



Wireless Application Service Providers' Association

Report of the Adjudicator

Dated: 31 July 2016

Complaint number	40722
Cited WASPA members	Red27Mobile Limited (1781)
Notifiable WASPA members	n/a
Source of the complaint	Public
Complaint short description	Misleading promotion of subscription services
Date complaint lodged	2019-01-07
Date of alleged contravention	2019-01-07
Applicable version of the Code	v 15.9
Clauses of the Code cited	5.1., 5.4., 5.5., 8.2., 8.7., 8.8., 12.1., 12.2., 12.4., 12.5., 15.9., 15.31.
Related complaints considered	n/a
Fines imposed	n/a

Other sanctions	Formal warning issued and Member must refund all amounts paid by the Complainant if established by their MNO that the subscription was validly activated and amounts were charged to their account
Is this report notable?	No
Summary of notability	n/a

Initial complaint

1. The complaint lodged by the Complainant against the Member relates to a Facebook advert promoting the Member's Games Unlimited subscription service.
2. In the complaint logged with WASPA, the Complainant stated that they had viewed the advert when it appeared on their Facebook home page. The advert promoted a mobile application (app) which allowed users to measure distance using the camera on their phone.
3. The Complainant states that they were interested in the advertised app and they clicked on the "install now" button on the advert. They were then presented with a landing page for the Member's Games Unlimited subscription service.
4. The Complainant provided screenshots of the landing page and of the various opt-in and welcome SMS's sent to their mobile phone during the subscription process.
5. The Complainant initially sent an SMS to unsubscribe and provided a screenshot as proof of their request. The Complainant did not receive any reply and did not know whether they had been unsubscribed or not.
6. The Complainant states that they found it strange that the app was not downloaded from the Facebook App store and that they had instead been presented with a landing page where they were prompted to enter their mobile number.
7. The Complainant then went back to the advert to check whether they had mistakenly clicked on a wrong button. They again clicked "install now" and were presented with the same process.
8. On the first attempt to download the app, the Complainant received an SMS notification asking them to confirm the subscription. The Complainant replied "N".

9. On the second attempted download, the Complainant did not receive any SMS asking them to confirm the subscription, and instead they received an SMS notification informing them that they had been subscribed to the service at a cost of R21.00 per day.
 10. The Complainant alleges that this is a scam and a deliberate attempt to get users to subscribe to a subscription service without their knowledge by advertising an app to entice people and then subscribe them to a subscription service for games.
 11. The Complainant alleges that this is totally misleading and constitutes a breach of clauses 5.1., 5.4., 5.5., 8.2., 8.7., 8.8., 12.1., 12.2., 12.4., 12.5., 15.9., 15.31 of the WASPA Code of Conduct.
 12. The complaint was referred to formal adjudication in terms of clause 24.20 of the WASPA Code.
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Member's response

13. The Member submitted a comprehensive response to the complaint. They described the nature of their Games Unlimited subscription service and explained the normal subscription flow and the three step opt-in process.
14. In brief, the Member stated that upon clicking on the 'Install Now' button, the consumer should be redirected to the Google Play Store to download the featured application, which may be one of a number of games, applications and mobile content offered to subscribers.
15. The consumer is given a free 24 hour trial period during which they may download and access the service for free. Thereafter they are charged the daily subscription fee.
16. In their response, the Member provided a step-by-step example (with screenshots) of the correct subscription flow for the service using an MSISDN from another network operator.
17. The Member advised that the subscription flow encountered by the Complainant, and as evidenced by the screenshots provided by the Complainant, was not normal and could not be replicated by the Member when it investigated the complaint.
18. The Member explained further that the Complainant was a Telkom subscriber and that it had, since December 2018, experienced a number of connectivity issues with Telkom subscribers which had affected DOI, billing, STOP requests and messaging.

19. The Member could not explain the reasons for these issues with complete certainty, but stated that it was possible that the application was presenting 'unknown' carriers with a default subscription flow which had been used for a legacy version of the application originally designed for and launched in other markets.
20. The Member states that it only became aware of these issues on 3 January 2019. It then immediately deployed a fix to this issue and updated the default flow. However, since the Complainant downloaded this particular application on 1 January 2019, i.e. before the updates were made; it was possible that the Complainant experienced an unexpected user experience.
21. The Member also alleged that the problem could also have been caused by the Complainant trying to re-subscribe after previously activating the service moments before.
22. The Member confirmed that it had not received any subscription notification for this activation.
23. The Member stated that its updates had not worked and it had not been able to resolve the Telkom connectivity issues it was experiencing. Consequently, as of 29 January 2019, the Member took the decision to prevent Telkom users from activating the Games Unlimited application service until these issues were resolved.
24. The Member indicated that the problem affected approximately 91 users.
25. The Member acknowledged that the Complainant had sent a STOP request to 41297 (as evidenced by the screenshot provided by the Complainant), but stated that neither the Member nor its gateway provider had received this STOP request from Telkom.
26. The Member confirmed that it had manually stopped the active subscription on receipt of the complaint on 7 January 2019.
27. Regarding the Complainant's allegations of specific contraventions of the WASPA Code, the Member responded as follows:
 - 27.1 *Clause 5.1* – The Member denies that it offered or promised or charged for services that it was unable to provide. The Member provided screenshots proving that the advertised "Camera Ruler" application promoted in the Facebook advert, referred to by the Complainant, was readily available from the relevant App stores and was a valid service offering included in the Member's Games Unlimited subscription service.
 - 27.2 *Clause 5.4* – The Member denies that it has not been honest and fair in its dealings with its customers. All required information was provided on the landing

