



**Wireless Application Service Providers' Association**

## REPORT OF THE ADJUDICATOR

Complaint number	#29207
Cited WASPA members	Viamedia (Pty) Ltd (0043 )
Notifiable WASPA members	-
Source of the complaint	Competitor
Complaint short description	Direct Marketing Misleading advertising
Date complaint lodged	2016-01-26
Date of alleged breach	2015-12-23
Applicable version of the Code	14.1
Clauses of the Code cited	5.4., 5.5., 5.10. ,15.13(a,b,c), 15.28., 16.11 (read with 16.9 and 16.10) 16.14.
Related complaints considered	-
Fines imposed	<ul style="list-style-type: none"> <li>⊂ R10,000 for breach of 5.4 of the Code</li> <li>⊂ R5,000 for breach of 5.5 of the Code of the Code</li> <li>⊂ R10,000 for breach of 16.11 of the Code of the Code</li> <li>⊂ R10,000 for breach of 16.14 of the Code of the Code</li> </ul>

Other sanctions	-
Is this report notable?	Not Notable
Summary of notability	-

## Initial complaint

*The cause for complaint (as cited by the complainant) visavis the respective clauses cited in the complaint are set out below:*

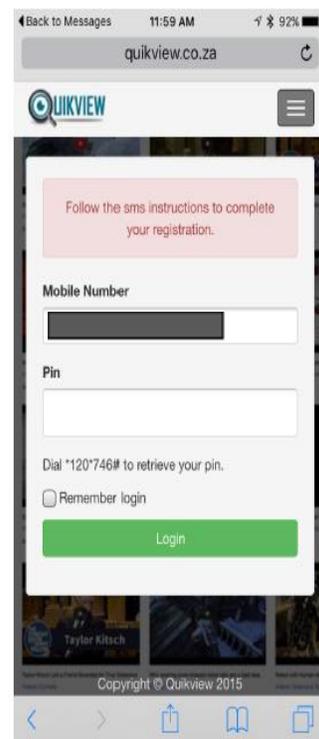
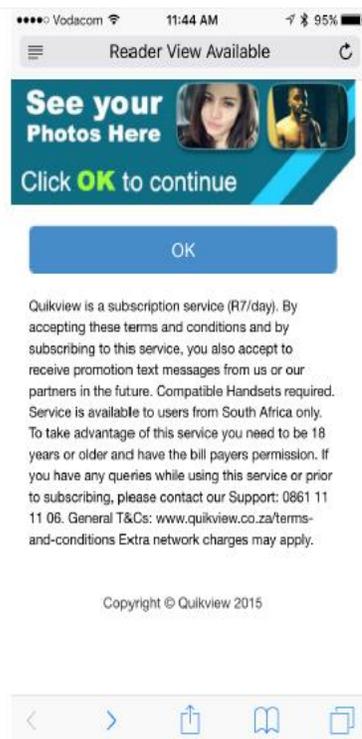
5.4. Members must have honest and fair dealings with their customers:	“The member is knowingly and dishonestly promoting a spurious service at a very high cost. The service is purported to be an image and video hosting and sharing service - but many social media platforms such as Facebook, Pixoto, Flickr, Instagram, etc. do this for free with vastly more functionality. The modus operandi of this dishonest scam is to trick consumers into consenting to pay R7 per day for a spurious service.”
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.	The mobisite is constructed in a way that it attempts to hide the fact that the service costs R7 per day, by displaying the information page only for a few seconds before overlaying the login page on top of it. This is deceptive (and dishonest). When first I checked the ownership of the quikview.co.za URL, ViaMedia was listed as the registered owner. A few days (later) I published my story on linkedin, I went back to check, and the ownership was disguised. This is clearly an attempt to hide their involvement with the service.
5.10 Whenever a customer is asked to consent to the terms and conditions of a service, it must not be assumed that the customer consents by default; a customer must take a specific action to confirm consent.	Immediately I clicked on the link in the SMS to view the service, I started receiving (and continue to receive - 8 so far) SMS messages asking me to confirm that I want to pay R7 per day. I have answered No every )me, yet still continue to receive the messages. At no stage did I click a consent tick-box, they have assumed that I have consented and now I am receiving multiple confirmation SMS messages.

