



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#31407
Cited WASPA members	<i>High Gable Limited (1486)</i>
Notifiable WASPA members	<i>Smartcall Technology Solutions (0090)</i>
Source of the complaint	<i>Media Monitor</i>
Complaint short description	Incorrect Direct Marketing Consumer Complaints helpline dysfunctional
Date complaint lodged	<i>2016-08-30</i>
Date of alleged breach	<i>2016-07-30</i>
Applicable version of the Code	<i>14.5</i>
Clauses of the Code cited	<i>4.2, 5.4, 5.5, 5.12, 5.13, 5.14, 15.4, 15.5, 16.9, 16.10, 16.11, 16.12</i>
Related complaints considered	<i>26723, 27644, 30842, 30981, 31228</i>
Fines imposed	None
Other sanctions	Sanctions imposed by complaints 30981 and 31228 confirmed
Is this report notable?	Not notable

Summary of Complaint:

Formal Complaint (2016-02-22)

Initial Complaint

A complaint was lodged by a member of the public regarding High Gable Limited (the 'Member') and was investigated by the WASPA media monitor. The anonymous complainant alleged that there was no prior interaction, no direct marketing SMS, no viewing of banners or web sites before the member of the public received the confirmation of subscription web page.

The Media Monitor then investigated the service (see Annexure A) and clicked on the 'subscribe' button. This resulted in the Media Monitor's phone being subscribed to the 'Bundleup' subscription service operated by the Member.

When the media monitor clicked on www.bundleup.co.za the page was redirected to www.epicbundle.co.za. Both EpicBundle and Bundleup are operated by the Member.

The Media Monitor then sent a 'stop' request and was then unsubscribed from the 'Apply your iPhone 6s service'. The Media Monitor then alleged a myriad of sections of the WASPA Code of Conduct (see Sections of the Code considered below).

Member's reply

The Member then requested that the matter be referred back to the WASPA head of complaints for the following reasons:

- There was a delay of approximately two months before the Member was informed of the complaint
- There was no process flow of how the subscription process operated
- A customer must click on an advertisement before they would arrive at the confirmation of subscription service page
- It was not possible to click on the www.bundleup.co.za link and arrive at www.epicbundle.co.za
- The media monitor was unsubscribed on the same day
- The complaints number is operational
- The name of the company providing the service can be found in the disclaimer below
- There is currently a formal adjudication on the same issue with complaint 30981

It should be noted that there were numerous grammatical errors in the Member's submission which made the response somewhat confusing.

WASPA Head of Complaints reply

The WASPA head of complaints considered the response from the Member and indicated that the matter should continue to formal adjudication.

Member's reply

The Member repeated the comments in the first reply. In addition the Member dealt with each of

the alleged breaches of the WASPA Code of Conduct.

In particular the Member alleged that there was in fact a banner which a customer would click on as well as a landing page that the customer would click on before reaching the subscribe page that was provided by the Media Monitor.

The Member also denied that a breach of clause 15.4 and 15.5 in that no marketing messages were provided in the complaint and as a result there could not have been deception relating to the marketing of the service.

In a similar (but confusing manner) the Member alleged that there was no direct marketing to the consumer in terms of clause 16.9, 16.10 16.11 and 16.12.

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.

5.12. Telephonic support must be provided via a South African telephone number and must function effectively. Customer support must be provided via standard rated numbers, and may not be provided via premium rated numbers. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers must not forward to full voice mailboxes.

5.13. The option of speaking to a call centre consultant (or leaving a message for a call centre consultant) should be obvious to the caller.

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.

5.15. Members must respect the constitutional right of consumers to personal privacy and privacy of communications.

15.4. A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: "to claim your prize, join this service".)

15.5. A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: "if you join this subscription service, you will be entered into a monthly draw for a prize".)

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.

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.

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.

16.12. Any communication for the purpose of direct marketing must contain the details of the identity of the sender or the person on whose behalf the communication has been sent and an address or other contact details to which the recipient may send a request that such communications cease.

Decision

At the outset it is worth pointing out that this complaint does not consider auto-subscription (unlike, for example, complaint 31228) but rather whether this matter amounts to misleading marketing and the failure of the call centre to be available.

