



**Wireless Application Service Providers' Association**

**Report of the Adjudicator**

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|--------------------------------|--|
| Complaint number               | 26921  |
| Cited WASPA members            | Allied Pacific Investments LTD (1448) (IP) / Smartcall Technology Solutions (0090) (SP)            |
| Notifiable WASPA members       |  |
| Source of the complaint        | WASPA Media Monitor  |
| Complaint short description    | Misleading Marketing   |
| Date complaint lodged          | 20 July 2015   |
| Date of alleged breach         |  |
| Applicable version of the Code | 14   |
| Clauses of the Code cited      | 4.2; 5.1; 5.4; 5.5; and 8.4.   |
| Related complaints considered  |  |
| Fines imposed                  |  |
| Other sanctions                | Provide details of the 3 <sup>rd</sup> party affiliate marketer and refrain from using them again. |
| Is this report notable?        |  |

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|-----------------------|--|
| Summary of notability |  |
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**Initial complaint**

The Media Monitor complained of a service which was misleading consumers into subscribing with the promise of being awarded prize(s). The Media Monitor provided various screenshots detailing the subscription process as well as summarizing as follows:

“The user received a link within the messenger WhatsApp, where he could spin a wheel and win a number of prizes. The user then proceeded to spin the lucky wheel. The user was then notified that he had possibly won a Samsung S6 and had to follow the instructions that appears next. The user then clicked “OK”. The next page informed the user that he had now won the S6. The user now had to share the promotion with 10 WhatsApp users and subsequently did so. The following page advised the user that he must verify his mobile on the next page. The user was then directed to the landing page for Win24 at R7/day. The user proceeded to enter his MTN mobile number and clicked the “Yes, I want” call to action button. The user then received the MTN double opt-in SMS and replied with the keyword “Yes”. The user had then received the Welcome SMS on his mobile phone that included his user login information as well. The user then proceeded to open the URL provided in the SMS. The user as then directed to the login page for Win24 where he entered his login and clicked the “Login” button. The user then successfully logged into Win24 where a number of prize categories where available. The user then proceeded to follow all the steps fill in his information where required. However, after completing all steps and selecting a prize of his choice, the homepage showed no prizes were applied for. Also, all pages up until the actual Win24 service, assured the user that he had won the Samsung S6. The user then elected to cancel the subscription by replying to the Welcome SMS with the keyword “Stop”. The user then received confirmation that the subscription has now been cancelled.”

The Media Monitor then provided general comments around the nature of this marketing stating that in their view the [www.win24.me](http://www.win24.me) service seems to only give away prizes. There is no mobile content on the site. In which case, all competition entries should be charged at R1-50 an entry, and not R7/day.

**Member’s response**

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The member provided the following response:

“We do understand the severity of the allegations being made by the WASPA Monitor and have taken the appropriate steps to halt the service until such time as this matter has been clarified. However, this being said, we cannot be held accountable for the actions of third parties, the 3rd party here being the marketing network contracted by ourselves in order for our services to be marketed.

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The WASPA monitor clearly lacks understanding of the nature of affiliate marketing and the impossibility of being able to ensure compliance with the WASPA code on the networks utilized in this method of marketing, they simply do not tell us where and how they will implement their methods of driving traffic to our landing pages.

The WASPA monitor clearly states in their conclusion that “all pages up until the actual Win24 service, assured the user that he had won the Samsung S6”, and as such all Win24 pages are compliant with the WASPA code and technically correct.

As to the monitoring team’s general comments on finding the type of marketing used to be misleading, we agree on this but once again this marketing was conducted by a third party and not Allied Pacific who had no idea as to the method of marketing the third party would make use of.

As to the media monitors implying that Win24 gives away prizes, this is patently untrue. Win24 enters users into competitions both within South Africa and internationally backed by a “money back” guarantee that subscribers will begin receiving prizes within 3 months of subscribing. We invite the monitoring team to put us to the test on this. As this is not a single competition entry, section 18.2 of the code does not apply to our service.

We would also like to respond to the possible breaches of the Code submitted by the monitoring team.

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.

We have and continue to conduct ourselves in a professional manner and cannot be held accountable for the action of third parties.

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

This is not applicable due to the WASPA monitoring team not being subscribed to the service for a 90 day period in order to either:

- a) Disprove our claim that within 90 days, subscribers will begin winning prizes or
- b) disprove that we will not give money back to the amount of all subscription fees.

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

All aspects of our service are compliant with the WASPA code. The marketing undertaken by a third party is what is not compliant and we will take the relevant steps to rectify this even though we cannot be held accountable for this.

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.

All aspects of our service are compliant with the WASPA code. The marketing undertaken by a third party is what is misleading and we will take the relevant steps to rectify this even though we cannot be held accountable for this.

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”.

Section 8.4 is not applicable to our service as we do not promote single entry into any competition, our service enters our subscribers into multiple competitions without their input or any need for them to commit R1,50 each time we submit their applications.

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Additionally to this, we also offer a host of apps and services our customers can make use of should they choose to at no additional cost to themselves.

As an example: [removed but is available as part of the document bundle provided to all parties]

We can provide you with a free trial login to check all relevant web site content.

In summary,

Allied Pacific has fallen victim to an unscrupulous affiliate marketing company. We have adjusted the text on all of our landing pages accordingly to prevent this happening in the future and we have shut down all campaigns associated with the marketing network in question.

We hope this clarifies matters, should you require any further information please let us know.

## **WASPA Secretariat's response**

This matter was originally referred to an Emergency Panel hearing but after the member's response the matter was referred to formal adjudication.

## **Sections of the Code 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.

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

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".

### **Definition**

18.1. A "promotional competition" means any competition, game, scheme, arrangement, system, plan or device for distributing prizes as defined in section 36 of the Consumer Protection Act, 2008.

### **Cost of entry**

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

### **Prohibited practices**

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**

The arguments the member puts forward as to their failure to comply with the Code due to the fault of their third party marketing network in my view hold no merit. Whilst I understand that the 3<sup>rd</sup> party affiliate marketer very well may (or may not) have acted without their knowledge does not excuse the fact that a campaign run by one of their appointed service providers (who they can contractually control) marketing a service which they seek to benefit from financially was not in compliance with the Code.

I also feel that they very conveniently “rely” on the breaches of the 3<sup>rd</sup> party affiliate marketer to draw consumers onto the page they have control over by which time the hook has been swallowed by the consumer and all the member has to do is reel them in. Due to the fact that the actual page which we can demonstrate is within the control of the member is compliant I cannot find the member to be in breach.

Further, and although this was not raised as a specific breach by the Media Monitor in their complaint, I feel that the purpose of the Code is to protect consumers. In a purposive interpretation of the Code, clauses 3.5-3.7 should apply to 3<sup>rd</sup> party service providers appointed by the member to provide services covered by the Code. Accordingly the member should be liable for their actions in not in compliance with the Code.

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## **Sanctions**

I sanction the member (Allied Pacific Investments) to provide details of 3<sup>rd</sup> party affiliate marketer and refrain from using them in the future.

## **Matters referred back to WASPA**

I refer to matter back to WASPA to deal with the following clauses:  
3.5-3.7.

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