



**Wireless Application Service Providers' Association**

**Report of the Adjudicator**

|                                |   |
|--------------------------------|---|
| Complaint number               | 27037   |
| Cited WASPA members            | Smartcall Technology Solutions (0090) – SECOND RESPONDENT<br>Allied Pacific Investments Ltd (1448) – FIRST RESPONDENT             |
| Notifiable WASPA members       |   |
| Source of the complaint        | Public  |
| Complaint short description    | Misleading and unlawful use of a company name   |
| Date complaint lodged          | 30 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, 12.5 and 15.4   |
| Related complaints considered  | 26921   |
| Fines imposed                  | I sanction the FIRST RESPONDENT to a fine of R15 000 payable within 7 (seven) days of publication of this report.                 |
| Other sanctions                | I further sanction them to provide details of 3 <sup>rd</sup> party affiliate marketer and refrain from using them in the future. |

|                         |    |
|-------------------------|----|
|                         |    |
| Is this report notable? | No |
| Summary of notability   |    |

---

### Initial complaint

Complaint 27037 is the formal complaint concerning unlawful and compromising use of a company name through shopping vouchers.

The formal complaint was sent to the WASP on 2015-08-07.

The WASP replied on the 2015-08-11, with regards to whom the complaint was directed and the WASPA secretariat replied advising that it was directed at the WASP.

The WASP replied on the 2015-08-25, 2015-08-28 requesting an extension for formal response.

The WASP replied on the 2015-09-02 with formal response.

The WASPA secretariat emailed the WASP on the 2015-09-15, advising that the complainant did not provide a response and that the complaint is being assigned for adjudication

### Member's response

The matter was not referred to the FIRST RESPONDENT and the SECOND RESPONDENT initially responded to state that the complainant had sent the following information:

*"This is spreading via Whatsapp where the site have to be send to 10 friends and then claim your prize. At the end it requires subscription with R7 per day. The whatsapp message reads wow, look <http://www.tl7.nl/lv/shoping06.php>.*

*The names of the following companies are compromised ...  
Pick & Pay."*

The SECOND RESPONDENT stated that message received by the customer was not sent via the STS gateway and that "we did not market the above service. We did advise our client (the FIRST RESPONDENT) of the complaint and the service has been disabled.

The service was hosted by the FIRST RESPONDENT and was disabled on 31 July. There was no marketing sent for this service from the client.

With regards to the name of Pick & Pay that has been compromised, this issue was dealt with legally with Adams and Adams attorneys and the matter has been resolved.

The service was not marketed via the STS platform. When we received notice that the service was sent on whatsapp we immediately notified our client that took immediate action to stop the service.”

The FIRST RESPONDENT was requested to respond due to the fact that they are members of WASPA and can be held liable in their own right.

The FIRST RESPONDENT responded to more than was complained of and as such I will only set out their responses to the sections of the Code complained of as being breached. The FIRST RESPONDENT responded as follows:

That they did not breach 4.2, 5.1 and 5.4 and that the action complained of with regards to 5.5 was taken by a 3<sup>rd</sup> party and as such they had no control over the behavior.

They further stated that their services comply with section 12.5 but failed to provide any evidence substantiating this claim.

Finally, they stated that they are in compliance with section 15.4 as they do not require customers to subscribe to the service to claim a reward as the customer can leave their details with the call center who will then just try to upsell the services to the customer when they claim their prize.

---

### **Complainant’s response**

The Complainant had no further response.

---

### **Member’s further response**

The member had no further response.

### **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.

12.5. The minimum terms and conditions displayed on any web page must include at least the following information:

(a) a customer support number, and

(b) a link to a web page where the full terms and conditions for the service are available.

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".)

---

## Decision

I will refer to the FIRST RESPONDENT as the member in this decision even though the SECOND RESPONDENT responded initially.

Once again the member puts forward the argument that their failure to comply with the Code was due to the fault of their third party marketing network. I understand that the 3<sup>rd</sup> party affiliate marketer very well may (or may not) have acted without their knowledge, however this does not excuse the fact that they appointed such 3<sup>rd</sup> party service provider (who they can contractually control) to market a service which they seek to benefit from financially.

Again it feels very convenient to be able to "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.

The member states that they are in compliance with 12.5 and 15.4. With regards 12.5 they have failed to provide any evidence substantiating their claim and accordingly I find them in breach of 12.5. 15.4 states that:

"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".)"

The member states that customers don't have to join the service but can leave their details with the support team and the sales staff would then try and upsell the customer on the benefits of subscribing.

I don't feel this argument has any merit. Firstly, the Code speaks to the marketing of the service. Secondly, the advertising of the service in no way lets the customer know about this option of not subscribing. Finally, from the member's response it appears that you do not have to subscribe but then there is no prize awarded if they get called and have not subscribed and do not subscribe following the upsell.

Further, and although this was not raised as a specific breach by the Complainant 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 not in compliance with the Code.

---

## **Sanctions**

I sanction the FIRST RESPONDENT to a fine of R15 000 payable within 7 (seven) days of publication of this report.

I further sanction them 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 the matter back to WASPA to deal with the following clauses:  
3.5-3.7.

---