It is also worth considering complaint 30981 (as the Member requested) as this complaint also deals with the Bundleup subscription service. In complaint 30981 the Member was accused of breaching various clauses, including the following clauses which are common between complaint 30981 and this complaint: 4.2, 5.4, 5.5, 15.4, 15.5. Put differently this complaint differs from that complaint in that the following clauses apply to this complaint only: 5.12, 5.13, 5.14, 16.9, 16.10, 16.11. In complaint 30981 the Member was found to have breached clauses 5.4, 5.5, 12.1 and 15.5.

Turning to the specific clauses alleged to have been breached:

Clause 4.2

Although the response from the Member left much to be desired, not only in terms of the correct use of the English language but also in terms of actually dealing with the issues raised by the complaint, I find there is insufficient evidence that the Member's conduct was unprofessional and so **I find that clause 4.2 was not breached by the Member.**

Clause 5.4

In a like manner to complaint 30981 and complaint 31228 the conduct of the Member is one of deception. The Member is making an active effort to obfuscate that this is a subscription service and that a consumer who enters the subscription service only has a chance to win an iPhone 6s. The Member also indicates that it is not possible to click on www.bundleup.co.za and be redirected to www.epicbundle.co.za. This claim is demonstrably false as it is perfectly possible to have a hyperlink direct the consumer to a URL which is not the same as the ostensible wording. In other words the fact that the words say 'www.epicbundle.co.za' does not mean that clicking on that link will result in a web page at www.epicbundle.co.za opening up. It is technically simple to have a hyperlink to www.bundleup.co.za even though the wording says 'www.epicbundle.co.za'. Indeed I have done exactly that with this link > www.bundleup.co.za. For some reason the Member did not address this particular possibility and so it seems quite possible that the link did in fact resolve to www.epicbundle.co.za as alleged by the Media Monitor. As a result **I find that the Member has breached clause 5.4.**

Clause 5.5

The real issue relating to clause 5.5 is whether the Member knew its conduct to be deceptive. In this regard it is worth noting that the Member had previously (complaint 26723) been found to have contravened clause 5.5 in that it was knowingly deceptive and so the Member clearly should have been aware of the existence and import of clause 5.5. Furthermore the Member was warned in the case of complaint 30981 not to run a deceptive campaign and so I find that the Member would have had the required knowledge to 'knowingly' disseminate information that is deceptive and so **I find that clause 5.5 was breached by the Member.**

Clauses 5.12, 5.13, 5.14

All the above clauses relate to the provision of call centre support to customers and assisting customer to complain. This particular issue is difficult to resolve as there is a fundamental dispute of fact that cannot easily be resolved on the papers (the complainant alleges three attempts to contact the call centre that were unsuccessful, while the Member alleges that the call centre was functioning). In an effort to resolve this impasse a call was made to the call centre which was successfully fielded by the Member's call centre staff. As a result **I find that clauses 5.12, 5.13 and 5.14 were not breached by the Member.**

Clause 15.5

In complaint 30981 the adjudicator found that the marketing of the subscription service was deceptive and clause 15.5 was found to be breached. The wording used in that complaint and in this complaint are almost identical ('Chance to win an iPhone 6s' was common to both cases) and **I also find that the Member has breached clause 15.5** in that it is not clear to the consumer that the benefit of entering the competition only applies once the consumer has subscribed to the service. This lack of clarity is slightly assisted by the bigger text used in the confirmation page which indicates that 'Apply your iPhone 6s @R7/day' but there is no mention of the fact that this is a subscription service on the confirmation page and as a result there is a lack of the clarity required by clause 15.5 of the WASPA Code of Conduct.

Clauses 5.15, 16.9, 16.10, 16.11

Clause 5.15 (the right to privacy of communications) and the remaining clauses effectively deal with direct marketing and the right of the consumer not to be marketed to by the Member unless the requirements of the above clauses have been met. Once again there is a dispute of fact in that the Member denies that these clauses apply as there are no marketing pages attached to the complaint. Unfortunately the Member misses the point entirely. The Member is accused of sending the confirmation page for the subscription without the consumer ever interacting with the Member / asking to receive the subscription page. The Member is also given the opportunity to explain how the MSIDSN as cited in the complaint arrived on the Member's telephone. It is worth recalling that it should be technically impossible for the consumer to subscribe to the service by only clicking on 'subscribe' on the 'confirmation of service' page. WASPA requires an earlier confirmation by the consumer (or double opt-in) before a customer can be subscribed to a subscription service. In this respect the Member did provide the logs for this particular MSIDSN. However it is far from clear from these logs that this initial mandatory step was present. On balance it appears therefore that the customer did not perform any act (such as clicking on a banner) before receiving the confirmation page for the subscription service. Clearly

this is not only deceptive but also in breach of the above clauses and so **I find that the Member has breached clauses 5.15, 16.9, 16.10 and 16.11.**

