



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#38554
Cited WASPA members	Basebone Pty Ltd (1344)
Notifiable WASPA members	All
Source of the complaint	<i>WASPA Compliance Department</i>
Complaint short description	Non Compliance by Affiliate members
Date complaint lodged	23 March 2018
Date of alleged breach	19 March 2018
Applicable version of the Code	15.5
Clauses of the Code cited	Clause 3.3 read with Clause 3.4 Clause 5.4 Clause 5.5 Clause 5.6A Clause 8.2 Clause 8.7 Clause 8.8 Clause 12.1 Clause 12.2 Clause 15.22 Clause 15.18 (a); (b) and (d) read with Clause 5.5, 8.1, 8.2 and 15.22
Related complaints considered	38551 29261 38552 27199 38553 27012 26610 26003 33364 30643 30621

Fines imposed	R 60 000, 00(sixty thousand rand) payable on demand by the member to the secretariat. <ul style="list-style-type: none"> - 3.3 - 3.4 - 5.5 read with 8.7 & 8.8
Other sanctions	None
Is this report notable?	Notable
Summary of notability	<p>Affiliate Members must not be allowed to design campaigns to appear to be linked to another (separate, unrelated) campaign as well as designing a campaign to appear to be part of a subscription acquisition flow and accessing the content of that service, when in fact it is something completely different (the acquisition flow for another service as the design of a campaign which is structured in a way to deliberately mislead, deceive, lure or bait a consumer is a campaign which is in breach of the essence of this code.</p> <p>The main members must be well versed in the sanctity of this code.</p>

Initial complaint

Manual Test Synopsis

The tester conducted a full manual test. The below demonstrates the journey the tester experienced. Browser cache and cookies were cleared, all active subscriptions were cancelled and a starting airtime balance was established.

The tester browsed the web and clicked on a banner advert which directed the tester to a landing page for the Chatpose (Westbound Direct) subscription service. The tester clicked on the call to action button and was directed to the Network Hosted Confirmation Page (NHCP). The tester confirmed the subscription on the NHCP.

A welcome message was received, and the MSISDN was billed. From the NHCP, the tester was automatically directed to a new landing page (for a different subscription service) and clicked on the Continue call to action button, which directed to a NHCP for the service Mediafolderz (Hammer Mobile). The tester confirmed subscription and was directed to a new landing page (for a different subscription service) and clicked on the Continue button, which directed to a NHCP for the service Pinpress (Tech Garden Media). The tester confirmed the subscription and was directed to a new landing page (for a different subscription service) and clicked on the pop-up banner which directed

to a new landing page. The tester exited the browser session at this point, after being directed to various different subscription service landing pages and NHCPs.

The tester inspected his message inbox, and identified welcome messages for 3 different services, and confirmed that billing had occurred on the MSISDN for all 3 services.

The tester inspected the T&Cs on all 3 services to identify the company that was providing the respective subscription services (affiliates members responsible for the services). The tester unsubscribed from the services using the short codes provided in the respective welcome messages, and received the unsubscribe confirmation messages. The tester established a closing balance. Test was concluded.

This complaint is being lodged against the Full Member, as we do not believe that the Full Member has taken reasonable steps to ensure that their clients (Affiliate Members) comply with the provisions of the WASPA Code of Conduct. The misleading way in which these campaigns are marketed and provided result in the Full Members and its clients benefiting from this *modus operandi*.

Member's response

Dear WASPA Secretariat

With regards to the Formal Complaint referenced above, we herewith reply providing all the due information we consider relevant.

With regards to the Potential Problems list, Basebone PTY LTD relevant responses to the same are provided hereunder for your convenience:

This complaint is being lodged against the Full Member, as we do not believe that the Full Member has taken reasonable steps to ensure that their clients (Affiliate Members) comply with the provisions of the WASPA Code of Conduct. The misleading way in which these campaigns are marketed and provided result in the Full Members and its clients benefiting from this modus operandi.