<p>5.14. Members must have a procedure allowing consumers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of )me.</p>	<p>I sent an email both to quikview (for whom ViaMedia is providing the service) and I filled in a customer contact form on the ViaMedia website on 18 January, 2016 without any acknowledgement whatsoever.</p>
<p>15.13. A confirmation message must contain only the following information, in this order:  (a) the name of the service,  (b) the pricing information,  (c) a customer support number,</p>	<p>The confirmation message does not include the customer support number.</p>
<p>15.28. If technically feasible, a recipient must be able to terminate a subscription or notification service by replying 'STOP' to any SMS sent to the customer regarding that service, including the welcome message and any reminder messages.</p>	<p>I replied STOP to the original spam SMS message.  I have replied No (as instructed) to every reminder since then but have received 8 (so far) with no sign that they will stop.</p>
<p>16.11. A member may not engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing other than as provided for above.</p>	<p>I have never consented to being contacted by Quikview or ViaMedia.</p>
<p>16.14. Once a recipient has opted out, a message confirming the opt-out must be sent to that recipient. This confirmation message must specify the marketing from which the customer has been opted</p>	<p>I never received any acknowledgement to the STOP reply that I sent to the first spam SMS.</p>

out, and the customer must not be charged for this message.

The complainant detailed the interaction with the service as follows:

- Receipt of an SMS "You have been sent 4 Photos. Click <http://quikview.co.za/m/> to open NOW. 2opt out sms stop"
- Complainant replied with the word STOP.
- Complainant also clicked on the link to see what would pop up.
- Receipt of the following images (image 2 in immediate succession of image 1) :



- The complainant asserts problematic automatic subscription to the services in view of the second image despite the “opt-out” action by the complainant.
- The complainant visited the linked website and asserts:
  - no contacts page is provided albeit that the terms of Use page does have some company details. The company is registered to Guernsey, UK, but the contact numbers are South African.
- The complainant called the support number, and the person answering his call noted that his mobile number was not on the database of registered users.
- The complainant investigated the owner of the URL to find that it is owned by ViaMedia (the cited WASPA member) whose customer care line is also that listed on the Quikview webpage.

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Domain: quikview.co.za
Registrant:
  Name: ViaMedia ViaMedia
  Organisation: ViaMedia Pty Ltd.
  Email: noc@viamedia.co.za
  Tel: +27.214027500
  Fax:

Registrant's Address:
  Street: 601, 6th Floor, The Studios 4 Loop Street
  Street:
  Street:
  City: Cape Town
  Province:
  Country: ZA
  Code: 8000

Registrar:
  Name: Hetzner (Pty) Ltd
  Organisation:
  Email: eppadmin@hetzner.co.za
  Tel: +27.219702000
  Fax:

Relevant Dates:
  Registration Date: 2015-07-16
  Renewal Date: 2016-07-16

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- The complainant received (thirty minutes later on the complainants version) , two SMS messages: “Confirm your request for Quikview @ R7 /day.Reply "Yes" to confirm/"No" to cancel,free SMS"
- The complainant answered No to both messages.

## Member’s response

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The Member responded noting that it had made contact with the complainant and explained the product and process to him. The Member asserted that the complainant has acknowledged that he understands that he was never subscribed to the product, and that the message he received were DOI reminder messages, sent by the network.

The Member noted their belief that the “situation has been defused”.

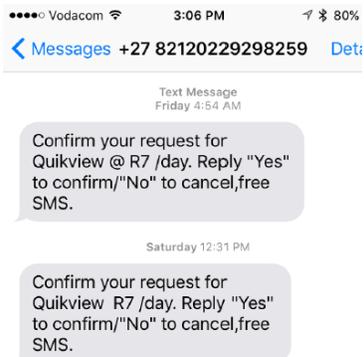
## Complainant's response

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The complainant responded noting the "peculiar response" of the Member. On the complainant's version, the Member informed the complainant that the Quikview service was shut down as resolution to the complaint.

The complainant denied acknowledgement that the DOI reminder messages were "sent by the network". The complainant asserts that these were triggered by ViaMedia. According to the complainant Vodacom confirmed to the complainant that they were triggered by ViaMedia and provided the complainant with the service identification particulars. Therefore, according to the complainant the Member's statement is incorrect, but the Member had resolved the complaint. In a subsequent communication (7 days later) the complainant noted that he was not satisfied with the resolution of the complaint, and requested referral to WASPA's Head of Complaints for review in view of: being sent yet another payment request SMS over the weekend and because the Member was still operating the "service". The complainant requested further "impartial examination" confirm whether or not "it is a scam".

