / possible prize.

This also, was not part of the Complainant’s grievances and would therefore also not be considered here.

The Adjudicator is ultimately of the opinion that the Respondent’s services offered are not in breach of sections 8.4 and 18.2.

The Adjudicator reviewed the email letter sent by Vodacom and is satisfied that the Respondent in this matter was not to blame for the technical irregularities it experienced, as this was clearly due to the problems experienced by Vodacom.

The alleged breaches of sections 5.2, 15.17, 15.18, 15.26 and 15.31 are therefore set aside and dismissed.

The Complaint is dismissed.

Sanctions

N/A

Matters referred back to WASPA

The Adjudicator is of the opinion that the services offered by the Respondent be subjected to sections 18.4 – 18.9 of the Code as they lack compliance.