Basebone's modus operandi is (and has always been) to advise their clients on any and all developments with regard to regulations, common marketing practices, etc. in the marketplace, resulting of attendance to trade shows, regulatory meets and the like. Proof of this can be seen for example in this case, where all WASPA Members aggregating under Basebone PTY platform are fully complying with WASPA formal request of avoiding the use of multiple price points within advertising as per output of the latest Codecom Meeting of 15 March 2018.

As you can see, we duly informed our clients regarding WASPA requirement avoiding them making use of multiple price points (regardless of the different billing mechanisms available on specific operators) on their campaigns and to use the same price point across the board, in these cases, that being R15, in order to avoid, inadvertently, confusing the average person during the subscription process. Based on this, Basebone PTY LTD is not liable for a breach of clauses 3.3 and 3.4 With regards to the points raised regarding items within the control of Basebone's clients allocated in Notices #38551, #38552 and #38553 (highlighted below) where they are in fact the primary respondents due to their memberships to WASPA, and no liability of such being of Basebone PTY LTD for those breaches, we ask that the adjudicator refer to the rationales raised in addendum (where the additional cases are contained).

- The pricing information on the initial banner advertisement (Slide 6, Screenshot_2018-03-1909-32-56) does not follow the prescribed format. The pricing is also not clearly and prominently displayed.
- The pricing information provided on the banner, landing page and NHCP is not consistent. •After each NHCP the tester is looped into subscribing to a new service. This is done by misleading the tester to think that they are accessing the content for which they just subscribed to, but are in fact baited/lured/mislead/deceived into subscribing to a totally different service. •Colour of call to action buttons; similar advertising lay-out; lay-out and imaging etc.
- The services being offered on the landing pages do not correspond with the information presented on the NHCP.
- The services being confirmed on the NHCP do not correspond to the services in the welcome messages.
- The opt-out instructions in the welcome messages are ambiguous.
- The services in half of the unsubscribe confirmation messages do not correspond with the service names in the welcome messages.

And furthermore, we do not believe that we are liable for the breaches raised regarding those points, being 5.4, 5.5, 5.6A, 8.7, 8.8, 12.1, 12.2, 15.18 and 15.22

That said, regarding the observations of the WASPA Testing Team with reference to the variations in the billing frequency “a” vs “/”, which was an unfortunate typo during the configuration of the messages on aggregation level. This issue was already identified at the point of which the test was conducted and has since been rectified.

Apologies for any inconvenience caused resulting from this.

We trust you find the above in order and we look forward for your kind feedback on these matters, may this be a positive one.

Should you need any further information, please do not hesitate to contact us.

(the member attached responses from the Affiliates, annexed hereto marked A,B and C)

Complainant's response

None.

Member's further response

None.

Sections of the Code considered

- 3.3. In the case of a customer, supplier, affiliate or sub-contractor who is also a member of WASPA, any complaint regarding the services provided or marketed by that member should be directed to that member. WASPA's members must assist WASPA in identifying services that belong to third parties who are also members of WASPA.
- 3.4. A member is not liable for any breaches of this Code of Conduct resulting from services offered or marketed by a third party, if that party is also a member of WASPA, provided that the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct.
- 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.
- 5.6A. Members must ensure that customers have ready access to information on how to access and use services.
- 8.2. For a subscription service, the "pricing information" consists of the word "subscription" and the cost to the customer and frequency of the billing for the service. The cost and frequency portion of the pricing information must follow the following format, with no abbreviations allowed: "RX/day", "RX/week", or "RX/month" (or RX.XX if the price includes cents). For services billed at an interval other than daily, weekly or monthly, the required format is "RX every [time period]", with no abbreviations permitted when specifying the time period. Examples of pricing information: "Subscription R5/week", "R1.50/day subscription", "RX every three days", "RX every two weeks". In a case where the total amount is billed in smaller increments over the subscription period, the pricing must still

reflect the full price and not the incremental amounts ("R30/month" and not "6 x R5 per month").