In response to a request from the WASPA Secretariat for screenshots of the SMS referred to above the complainant noted further payment request SMSs received and provided the screenshots below of such subsequent SMSs:



## Member's further response

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Viamedia asserted that it had undertaken an exhaustive investigation regarding the continued messages despite the block against the complainant's number. Some fixes were implemented that did not appear to resolve the issue and more technical examination revealed:

Investigation:	Result	Evidence
8 March 2016	URL clicked on 4 March 2016 from a public site. It appears to be a google bot that access the URL and triggers a DOI reminder on the mobile number. This will continue to occur until the URL is removed from the public site.	<p><b>Redirect from QuikView to DOI</b></p> <pre>./access_log.1.gz:66.249.64.115 - - [04/Mar /2016:04:54:17 +0200] "GET /enterprise/subscribe /?apikey=1ed6f81bf8a7bf4e5e848c791f2ff432&amp; caturi=http://quikview.co.za/doicallback&amp; imgurl=&amp;msisdn=[REDACTED]nonce=1457059687&amp; productid=f977427a-427e-11e5-b97c-90b11c386419&amp;reference=1457059687&amp; hash=050418cb640a5936d2964d79f366aeafa5e53880 HTTP/1.0" 302 546 "-" "Mozilla/5.0 (compatible; Googlebot/2.1; +http://www.google.com /bot.html)" "66.249.64.115"</pre> <p><b>QuikView webserver logs:</b></p> <pre>/opt/viamedia/logs/quikview.co.za /ganqia.log:quikview.co.za 10.0.32.4 10.0.8.207 - 2016-03-04T02:56:05 - 200 302 4704 28651 cookie "Referer" "GET /doicallback?result=PENDING&amp; result_code=1&amp; desc=Off+net%2C+DOI+pending+on+fallback+bearer&amp; reference=1457059687&amp;token=37Rc3ccf143-b542-43be-9e79-bfcd0d206b0b%7D&amp;msis [REDACTED] nmr=1&amp; nonce=1457059687&amp;cvcnetworkid=1 HTTP/1.1" "User-Agent" 5786</pre>

In summary, an article on a web page included the marketing message and his mobile number interacting with a "Google Bot" was the cause of the continued messaging. The complainant was advised to remove his number from the article. Furthermore, a global block was placed by the Member on the complainant's number. An executive of the Member's organisation contacted the complainant on 3 occasions and generally the Member believed that the concerns had been addressed.

## Complainant's further response:

The complainant responded that the SMS messages were the least important part of the complaint and directed the Secretariat to other aspects of complaint including the service itself and the Member's relationship with Quikview.

## Members further response to formal complaint

On 2016-04-12 the Member responded to the lodging of the formal complaint detailing:

- the measures to govern the relationship with Quikview (including requesting Quikview to become a Member of WASPA);
- the measures to address the campaign concerns (including halting the campaign);
- the measures to address the complaints with the complainant including removing the complainant from the Member’s database; the technical investigation described above; and
- that the complainant is a director of a competitor to the Member and is unnecessarily frustrating resolution of the complaint.

The Member provided a technical log for review which in addition to the log previously provided has a log dated 4 March as per below:

Technical Log for Quikview:

Investigation:	Result	Evidence
8 March 2016	URL clicked on 4 March 2016 from a public site. It appears to be a google bot that access the URL and triggers a DOI reminder on the mobile number. This will continue to occur until the URL is removed from the public site.	<p><b>Redirect from QuikView to DOI</b></p> <pre>./access_log.1.gz:66.249.64.115 - - [04/Mar/2016:04:54:17 +0200] "GET /enterprise/subscribe/?apikey=led6f81bf8a7bf4e5 e848c791f2ff4326cbur=&amp;http://quikview.co.za/doi callback&amp;imgurl=6ms[REDACTED]&amp;nonce=14570 59687&amp;productid=5977[REDACTED]&amp;prod= 90b11c386419&amp;reference=1457059687&amp;hash=050418cb 640a5936d2964d79f566aeafa8e83880 HTTP/1.0" 302 546 "-" "Mozilla/5.0 (compatible; Googlebot/2.1; +http://www.google.com/bot.html)" "66.249.64.115"</pre> <p><b>QuikView webserver logs:</b></p> <pre>/opt/viamedia/logs/quikview.co.za/ganglia.log:q uikview.co.za 10.0.32.4 10.0.8.207 - 2016-03- 04T02:56:05 - 200 302 4704 28651 cookie "Referer" "GET /doi/callback?result=PENDING&amp;result_code=1&amp;desc= Off+net%2C+DOI+pending+on+fallback+bearer&amp;refer ence=1457059687&amp;token=*7Bc3ccf143-b542-43be- 9e79- bfcd0d206b0b*7D&amp;msiedr[REDACTED]&amp;fl6nonce= 1457059687&amp;cvcnetworkid=1 HTTP/1.1" "User- Agent" 5786</pre>
4 March	Emergency fix to block all SMS reminders to subscribers that are flagged as blocked or Opted out of marketing content on Viamedia business applications	Production Release: 4 <sup>th</sup> March 2016 Post implementation testing shows that fix worked.

## Sections of the Code considered

5.4., 5.5., 5.10. ,15.13 (a,b,c), 15.28., 16.11. (read with 16.9 and 16.10) ,16.14.