page and the Member was never contacted by the Complainant for any further information or assistance.

- 27.3 *Clause 5.5* – The Member denied that it had knowingly disseminated information that was false or deceptive, or that was likely to mislead by inaccuracy, ambiguity, exaggeration or omission. As per the explanation given, the Member was experiencing a problem with Telkom. The issue that the Complainant experienced was not known to the Member at the time and it had, since becoming aware of the problems, taken steps to rectify them and was in communication with Telkom too. The Member had also contacted the Complainant to resolve the issues and had offered to assist the Complainant in downloading the app he was interested in at no charge.
- 27.4 *Clause 8.2.* – The Member denied that it had breached this clause and submitted that the full cost of the service was displayed on the landing page of the service prior to subscription and also in the DOI confirmation step. The WASPA Code of Conduct does not require the full cost of the service to be visible on the advert if the user is directed to a landing page where all the information is available.
- 27.5 *Clause 8.7* – The Member denied that it was in breach of this clause. The full cost of the service was on the landing page of the service prior to subscription and also in the DOI confirmation step. The full retail price was provided.
- 27.6 *Clause 8.8* – The Member denied that it was in breach of this clause and submitted that the advertised application was present and available.
- 27.7 *Clause 12.1* – The Member denied that it was in breach of this clause and submitted that the full cost of the service was provided on the landing page of the application (directly below the call-to-action) prior to activation and also in the DOI confirmation step.
- 27.8 *Clause 12.2* - The Member denied that it was in breach of this clause and submitted that the full cost of the service was provided on the landing page of the application directly below the call-to-action.
- 27.9 *Clause 12.4* - The Member denied that it was in breach of this clause and submitted that the terms and conditions of the service are displayed on the call-to-action page.
- 27.10 *Clause 12.5* - The Member denied that it was in breach of this clause and submitted that the terms and conditions of the service are displayed on the call-to-action page.

- 27.11 *Clause 15.9* - The Member denied that it was in breach of this clause and submitted that the confirmation step was an explicit response from the customer of the service. The clause states that the confirmation step cannot be performed in an automated manner in a way that is hidden from the customer. The process was not hidden from the customer and the user explicitly confirmed the request to subscribe.
- 27.12 *Clause 15.31* - The Member denied that it was in breach of this clause and submitted that when the complainant requested to be terminated there was no known subscription at the time due to the outlined Telkom issues. Furthermore, the Telkom stop request was not received and therefore not forwarded by the Member's gateway, hence why the Complainant did not receive the termination message. The Complainant was unsubscribed and blocked upon receipt of the formal complaint.
28. The Member also submitted that it had taken reasonable steps to prevent consumer harm in line with the WASPA Code of Conduct, by blocking Telkom consumers from activating the service until the relevant connectivity issues were resolved.
29. The Member had also unsubscribed all 91 other 'unknown' subscribers and all users would be sent an SMS in due course, offering a full refund if any charges were made to their accounts. The Member was waiting for Telkom to confirm whether such charges had occurred.
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Sections of the Code considered

30. The following clauses of the WASPA Code of Conduct were considered:
- 30.1 *Clause 5.1*. Members must not offer or promise or charge for services that they are unable to provide.
- 30.2 *Clause 5.4*. Members must have honest and fair dealings with their customers.
- 30.3 *Clause 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.
- 30.4 *Clause 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”).

- 30.5 *Clause 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.
- 30.6 *Clause 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.
- 30.7 *Clause 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.
- 30.8 *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.
- 30.9 *Clause 12.4.* For any web page advertising a service for which there is not a subsequent confirmation step containing a link to the terms and conditions, the minimum terms and conditions for the use of the service must be clearly displayed.
- 30.10 *Clause 12.5.* The minimum terms and conditions displayed on any web page must include at least the following information:
- (a) a customer support number, and
 - (b) a link to a web page where the full terms and conditions for the service are available.