- 8.7. Pricing information must not be misleading. The price must be the full retail price of the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.
 - 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. Advertising must not mislead consumers into believing that it is for an entirely different service or for different content.
 - 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 adjacent to the call-to-action.
 - 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.
 - 15.22. Any instructions for terminating a subscription or notification service must be clear and easy to understand and should be readily available to customers.
 - 15.18. The welcome message must be a single message and may not contain any line breaks or carriage returns. The welcome message must begin with the word "welcome" and then contain only the following additional information:
 - (a) the name of the service...
 - (b) the pricing information...
 - (d) instructions for terminating the service...(read with Clause 5.5, 8.1, 8.2 and 15.22)
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Decision

Something must be said with regard to the flippant manner in which the member has addressed the concerns raised by the Compliance Department and the testing team, along with the extensive test results which were attached to the complaint.

This complaint has been made formal and sent to me as an independent adjudicator due to the gravity of the breach. I have had regard to many other complaints against this exact member in

relation to these exact affiliate members and I am appalled at the lack of insight provided by this member in the seriousness of this breach and for that I hold the member liable in all respects as well as impose a sanction based on the varying aggravating factors before me.

While I am impressed with the articulated manner in which the affiliate members presented their reasoning I reiterate and caution the use of innuendos and spite that is evident in the responses. The industry as a whole stands to benefit between the members and this body (WASPA) which regulates conduct for the greater good. Members must therefore respect the manner in which such regulation occurs and disagree with respect.

I provide the narrative for my ruling and the basis of my sanction below, based on the information provided by the member as well as regard being had to the vary many Adjudications against the member in relation to the affiliate marketers noted under complaints number 38551, 38552 and 38553.

The issues for determination before me in the aforementioned complaints were the following (*I provided hereto a short summary, but urge the member to read the full ruling under each respective complaint* ;

1. The pricing information on the initial banner advertisement does not follow the prescribed format. The pricing is also not clearly and prominently displayed.

Wherein I held under all three complaints that a breach of clause 8.2 read with Clause 12.1 of the code had occurred.

2. The pricing information provided on the banner, landing page and NHCP is not consistent.

With regard to issue number 2, I partially aligned myself with the evidence placed forward by the yet I concurred with the Compliance Department team on the issue of inaccuracy and ambiguity, I found that a sanction was appropriate as there was no evidence that consumers were advised of the variation in price points.

3. *After each NHCP the tester is looped into subscribing to a new service. This is done by misleading the tester to think that they are accessing the content for which they just subscribed to, but are in fact baited/ lured/ mislead/ deceived into subscribing to a totally different service.*

The practice of cross sell/upsell where a consumer is looped into a new page every time he/she lands on a new one without the benefit of a change in the offer is suspicious. It stands that there was breach of Clause 5.4 read with 5.5. due to the severity of the deception towards the consumer.

4. Colour of call to action buttons; similar advertising lay-out; lay-out and imaging etc.

While I aligned myself with the argument that “the WASPA Code of Practice does not provide any colours restriction regarding the call to action buttons nor regarding the lay-out of the Landing Pages”, I was of the view that there has been a breach of Clause 5.5 read with Clause 8.8 (advertising must not mislead consumers into believing that it is for an entirely different service) as the member here knowingly disseminated information that was deceptive and likely to mislead by ambiguity and exaggeration.

5. The services being offered on the landing pages do not correspond with the information presented on the NHCP.

Breach of the code under Clause 12.1 read with 12.2 and 5.4 was evident.

6. The services being confirmed on the NHCP do not correspond to the services in the welcome messages read with Point 9, The services in half of the unsubscribe confirmation messages do not correspond with the service names in the welcome messages.

