



## Adjudicator's report

**Complaint reference number:** 21352

**WASPA member(s):** Imobic (IP) (1359) / Integrat (SP) (0030)

**Complainant:** Public

**Type of complaint:** Competition/Subscription Service

**Date complaint was lodged:** 2013-08-06

**Date of the alleged offence:** 30 July 2013

**Relevant version of the Code:** 12.4

**Clauses considered:** 11.2.2 and 11.2.3

**Relevant version of the Ad. Rules:** Not applicable

**Clauses considered:** Not applicable

**Related cases considered:** It was not necessary to consider previous decisions

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## Complaint

The complainant is a member of the public who filed the following complaint after what appears to have been a related initial complaint:

*Note I have sent an email regarding this complaint in the last few days, with attachments. WASPA requested today 5 August 2013 via email at 1:14 PM that I use the online form. WASPA indicated they will then take care of the attachments.*

*A prize is being offered as a hook into a subscription service. This breaches the code of conduct. The following URL showed that I have won a prize.*

<http://www.weekly-contest-winner.net/page?cam=4&country=za&pub=11&context=g.gVAFajQABeASQBAAAAADTWUQAAAAAAAAACWgQAAAAAABAAACAADCBBtawAAAA NCEkPMPM28nSP98kpsQgNynMP1NUFAOFYC9Q=&P=1332004>

*I attach an image (full\_page.png) showing that: "Based on today's random draw you are the winner in Stellenbosch!"*

*This is hogwash. Clicking on "Answer the simple test question" redirects to a sign up page for a content service from Carambaba. The SP is Integrat. See attached image full\_page2.png*

*And note, now I have not won a prize any more, rather we have: "Enter your details for your chance to win!"*

*There is absolutely no mention anymore that I HAVE won the Iphone 5. This is deliberate deception!*

*All the URL's that were accessed during the clicking through process are attached in the pdf.*

*In addition, I would like to bring to WASPA's attention that the winners are fake.*

*See fake\_steve\_alt.png. Here we have the same image, but it is Brandon Davenport from California.*

*And in fake\_alison\_alt.png the same picture shows Maria Aguilar, not Alison anymore.*

*Also in this following URL you will see Alison Smith again, but now she has moved to Johannesburg!*

<http://w.prizes.im/za/ipad3/t/index.html?did=5a5851d3-ec1a-45b8-b950-561221d61cb1xff736b0b-bc3b-4386-844b-e57eaae660c4&oid=08fa5982-e9a7-408d-94c3-c54237b6acec&caid=f90b3ec1-202d-4135-88b1-bb5e9a7cc18c>

*See image alison\_smith\_johannesburg.png*

*Integrat, as a member of WASPA, should distance themselves from this campaign. If they do, then we can probably resolve this complaint through the informal process.*

The complainant appears to have also submitted the following version of the complaint prior to the version which was forwarded to Imobic and Integrat for comment:

**This is a new complaint. Please assign a new complaint number.**

*This is not an unsubscribe request. I have not been subscribed to any services. However, I would like to bring to WASPA's attention breaches of the code below.*

*A prize is being offered as hook into into a subscription service. This breaches the code of conduct as follows:*

*"11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.*

*11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, it must be reasonably clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition."*

*The following URL showed that I have won a prize.*

<http://www.weekly-contest-winner.net/page?cam=4&country=za&pub=11&context=g.gVAFajQABeASQBAAAAADTWUQAAAAAAAAACWgQAAAAAABAAACAADCBBtawAAAAAAJFMUAAAAAAAF9WgNCEkPMPM28nSP98kpsQgNynMP1NUFAOFYC9Q=&P=1332004>

*I attach an image (full\_page.png) showing that: "**Based on today's random draw you are the winner in Stellenbosch!**"*

*This is hogwash. Clicking on "Answer the simple test question" redirects to a sign up page for a content service from Carambaba. The SP is Integrat. See attached image full\_page2.png*

*And note, now I have not won a prize anymore, rather we have: "Enter your details for your chance to win!" There is absolutely no mention anymore that I HAVE won the Iphone 5.*

*All the URL's that were accessed during the clicking through process are attached in the pdf.*

*In addition, I would like to bring to WASPA's attention that the winners are fake.*

*See fake\_steve\_alt.png. Here we have the same image, but it is Brandon Davenport from California. And in fake\_alison\_alt.png the same picture shows Maria Aguilar, not Alison anymore.*

*Also in this following URL you will see Alison Smith again, but now she is from Johannesburg!*