- 30.11 *Clause 15.9.* The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.
- 30.12 *Clause 15.31.* Once a customer has terminated a service, a message confirming this must be sent to that customer. This message must specify the service the customer has terminated, and the customer must not be charged for this message.
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Decision

31. The Member has acknowledged that the steps normally presented in its standard subscription flow process were not presented to the Complainant when they clicked on the relevant Facebook advert.
32. It is clear from the screenshots and explanation given by the Complainant that the required opt-in process was not functioning correctly and that they were subscribed to the Member's subscription service without an express intention to do so.
33. The Member provided a plausible explanation for the incorrect subscription flow experienced by the Complainant and referred to certain technical issues which it was experiencing at the time (and has continued to experience) with consumers who are Telkom subscribers.
34. The explanation given by the Member was not refuted or contradicted by the Complainant.
35. The Member also provided proof that the featured application that was promoted via the relevant Facebook advert was in fact made available for download from the relevant App stores. This was also not refuted or contradicted by the Complainant.
36. Based on the foregoing, I have made the following findings:
- 36.1 *Clause 5.1.* I am satisfied that the Member has not offered or promised or charged for services that it was unable to provide. The advertised app is available for download by subscribers to the Member's Games Unlimited subscription service. There has been no breach of clause 5.1 and the complaint is accordingly dismissed in this regard.

- 36.2 *Clause 5.4.* Based on the explanation given by the Member for the issues experienced by the Complainant, and the steps that the Member has taken since becoming aware of these issues, I am satisfied that the Member has not failed to act honestly and fairly in its dealings with the Complainant. There has been no breach of clause 5.4 and the complaint is accordingly dismissed in this regard.
- 36.3 *Clause 5.5.* There is also no basis for a finding that the Member knowingly disseminated information that was false or deceptive, or that was likely to mislead by inaccuracy, ambiguity, exaggeration or omission. There has been no breach of clause 5.5 and the complaint is accordingly dismissed in this regard.
- 36.4 *Clause 8.2.* I am satisfied that the Member has complied with the relevant requirements for displaying the pricing information for the relevant subscription service. There has been no breach of clause 8.2 and the complaint is accordingly dismissed in this regard.
- 36.5 *Clause 8.7.* The full retail price of the relevant service was displayed where required. There has been no breach of clause 8.7 and the complaint is accordingly dismissed in this regard.
- 36.6 *Clause 8.8.* The featured application promoted in the Facebook advert was offered as part of the advertised service. There has been no breach of clause 8.8 and the complaint is accordingly dismissed in this regard.
- 36.7 *Clause 12.1.* The pricing information was clearly and prominently displayed adjacent to the call-to-action on the relevant landing page. There has been no breach of clause 12.1 and the complaint is accordingly dismissed in this regard.
- 36.8 *Clause 12.2.* There was no intervening text or images between the call-to-action and the pricing information and the other requirements for the display of the pricing information in this clause were complied with. There has been no breach of clause 12.2 and the complaint is accordingly dismissed in this regard.
- 36.9 *Clause 12.4 and 12.5.* The Complainant has provided screenshots that show that the terms and conditions for the Member's service were not clearly displayed on the landing page when accessed by the Complainant. The Member has disputed this and has alleged that the Complainant may not have provided screenshots of the entire subscription flow. The screenshots provided by the Member clearly show that the terms and conditions were correctly displayed. I am unable to make a definitive finding that the Member has breached clause 12.4 and 12.5, and the complaint is accordingly dismissed in this regard.
- 36.10 *Clause 15.9.* Based on the evidence given by the Complainant and the Member's admission that the normal subscription flow and required confirmation step was

not presented to the Complainant, I am satisfied that there has been a breach of clause 15.9 and the complaint is accordingly upheld in this regard.

- 36.11 *Clause 15.31.* Based on the evidence given by the Complainant and the Member's admission that it had not received the Complainant's unsubscribe request, no confirmation message was sent as required. I am satisfied that there has been a breach of clause 15.31 and the complaint is accordingly upheld in this regard.

Sanctions

37. I have noted that no previous complaints have been lodged or upheld against the Member.
38. I have also noted that the Member immediately took steps on becoming aware of the technical issues experienced with regard to Telkom subscribers to firstly, try to fix these issues and then to subsequently block access to the service for Telkom subscribers when the problems persisted.
39. The Member has also offered to refund any amounts charged to any Telkom subscribers, including the Complainant, if it is discovered that charges have been made while the reported issues with Telkom persisted.
40. Based on the foregoing, the following sanctions are imposed:
- 40.1 The Member is formally warned to ensure that all advertised subscription services are functioning correctly for all potential subscribers before such advertising takes place.
- 40.2 The Member must refund any amounts paid by the Complainant should it be established by the Mobile Network Operator that the subscription was activated and subscription fees were charged to the Complainant's account. Any such refund must be paid by the Member no later than 10 (ten) days after being notified by the MNO that amounts were charged to the Complainant's account. The Member must also provide the WASPA Complaints Department with confirmation that the refund has been paid as aforesaid.