In terms of Clause 15.8, I found no breach in that the service name(s) were confirmed in the welcome messages received by the tester, there are instructions regarding the offeror of the service as well as the details of the WASP. It stands to reason that allegation of breach of Clause 15.8 is dismissed the flow utilized by the member fully complies with the Code

7. The pricing format in the welcome messages does not follow the prescribed format.

WASPs are obligated to follow the code and ensure full compliance without dismissing it. Albeit rectified, at the time the complaint was lodged, there was a breach and as such the member stands to be sanctioned for such.

8. The opt-out instructions in the welcome messages are ambiguous.

I found no breach of Clause 15.22, there was compliance with the format. It stood to reason that the allegation of breach of Clause 15.22 was dismissed.

All of the above in turn leads to the direct consideration of the complaint against the member by the Compliance Department which is the following;

This complaint is being lodged against the Full Member, as we do not believe that the Full Member has taken reasonable steps to ensure that their clients (Affiliate Members) comply

with the provisions of the WASPA Code of Conduct. The misleading way in which these campaigns are marketed and provided result in the Full Members and its clients benefiting from this modus operandi.

Regard being had to the evidence before me – I find that the member is in breach of the code. More particularly, Clause 3.3, Clause 3.4 as well as Clause 5.5 read with 8.7 & 8.8. My reasoning is as follows;

There is precedent to indicate that the full member has been held liable for the actions of the affiliate. There is more than enough evidence placed forward by the testing team to sustain an indication of breach by the full member. The unethical and/ or administrative nature of the error(s) cannot excuse the occurrence of the breach, under complaint #26003(false and misleading advertising) while there was no sanction enforced by the Adjudicator, it was noted that, that case highlighted the need for some sort of revision around the use of affiliate marketers. It is all too easy for the WASP to look the other way and avoid liability and I believe that Clause 3.3 provides that there can be liability imposed. Under #27199 (*misleading affiliate marketing*) it was common cause that the assets used by the affiliate marketer were blatantly misleading and deceptive, and clearly in contravention of the provisions of sections 4.2 and 5.5 of the Code, while under #29621 (misleading information) led consumers into believing that they were getting a free version of whatsapp and a sanction was imposed. #26610 in 2015 once again by an affiliate marketer under the full member saw misleading promotion where a deceptive promotional practice was sanctioned.

See the trend here? The full member has neither in the past nor under this complaint demonstrated that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct as codified under Clause 3.4. There is no solid evidence placed before me by the member and again the flippant manner in which it has dealt with the response to this complaint is concerning.

The nature of these services is that the consumer is easily confused by the manner in which these members operated and find themselves out of pocket due to deception.

It was provided by the member under #30621 and 30643 *The “Directory WhatsApp” service allows users of Whatsmob to see and chat to other Whatsmob users, provided that they have consented to their profiles being public and are also WhatsApp users. It is in fact a Whatsmob directory of WhatsApp users. It is not a WhatsApp directory and on the Members admitted that it does not integrate with WhatsApp.* I fail to understand as to why this practice persists in the market, therefore I find that (taking into consideration the above from 2015/2016) there is a breach of 5.5 read with 8.7 & 8.8, the member has shown little to no remorse and continues to harm the entire market- one only has to take heed to the myriad of complaints on hellopeter to notice the damage caused.

Sanctions

My ruling under 38551, 38552 and 38553 with regards to fines imposed were imposed (in totality) imposed on the affiliate member(s) concerned for breach of the following clauses;

- 8.2 read with 12.1
- 5.5 read with 8.7
- 5.4 read with 5.5
- 5.5 read with 8.8
- 12.1 read with 12.2 inconsideration of 5.4.

I ruled that monetary suspended sentences where to be imposed on each of the affiliate members for their respective breaches, the member herein is not as fortunate as there is no suspended sentence imposed on it.

Taking into account the severity of the breaches of all affiliate members, the main member under the code is therefore liable for a fine in the amount of R 60 000,00 (sixty thousand rand). payable on demand by the member to the secretariat for breach of the following;

- 3.3
- 3.4
- 5.5 read with 8.7 & 8.8

Matters referred back to WASPA

None.