<http://w.prizes.im/za/ipad3/t/index.html?did=5a5851d3-ec1a-45b8-b950-561221d61cb1xff736b0b-bc3b-4386-844b-e57eaae660c4&oid=08fa5982-e9a7-408d-94c3-c54237b6acec&caid=f90b3ec1-202d-4135-88b1-bb5e9a7cc18c>

*See image alison\_smith\_johannesburg.png*

***Integrat, as a member of WASPA, should distance themselves from this campaign. If they do, then we can probably resolve this complaint through the informal process.***

The complaint concerns a Web-based campaign which is clearly framed as a competition. Annexure “A” to this report is a set of screenshots which the complainant submitted to WASPA with his complaint. The screenshots clearly indicate the page the complainant visited indicates the complainant was “today’s lucky winner in Stellenbosch!” in a prominent headline. Further down on the page the text includes the following:

*Great News!*

*Answer one question and you win a prize!*

*Every tuesday we randomly select a winner to our site. Based on today’s random draw, **you are the winner in Stellenbosch!***

*The following prize is yours:*

*Apple iPhone 5*

*...*

To the left of this text is an image of an iPhone and, above it is the text “**iPhone 5\*** ”. The asterisk seems to reference pale grey text at the bottom of the page which states “\*Subscription service R6/day + R6 joining fee.”.

## **Service provider’s response and further developments**

Integrat referred WASPA to Mobic and sought to disclaim any responsibility for the campaign, insisting that WASPA regard Mobic as the responsible party. Mobic’s response to Cindy Scheepers at Integrat was as follows:

*Hi Cindy,*

*We have review the escalated case and we were able to trace the affiliate who was promoting our service as described by the customer in the complaint. The affiliate confirmed at 17:50 GMT+1 today that the publisher has been shut down and banned from the network, the website is therefore not live any longer.*

*This user has not incurred any costs on the MSISDN provided. So we cannot refund him, however our customer care will contact him in the course of tomorrow to let him know that we banned this publisher from all our services and that we do not condone this kind abuse of our marketing material.*

*Should you need us to report to WASPA please let us know. However, in this case it would be more logical for Integrat to report back to WASPA considering that Integrat was initially approached. Our WASPA membership is listed under the name Imobic GmbH.*

*Best regards,*

*Roeland Kulk*

*Marketing Manager | CLIQ Digital*

The offending campaign appeared to have been disabled and this was communicated to the complainant. The complainant wrote to WASPA on 8 August and confirmed that the campaign appeared to have been disabled:

Good day, WASPA

The IP telephoned me. They have terminated their association with the “fake winners” campaign. I was able to verify that the banner is no longer getting routed to the fake winners page.

You may close this complaint.

Unfortunately this apparent resolution was short-lived. The complainant wrote to WASPA again on 9 August with the following:

Good day, WASPA

I would like to re-open this complaint. I am not satisfied with the response I have received from the IP. I would like to present evidence that contradicts the IP's assertion that they have terminated this campaign.

This morning, 2 days after they have stated that they terminated this campaign, I came across the banner as seen in the attached image, banner.jpg. Clicking this banner routes again to the “Fake winners” website: <http://w.prizesweekly.com/za/ipadmini/s/1/index2.html?did=ecdb76f3-dc41-4ed4-9c53-311daf4bb0bfxad02e957-f801-453e-95c5-7057d1ec3f38&oid=08fa5982-e9a7-408d-94c3-c54237b6acec&caid=b7ebcd89-0e55-4bbe-9ebb-11ec2a36e304>

See attached image “fake\_winners\_again.jpg”

I have presented ample evidence before that the winners are fake. I will not go into that again.

Clicking there “Don't miss your chance” we get routed again to a signup page of Carambaba. The SP is Integrat.

The URL is [http://www.carambaba.com/ZA/2121123235?](http://www.carambaba.com/ZA/2121123235?trackid=967944277&transaction_id=10275b5df3f3851b168ea613452304&subid=y0152)

[trackid=967944277&transaction\\_id=10275b5df3f3851b168ea613452304&subid=y0152](http://www.carambaba.com/ZA/2121123235?trackid=967944277&transaction_id=10275b5df3f3851b168ea613452304&subid=y0152) The attached image, carambaba2.jpg shows the site.

The URL's accessed in the background during the clicking through process are attached again in the pdf.

But I would like to present evidence that the IP was lying to me. Find attached a voicemail message they left on my phone on the 7th of August. In this message they state the campaign has been terminated.