Sanctions

Before considering the sanctions it should be noted that the matter in complaint 30981 occurred in early July 2016 while this matter occurred in late July 2016. Effectively this means that the Member was not given the opportunity to read the adjudication in complaint 30981 and take remedial steps before this complaint was referred. This is equally true for complaint 31228 which is published at the same time as this complaint.

On the other hand the Member has demonstrated continuous lack of appreciation for the requirements of WASPA Code of Conduct as set out in the complaints 26723, 27644, 30842, 30981, 31228 and now also in this complaint. This pattern of behaviour suggests that the Member has not put sufficient controls in place to ensure compliance with the WASPA Code of Conduct, or alternatively there is a lack of willingness to abide by the WASPA Code of Conduct.

Ordinarily the actions of the Member in this complaint would be serious and would require a substantial sanction, but such a substantial sanction was already imposed for this campaign in complaint 30981 in that the Member was ordered to refund all consumers in full (a substantial sanction) and further not to market to the MSIDSN captured during the campaign.

In addition the subscription service itself of epicbundle.co.za was suspended in complaint 31228. Bearing in mind all of these sanctions relate to the same subscription service and are sufficient to protect the public from the Member's conduct no further sanction is imposed on the Member. However the Member is warned that if its behaviour continues it is likely that the only option available to future adjudicators will be to suspend the WASPA membership of the Member.

Matters referred back to WASPA

None

Annexures: Summary of important communications and graphics

Annexure A: Screenshots provided by complainant:

A consumer received the following network hosted confirmation page on his phone, without interacting with a subscription service, or any marketing pages of a subscription service, at all. Please note, there was NO SMS message received prior to this network hosted message either.

The user clicked subscribe, and received the following Welcome message in two parts:

Confirmation of service

Chance to WIN

iPhone 6S

Click **Below!**



Confirm your request for Apply your iPhone 6s @ R7.00 /Day . Please accept or decline the request by selecting the appropriate option below.

Apply your iPhone 6s	
Subscribe	>
Decline	>



+278708503...

CALL

MORE

Saturday 30 July 2016



Welcome to Apply Your iPhone 6S. Visit www.bundleup.co.za and enter your password: 7959 ,R7/day, to optout send stop,help: [0115074630](tel:0115074630)

