



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#30768
Cited WASPA members	Interband Enterprises LLC (1315)
Notifiable WASPA members	ALL
Source of the complaint	WASPA Media Monitor
Complaint short description	Subscription Service
Date complaint lodged	2016-06-15
Date of alleged breach	Unknown
Applicable version of the Code	14.3
Clauses of the Code cited	4.2 , 5.4, 5.5, 12.2
Related complaints considered	#26723
Fines imposed	<ul style="list-style-type: none"> • R 50 000.00 fine for breach of all clauses breached payable within one week of receipt of adjudication - Clause 4.2 R 10 000.00 - Clause 5.5 R 20 000.00 - Clause 12.2 R 20 000.00

Other sanctions	N/A
Is this report notable?	<i>Not Notable</i>
Summary of notability	N/A

Initial complaint

The media monitoring team came across a highly misleading campaign in trying to lure customers into a subscription service. Please note this campaign is not Affiliate marketer driven, but is a campaign hosted by the member, Interband.

Furthermore, pricing and T&C's are illegible, further misleading an average consumer, who had already been advised of a possible hacking.

Interband has been a WASPA member for years. It appears their "*continuous trying to lure consumers at any cost*" strategy continues, despite continuous advice from the media monitoring department.

There seems to be no respect for the WASPA Code of Conduct.

Member's response

For joining the service users are required to subscribe to the service. The landing page clearly indicated that the customer will be billed R7/day.

Applock is a campaign that notifies the user about viruses popping out while browsing with the phone. The Service offers downloadable mobile content for joining a subscription once you enter the portal page, after the subscription the user can download antivirus applications for his phone.

Security applications are updated weekly and content can be updated on the users demand. The user can monitor / update the content weekly during subscription, he can download all latest security applications for the mobile.

The user can request for content that he is interested in with our 24h email support (info@10free.biz) and we will update the content as soon as possible.

All 3 Clauses mentioned above were not breached by Interband as our advertisement was compliant. For that, we are sending you a copy of our banner as a first step of advertisement. It was not our intention to mislead customers as our campaign was clear about what the customer is subscribing to. When WASPA found our campaign inappropriate, we removed it with immediate effect.

We put the pricing on our banner and a landing page which can be seen clearly before the customer is required to enter his mobile number. Letters are large enough to be noticed and the pricing pops out along with activation button when the customer clicks on our advertisement. If required, we could change the colour of the letters but according to our testing done before launching the pricing was visible enough for the customers on many different types of devices. You can find the pricing on our banner, landing page, home page of a website, welcome message and the confirmation message highlighted and easy to notice.

In conclusion we want to point out that we feel this could have gone to the Heads Up Process as our advertisement was left out of this complaint which is a part of the entire marketing. We would like to cooperate with WASPA more by accepting advice in this case as well as in other cases. It was not our intention to mislead and for that purpose we put the possibility of a device being threatened.

Our advertisement suggests that “someone could be...” which cannot be interpreted as deceptive marketing considering we live in times when mobile protection is a necessity. A customer is free to accept or not, our terms and avoid subscribing to the service. The text of the terms are easy to understand for an average customer and are noticeable.

We cancelled this campaign as it was instructed to us in this formal complaint. We ask for Adjudicator to nullify this formal complaint and to advise us in future business so we would avoid any potential misleading relationship with our customers.

Complainant's response

Dear Complaints

Herewith my response to complaint 30768.

The media monitoring team do not fabricate and alter screenshots that are saved for a test result. What was recorded in our test result, is how the campaign appeared to the consumer.

We find the downright dishonesty absolutely alarming.

The member has now provided a banner ad that was not part of this campaign. (The Banner is shown in our test result. It can also be seen that that banner is owned by the member, not an Affiliate marketer)

The member has now provided a home page that now suddenly has pricing. (No pricing During our journey) and lastly, we absolutely disagree that pricing "is clear" on the landing page as claimed by the member.

We trust the adjudicator sees the deceit and trickery that is displayed by this member.

Kind Regards
WASPA media monitor

Member's further response

We are not disputing the fact that the media monitor submitted correct test results, we are advising that prior to the landing page there was a banner with service information with pricing information. The user will click on the banner and then proceed to the landing page (as submitted by the media monitor).

The media monitor did not include the advertising of this service. We did not change the landing page, we merely included the advertising that was omitted from the test result supplied by the Media Monitor.

The media monitor did not include the banner advertising. The first image as per below is the landing page prior to subscription.

Please see below the image as per the Media Monitor's test results with pricing information. We have supplied an exact duplicate of this image.

The pricing information was on the landing page, confirmation of subscription and the welcome message. Only after the user confirmed the subscription was the pricing information smaller, as the user was already subscribed.

Please note that there was no deceit or trickery as we have supplied all the supporting details of the service. We find this statement very alarming from the Media Monitor.

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.

5.4. 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.

12.2. There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated. It must not be a requirement that the viewer of an advert has additional software installed in order to see pricing information in the advert.

Decision

I am satisfied that the information provided by both the complainant and the respondent are in order.

My observations are the following;

Essentially, the campaign is an invitation to download an antivirus. There are terms and conditions but with no reference to the subscription nature of the warning at inception.

“Whilst browsing the internet, the user was directed to a page informing the user that someone could be trying to hack his Sony Xperia Z1 Compact today, and if he doesn’t protect now, he could lose all his photos and private data”

By far, the most projecting graphic element is in fact a notification that “someone” could be trying to hack your phone. Once the invitation to insert the mobile number is provided the “**protect now**” is much larger than the information below advising that the service is in fact a subscription service at R 7/day.

I therefore find Interband Enterprise LLC to be in breach of the following clauses of the code considered namely;

1. Clause 4.2. In that the manner in which they dealt with the campaign was unprofessional in that only once the user refreshed the campaign, were they shown the subscription element.
2. Clause 5.5. as they knowingly disseminated information that was false or deceptive, as the "invitation" could be seen to have caused the user to be alarmed, in that should he/ she not make use of the service his/ her phone would be hacked.

"Applock is a campaign that notifies the user about viruses popping out while browsing with the phone."

My submission is that it went beyond being a notification and instead coerced/frightened the user into accepting the terms regardless of the cost.

3. Clause 12.2. There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated. It must not be a requirement that the viewer of an advert has additional software installed in order to see pricing information in the advert.

My submission is that there was intervening text between the call to action and the pricing information, such intervening text is in a much larger font than that of the pricing information as well as the terms and conditions which are extremely difficult to read and small. Further to this, the respondent submitted "...***the pricing pops out along with an activation button when the customer clicks on our advertisement.***" Therefore only once the required information is inserted is the user aware of the cost. "***If required, we could change the colour of the letters***", here, the respondents acknowledge tacitly that the colours are in fact not legible.

I concur with the complainant "***...pricing and T&C's are illegible, further misleading an average consumer, who had already been advised of a possible hacking***"

I find no breach of the following;

Clause 5.4. In that they were providing the installation, of the antivirus to those who chose to accept same.

Sanctions

R 50 000.00 fine for breach of all clauses breached payable within one week of receipt of adjudication

- Clause 4.2 R 10 000.00
 - Clause 5.5 R 20 000.00
 - Clause 12.2 R 20 000.00
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Matters referred back to WASPA

None.