Listen from timestamp 0:38.

They are dishonest.

**“4.1.1. Members must have honest and fair dealings with their customers”**

The complainant followed up on 14 August with the following email:

Good day, WASPA

Further to my complaint (and screenshots provided) lodged on 2013/08/05 at 05:23 PM, I would like to know when I will be receiving my Iphone. Neither the SP or the IP has made any indications regarding my prize yet. And nowhere did it show that I needed to subscribe to anything to obtain my prize. The screenshots provided on 5 August shows that I DID win an Iphone, so they are obliged to honour this request.

The matter was escalated to a formal complaint on 16 August and referred to Integrat and Imobic for further comment. Integrat replied on the same day with the following statement:

*To whom it may concern;*

*Imobic have also shut down the affiliate responsible for the below offending adverts. Please find aached due diligence steps confirmed from their side. Please let me know what further ac!on you require from us.*

Imobic's response, enclosed with Integrat's, was as follows:

*Hi Cindy,*

*Thank you for informing us on this matter.*

*We are taking this complain very seriously and it is currently our top priority to be resolved as soon as possible today.*

*Based on our preliminary investigation, the advertisement page which mentioned by the complainant is being promoted by a different affiliate partner which was inially raised by the complainant on August 6th.*

*We managed to tracked and trace the affiliate who is responsible for this advertisement. We have contacted the them to request to put the advertisement offline with immediate effect and will purpose a formal case with this affiliate as they breached our guideline. Please find aached our Marketing Compliancy Guidelines for South Africa which were sent out to all partners. In order for our media partners (affiliate) to promote our service in South Africa, they must comply to the above Guidelines. Looking at the case at hand, it is obvious that the affiliate breached our Guidelines as CLIQ digital never provide consent to promote the advertisement.*

*Below you can find the email which we sent out the affiliate who is responsible for the unapproved advertisement.*

*We therefore not only will stop any cooperations with this affiliate but are in the middle of discussions with upper management to considering posing a fine.*

*We will also send a reminder to all of our media partners (affiliates) that they will need CLIQ's consent to promote their own marketing materials and that they must comply to our Guideline.*

*We will keep you informed about our next acons today, and immediately confirm to you when the page is put offline. We hope we have informed you well.*

*Kind regards, Irina Nikina*

Imobic's email to Integrat enclosed internal instructions to terminate the "prelander", "stop running our ZA offer with this specific publisher" and confirming that the "prelander" was not approved by CLIQ (which I understand to be an Imobic alias). Imobic also forwarded a copy of its "Rules and Regulations Marketing Promotion" which sets out a series of guidelines and rules for Imobic's customers. It specifically prohibits terms such as "You've won", "You're the lucky Winner" and "You're the lucky visitor".

On 20 August the complainant wrote back to WASPA with the following:

*Good day, WASPA Secretariat*

*I am frankly getting bored to tears with the excuses provided. The “fake winners” campaign is STILL being run. It seems the parties involved are not even aware of their own advertisers. Perhaps the advertisers are running these campaigns out of the kindness of their hearts.*

*Find attached screenshots and URLs in the PDF (of the clicking through process) of ANOTHER virtual carbon copy of the SAME fake winners campaign, again under a different URL.*

*[http://dailyprizes4u.com/ZA/won\\_ipad/daily-winner .php?](http://dailyprizes4u.com/ZA/won_ipad/daily-winner.php?offer_id=1676&aff_id=192&aff_sub=ams1CK3hnaWF4q_efRACGJ2rrd2yzNXJWiiPMTA1LjzNi4xMzluMTk0KAE)*

*[offer\\_id=1676&aff\\_id=192&aff\\_sub=ams1CK3hnaWF4q\\_efRACGJ2rrd2yzNXJWiiPMTA1LjzNi4xMzluMTk0 KAE.](http://dailyprizes4u.com/ZA/won_ipad/daily-winner.php?offer_id=1676&aff_id=192&aff_sub=ams1CK3hnaWF4q_efRACGJ2rrd2yzNXJWiiPMTA1LjzNi4xMzluMTk0KAE)*

*I was willing initially to resolve this complaint informally, but I now INSIST that an adjudicator determines the veracity of the excuses offered by the relevant parties. I also want an adjudicator to rule whether I am indeed eligible to receive the prize that I provided proof of I won.*

*This complaint is NOT resolved.*

## **Sections of the Code considered**

The initial complaint cited clauses 11.2.2 and 11.2.3 which state the following:

*11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.*

*11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, all marketing and promotional material must make it reasonably clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.*

The complainant also cited clause 4.1.1 on 9 August in a follow-up. This clause states the following:

*4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.*

## **Sections of the Advertising Rules considered**

I did not consider the Advertising Rules.