SMS 19:42

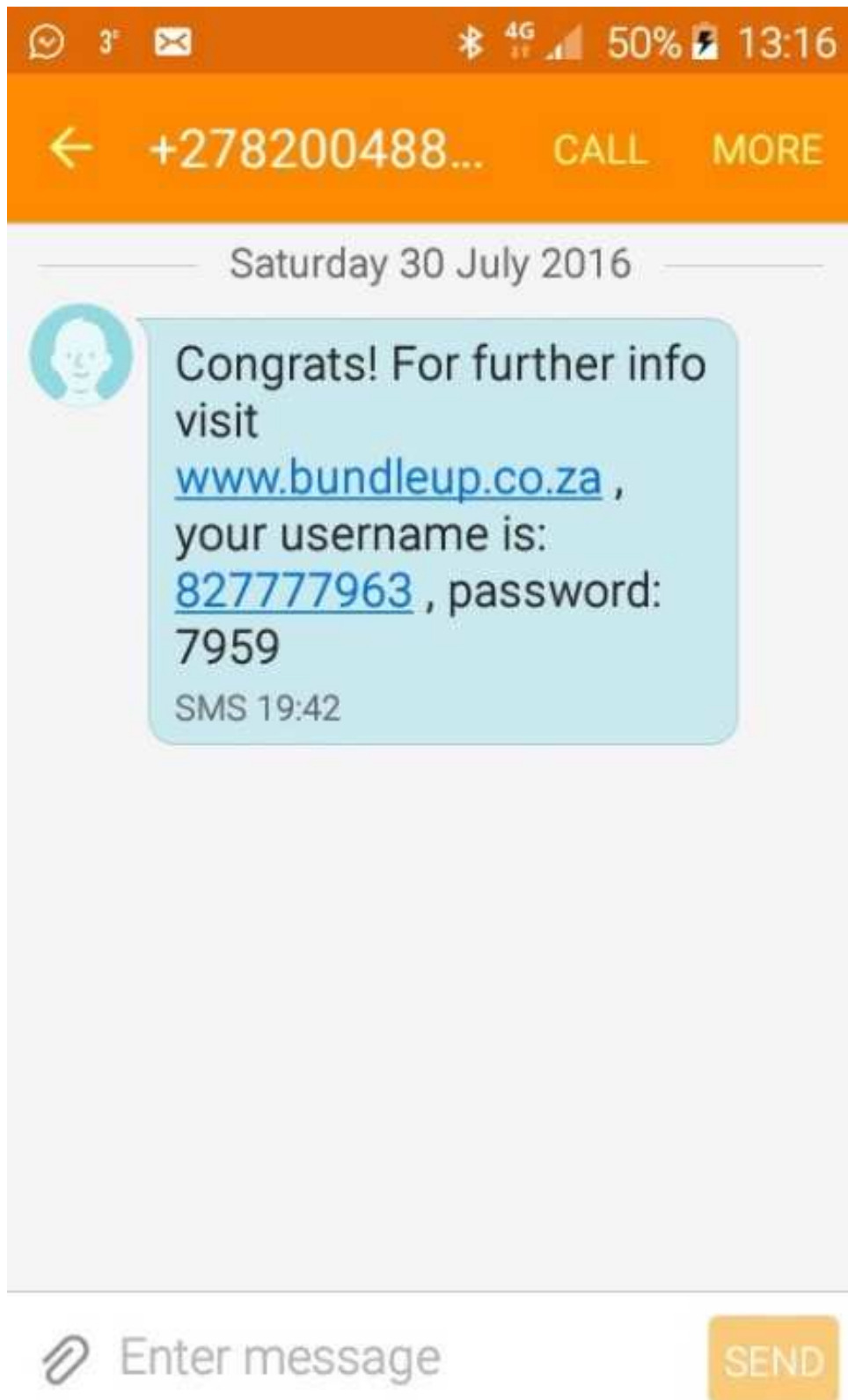
Stop

SMS 19:56



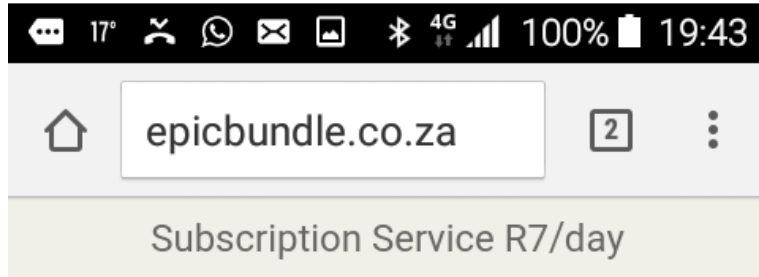
Enter message

SEND



The user then clicked on the URL provided and proceeded to the LOGIN page:

The user had to take a screenshot of the Terms to establish who was sending him the messages. The user tried calling the Call Centre number 3 times, on 0115074630, on Monday, 3 times without his calls being answered and no option to leave a message.



[Terms](#) [Contact](#) [Login](#)



LOGIN

2. COMMENCEMENT, DURATION AND COOLING OFF

2.2.1. The Agreement will commence on the Acceptance Date and endure indefinitely until it is cancelled as provided for in this clause 2.

2.2. The Agreement may be terminated by either us or you on one calendar months' notice, which termination will take effect on the first day of the month immediately following the end of the applicable notice period.

2.3. Even if the Agreement has been terminated, in the event that you continue to use the Services despite the termination of the Agreement, you will remain liable for and promptly pay on demand all amounts that would have been due to us as a result of the use of or access to the Service and this Agreement shall be deemed to continue to apply until all amounts due to us have been paid in full.

2.4. To unsubscribe by text message, text "STOP" to 43927 or call CC 0115074630. The Service is available via mobile devices, making available to you to get top pictures, videos,

The user then unsubscribed from the service and received a confirmation SMS:

