



Wireless Application Service Providers' Association

Adjudicator's Report

Complaint number	31355
Cited WASPA members	Media Union Limited (1601)
Notifiable WASPA members	
Source of the complaint	Public
Complaint short description	Pop up advertising
Date complaint lodged	24 August 2016
Date of alleged breach	
Applicable version of the Code	14.5
Clauses of the Code cited	3.5, 3.6, 4.2, 4.5, 4.9 (b.c), 5.1, 5.4, 5.5, 5.15, 8.8, 12.1
Related complaints considered	31013

Fines imposed	Clause 4.2 and 3.6 – R 10 000
Is this report notable?	<i>Not notable</i>
Summary of notability	

Initial complaint

The complainant gets pop up anti-virus alerts every time he opens Safari or google Chrome. These link to the Member. He finds this invasive.

The problem continued after the Member responded.

Member's response

The Member submitted that the complainant's details do not appear on its system.

The pop ups were created by an affiliate and were immediately stopped.

Clauses

3.5. Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.

3.6. Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of this Code of Conduct.

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.

- 4.5. Members must respect the intellectual property rights of their clients and other parties and must not knowingly infringe such rights.
- 4.9. Members must not provide any services or promotional material that:
- (b) results in any unreasonable invasion of privacy;
 - (c) induces an unacceptable sense of fear or anxiety;
- 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.
- 5.15. Members must respect the constitutional right of consumers to personal privacy and privacy of communications.
- 8.8. Content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service.
- 12.1. For any web page, pricing information does not need to be displayed for services which are free, or which are billed at standard rates. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action

Decision

The Member firstly submitted that the complainant's number is not on its system. There is no reason to think that it would be – the problem is not that he subscribed nor that he is receiving spam – the problem occurs when he is browsing and involves pop up advertising.

The Member appears to accept that the advertising is not acceptable. I note for the Member's guidance that pop ups implying that a phone has a virus or that an App needs updating in order to lure a consumer to a subscription page are completely unacceptable in terms of WASPA's rules.

The Member has relied on the fact that this campaign was run by an affiliate. It is well established that a Member is liable for the actions of an affiliate, both on a reading of Clause 3.6 and in terms of professional behaviour required by Clause 4.2. I refer the Member to the decision in matter 31013 for a full discussion of this liability.

It is clear that in the matter the Member allowed an affiliate to run campaigns without any checks or supervision in place. This is not a matter where there is a small technical breach,

but a flagrant and unacceptable advertising campaign luring consumers with anxiety provoking misrepresentations.

The Member is therefore in breach of Clauses 3.6 and 4.2.

This is also not the same advertising campaign as that in matter 31013 and there is therefore no issue of “double jeopardy”. However, I will take into account that the matters have been considered simultaneously, that the Member is a new member and may not have been properly aware until now of the duty of care that it holds vis-à-vis affiliates, and that the Member was fined in matter 31013. This is not a complete defence – the Code is absolutely clear on the issue, and one would expect a reasonable new player in the market to diligently familiarise itself with the requirements of the regulator.

Taking both aspects into account, I fine the Member R10 000 in respect of this breach.