## **Decision**

The emphasis on a competition is clear from the screenshots attached to the complaint in its various incarnations. The subscription service appears to be an after-thought in the process. At no point did either Integrat or Imobic contend that the campaign was compliant or that the subscription service was distinct from the competition. On the contrary, both Integrat and Imobic responded to the complaint on the basis that the campaign was not compliant with the WASPA Code or Imobic's rules which it applies to its customers. I therefore have no difficulty finding a breach of clauses 11.2.2 and 11.2.3 of the Code.

The factor that seems to me to be more prominent in this matter is the extent to which the complainant was forced to go to have the campaign disabled. Integrat and Imobic reported on the campaign's demise on several occasions only to be disputed each time. I followed one of the direct links the complainant cited when I read through the case file for this complaint and was able to load the competition landing page which geolocated me in Johannesburg and suggested I could be a winner despite not having entered a competition at all. That said, what this highlights is the limits on what a member can do to disable non-compliant campaigns.

What concerns me more is that, between Integrat and Imobic, they failed to take more decisive action sooner. Some of Imobic's initial feedback to WASPA, through Integrat, included the following statement:

*The affiliate confirmed at 17:50 GMT+1 today that the publisher has been shut down and banned from the network, the website is therefore not live any longer.*

This was patently false as the website remains online as of 12 June 2014 when I visited the page.

While I appreciate that Integrat and Imobic do not necessarily exercise direct control over downstream providers' hosting arrangements, I'm not satisfied that Integrat and Imobic met their obligations to "at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA" (clause 3.9.1). I am also not satisfied that Integrat and Imobic took adequate steps to ensure the campaign website was taken offline or, in the event they did all that was reasonably possible, to communicate the extent to which they were able to enforce the Code's requirements on their downstream providers. Integrat routinely sought to deflect responsibility for the campaign to Imobic and while Imobic was in a better position to influence the offending campaign, Integrat shouldn't be too quick to shirk its responsibility for ensuring its Information Providers comply with the Code's requirements.

On a related note, I considered whether Integrat and Imobic met the requirements of clause 4.1.1 and, having regard to their submissions to WASPA in response to the complaint at various stages, Imobic's responses were not entirely truthful and this only seemed to inflame the matter further as the complainant became increasingly dissatisfied with Integrat's and Imobi's responses. I therefore find that Imobic breached clause 4.1.1 too.

## Sanctions

In light of my findings, I impose the following sanctions:

1. Imobic is fined R10 000 for its failure to ensure that the campaign was compliant with clauses 11.2.2 and 11.2.3;
2. Imobic is formally reprimanded for its failure to respond truthfully to the complaint, specifically by advising WASPA, through Integrat, that the offending campaign website had been taken offline when it remains up almost a year later.



Although not a sanction I am empowered to impose under the Code, I caution Integrat to be more diligent in ensuring that its Information Providers comply with the Code's provisions, particularly when it comes to such flagrant breaches of the Code. It is not appropriate to impose any sanctions on Integrat given its role in this matter and the speed with which it referred issues to Imobic for response and then gave feedback to the WASPA Secretariat.

Payment of the fine I have imposed on Imobic is due on demand by the Secretariat.

## You are today's lucky winner in Stellenbosch!

Contest Results:

Tuesday, 30 July 2013

You have (1) unclaimed prize.

Site Visitor...

Annexure "A"

### iPhone 5\*



## Great News!

**Answer one question and you win a prize!**

Every tuesday we randomly select a winner to our site. Based on today's random draw, **you are the winner in Stellenbosch!**

The following prize is yours:

**Apple® iPhone 5**

**Please respond within 0:36 ! Or we'll have to give the prize to another visitor from Stellenbosch.**

**Here's how you win:**

**Step 1:** [Click here](#) to answer the simple test question. It takes only 1 minute.

**Step 2:** If you answer correctly, enter your mobile number and confirm PIN.

[Answer the simple test question](#)

Last Week's Winners:



Steve Jones  
**Stellenbosch**

*"I was just browsing around and got a notice that I could win an iPhone 5, I still can't believe it! Thank you so much!"*



Alison Smith  
**Durban**

*"I always wanted an iPhone, but couldn't afford one. Thank you for giving me this opportunity!"*