## Decision

Based on the evidence presented, the following is my ruling respectively on whether there has been a breach of the cited clauses.

<p>5.4. Members must have honest and fair dealings with their customers:</p>	<p>The screenshots provided by the complainant assist in evaluating whether a subscription service is offered and whether the nature of the subscription services offered by the Member is easily ascertainable. Whilst it is clear that a subscription service is offered, the nature of the service is not ascertainable and otherwise open to speculation. The parallel between the <i>viewing of photos</i> offered and the services on subscription is furthermore not ascertainable. With this in mind the Member's dealings with its customers are not at an acceptable standard of transparency.</p>
<p>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.</p>	<p>In accordance with my ruling on 5.4, and the quick succession of screen images (1) and (2) as provided by the complainant and which has not been contested by the Member: I find that the Member has disseminated material that is likely to mislead customers into subscribing for a service that is not clearly understood by the customer. Member's lack of transparency on the nature of the service i.e. omission of relevant details. is unacceptable and the Member is in breach of this clause.</p>
<p>5.10 Whenever a customer is asked to consent to the terms and conditions of a service, it must not be assumed that the customer consents by default; a customer must take a specific action to confirm consent.</p>	<p>Again turning to the screenshots provided by the complainant I find the terms and conditions to be prominent. This read with the complainants admission of having clicked the action button to proceed (albeit from a position of curiosity) and the complainant's admission that this did not equate to consent to receive the service but rather continued marketing, my decision is that 5.10 has not been breached.</p>
<p>5.14. Members must have a procedure allowing consumers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.</p>	<p>By the complainants admission the facility for complaints was that of the Member, and in view of the correspondence that forms part of the evidence, the Member does appear to have a complaint facility and process to at least acknowledge receipt of a complaint and respond within a reasonable period of time. My decision is that 5.14 has not been breached.</p>
<p>15.13. A confirmation message must contain only the following</p>	<p>This issue cannot be deliberated as the service was not subscribed to and as a result the matter of a confirmation</p>

<p>information, in this order:</p> <p>(a) the name of the service,</p> <p>(b) the pricing information,</p> <p>(c) a customer support number,</p>	<p>message is not a concern. I find that there is no breach of 15.13 of the Code.</p>
<p>15.28. If technically feasible, a recipient must be able to terminate a subscription or notification service by replying 'STOP' to any SMS sent to the customer regarding that service, including the welcome message and any reminder messages.</p>	<p>As there is no subscription at hand, the issue of termination of the subscription is not of concern. I find that there is no breach of 15.28 of the Code.</p>
<p>16.11. A member may not engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing other than as provided for above.</p> <p>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.</p> <p>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:</p> <p>(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</p> <p>(b) has been given a reasonable</p>	<p>16.11 must be read with clauses 16.9 and 16.10</p> <p>There is no evidence before me to indicate that the Member has fulfilled either 16.9 or 16.10 as conditions for engaging in direct marketing to the complainant. The Member is as a result in breach of 16.11.</p>

<p>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.</p>	
<p>16.14. Once a recipient has opted out, a message confirming the opt-out must be sent to that recipient. This confirmation message must specify the marketing from which the customer has been opted out, and the customer must not be charged for this message.</p>	<p>It is clear from the screenshots provided that the direct marketing to the complainant endured despite: several valid requests to the Member from the complainant; and the Member itself confirming that it had attempted to resolve the issue and believed it to be resolved. Sufficient opt out confirmations would have presented assurances both to the complainant and to the Adjudicator that the Member has satisfactorily provided for opt-outs in line with the requirements of the Code.</p> <p>Notwithstanding the explanation (and supporting logs) provided by the Member, I submit that it falls on the Member itself to address any technical inefficiency which prevents satisfactory opt-outs and confirmations of such opt-outs. Reading the letter of the Code and standard required, the Member is in breach of clause 16.14.</p> <p>I find the ultimate removal of the complainant from the direct marketing databases to be untimely and a deviation from the timely opt-out and confirmation of such intended by the Code is thus not viewed as a mitigating factor.</p>

In summary, the Member is in breach of 5.4, 5.5 16.11 and 16.14 of the Code.

I note specifically that the Member has recalled the governance measures with the third party, Quikview. In view of the logs provided by the Member that indicate access to the technical systems to distribute the marketing messages and the administration of the complaint facilities by the Member however, I have no cause to believe that the Member's own liability for the breaches of the Code is in question.

## Sanctions

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The Member is to pay:

- R10,000 for breach of 5.4 of the Code
- R5,000 for breach of 5.5 of the Code of the Code
- R10,000 for breach of 16.11 of the Code of the Code
- R10,000 for breach of 16.14 of the Code of the Code.

## Matters referred back to WASPA

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