



**Wireless Application Service Providers' Association**

## Report of the Adjudicator

|                                |                                                                                                                                                  |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Complaint number               | #27278                                                                                                                                           |
| Cited WASPA members            | Allied Pacific Investments Ltd (1448)<br>SMSPortal (Pty) Ltd (0139)<br>Cellfind (Pty) Ltd (0019)                                                 |
| Notifiable WASPA members       | n/a                                                                                                                                              |
| Source of the complaint        | WASPA staff member (in personal capacity)                                                                                                        |
| Complaint short description    | Unsolicited marketing message                                                                                                                    |
| Date complaint lodged          | 20 August 2015                                                                                                                                   |
| Date of alleged breach         | 20 August 2015                                                                                                                                   |
| Applicable version of the Code | Version 14.0                                                                                                                                     |
| Clauses of the Code cited      | 5.15; 5.16; 16.4; 16.5; 16.9; 16.10; 16.11; 16.12; 16.13; 16.15                                                                                  |
| Related complaints considered  | 25553, 25904, 26921                                                                                                                              |
| Fines imposed                  | Allied Pacific Investments Ltd is fined R45 000 for an infringement of 5.1, 5.4, 5.5, 15.10, 15.11, 16.9 and 16.10 of the WASPA Code of Conduct. |
| Other sanctions                | n/a                                                                                                                                              |

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| Is this report notable? | No  |
| Summary of notability   | n/a |

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## Initial complaint

1. The complainant received an SMS inviting him to click on a link to claim a R9 500 gift card from Shoprite.
  2. The complainant clicked on the link provided and was directed to a landing page which stated that he would receive a free SMS to which he must reply YES to.
  3. He then received a DOI SMS from Vodacom advising that he had been subscribed to a subscription service which charged a fee of R7/day.
  4. The relevant landing page did not display any information about the sender or any details regarding the subscription service, or any terms and conditions.
  5. The complainant alleges that the member has contravened sections 5.1, 5.4, 5.5, 15.10, 15.11, 16.9 and 16.10.
  6. The complaint has been referred to the formal adjudication process.
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## Member's response

7. SMS Portal directed the complaint to Cellfind, who in turn directed it to Allied Pacific Investments Ltd ("Allied"), who were the party responsible for sending the message.
8. Allied responded by stating the following:
  - 8.1 Customers who validly subscribe to its subscription service could claim a promotional voucher. (A copy of the relevant landing page for the service was attached to the response).
  - 8.2 This particular promotional campaign for the service was conducted by a lead generation company on its behalf.

- 8.3 Allied is in no way affiliated with Shoprite or any of its subsidiaries in South Africa.
  - 8.4 It has withheld payment for the campaign and has broken ties with the marketing network in question.
  - 8.5 With regards to the alleged contravention of sections 15.10 and 15.11 of the WASPA code, the complainant would not have received the confirmation address as he did not complete the necessary steps in the subscription flow.
  - 8.6 The member denied contravening section 5.1 and denied offering or promising services that it was unable to provide, and stated that it would be counterproductive to its business model of gathering subscribers to make use of its services.
  - 8.7 In response to the allegation that it had breached section 5.4 of the Code, the member stated that it strives to always have honest and fair dealings with its customers as it wants to build strong, long term relationships with them.
  - 8.8 In response to the allegation that it had breached section 5.5 of the Code, the member stated that it would never knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.
  - 8.9 It stated again that it had fallen victim to an unscrupulous lead generation company with which it had severed all ties.
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## Sections of the Code considered

- 9. The following sections of the WASPA Code of Conduct were considered:
  - 9.1 *Section 5.1:* Members must not offer or promise services that they are unable to provide.
  - 9.2 *Section 5.4:* Members must have honest and fair dealings with their customers.
  - 9.3 *Section 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.

9.4 *Section 15.10:* For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can provide the customer with a "confirmation page".
- (iii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

9.5 *Section 15.11:* A confirmation page must contain the following information:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,
- (d) instructions for confirming the initiation of the subscription service, and
- (e) a link to any applicable terms and conditions.

Additional information about the service may also be included, provided it follows the above information.

9.6 *Section 16.9:* A member may engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing, to a person who has given his or her consent.

9.7 *Section 16.10:* A member may engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing, to a person who:

- a) has provided the party responsible for sending the direct marketing communication with his or her contact details in the context of the sale of a product or services, and the responsible party's own similar products or services are being marketed, and
- b) has been given a reasonable opportunity to object, free of charge, and in a manner free of unnecessary formality, to such use of his or her details at the time when the information was collected and on the occasion of each subsequent direct marketing communication sent to that person.

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## Decision

10. It is common cause that the promotional SMS sent to the complainant and the subsequent links and landing pages used for this promotion contravene sections 5.1, 5.4, 5.5, 15.10, 15.11, 16.9 and 16.10 of the WASPA Code of Conduct.

11. The member 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 marketing networks to promote its subscription services, and that this particular promotional campaign was run by one of these networks.
  12. Although version 14.0 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 a member and contravene the Code when doing so.
  13. The member is the only party who is able to manage the risks involved in using non-compliant campaigns and, even though it may not always be in a position to take pre-emptive steps to prevent these forms of misleading campaigns, it must bear the ultimate responsibility to consumers who are misled by such campaigns, as was the case in this complaint.
  14. The member has also not presented any evidence that it has contractual protections in place with such affiliates with sufficient penalties or other measures which can be used to prevent these kind of practices.
  15. There is also no evidence before me regarding any steps taken by the member to check and evaluate new providers that it wishes to use.
  16. Based on the foregoing, I am satisfied that the member must be held responsible for the contraventions of the Code.
  17. The complaint is accordingly upheld.
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## **Sanctions**

18. I am prepared to accept the member's explanation that one of its affiliate marketing networks was responsible for this campaign and that it has severed ties with it. I have taken this into account as a mitigating factor.
19. However I have also noted a number of other complaints of a similar nature which have been upheld against the member.

20. The member has to do more to ensure that sufficient protections are in place for consumers who are targeted by these misleading promotional campaigns.
  21. For that reason, the member, Allied Pacific Investments Ltd, is fined the sum of R45 000.00.
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