



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#41263
Cited WASPA members	Cookies Factory SLR (1812)
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliance with requirements for publication of terms and conditions
Date complaint lodged	2019-04-29
Date of alleged breach	2019-04-29
Applicable version of the Code	v16.3
Clauses of the Code cited	5.8(a) – (l)
Related complaints	n/a

considered	
Fines imposed	R10 000 for the Member's breach of clause 5.8
Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

Complaint

1. This complaint was lodged by the WASPA Compliance Department after it tested two of the Member's services and identified that the Member's terms and conditions for the relevant services were not aligned with the requirements of section 5.8 of the WASPA Code of Conduct.
 2. The services in question were offered from the following URLs:
 - 2.1 Real Time Daily subscription service (found at: <http://ready2play.biz/realtimenewsdaily/tos.php>); and
 - 2.2 Like It Daily subscription service (found at <http://ready2play.biz/likeitdaily/tos.php>)
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Member's response

3. The Member did not respond to the complaint.
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Sections of the Code considered

4. The complainant cited clause 5.8(a) to (l) of the WASPA Code of Conduct as the basis for their complaint.

5. Clause 5.8 states as follows:

5.8. The full terms and conditions for any service provided by a member must contain:

(a) the registered company name of the WASPA member providing the service;

(b) a customer support number;

(c) unsubscribe instructions (for subscription services);

(d) any handset compatibility requirements for the service;

(e) an indication that network fees may apply;

(f) an indication of how billing errors are handled;

(g) a statement that the service must only be used with the permission of the bill-payer (for paid services);

(h) a statement that the service must only be used with the permission of a parent or guardian (for children's services); and

(i) the following statement: "[member name] is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. [member name] may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint. WASPA website: www.waspa.org.za";

(j) a statement that the service must not be used:

(i) to intentionally engage in illegal conduct,

(ii) to knowingly create, store or disseminate any illegal content,

(iii) to knowingly infringe copyright,

(iv) to knowingly infringe any intellectual property rights, or

(v) to send spam or promote the sending of spam;

(k) a statement that the member has the right to suspend or terminate the services of any customer who does not comply with these terms and conditions or any other related contractual obligations; and

(l) a statement that the member has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.

6. No further clauses were assigned by WASPA.

Decision

7. I have reviewed the Member's terms and conditions for both services and confirmed that they do not comply with the requirements of clause 5.8 of the WASPA Code of Conduct in the following ways:

7.1 No customer support number is provided.

7.2 No unsubscribe instructions for subscription services are provided.

7.3 No handset compatibility requirements for the service are provided;

7.4 No indication that network fees may apply is provided;

- 7.5 No indication of how billing errors are handled is provided;
- 7.6 No statement that the service must only be used with the permission of the bill-payer (for paid services) is included;
- 7.7 No statement that the service must only be used with the permission of a parent or guardian (for children's services) is included; and
- 7.8 The following statement is not included: *"[member name] is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. [member name] may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint. WASPA website: www.waspa.org.za";*
- 7.9 No statement is included that the service must not be used (i) to intentionally engage in illegal conduct, (ii) to knowingly create, store or disseminate any illegal content, (iii) to knowingly infringe copyright, (iv) to knowingly infringe any intellectual property rights, or (v) to send spam or promote the sending of spam;
- 7.10 No statement is included that the Member has the right to suspend or terminate the services of any customer who does not comply with its terms and conditions or any other related contractual obligations; and
- 7.11 No statement is included that the Member has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.
8. The Member is in breach of clause 5.8 of the WASPA Code of Conduct for each of the relevant services.
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Sanction

9. In determining appropriate sanctions against the Member for its numerous breaches of the WASPA Code of Conduct, the following has been taken into consideration:
 - 9.1 any previous successful complaints made against the Member in the past three years;
 - 9.2 any previous successful complaints of a similar nature;
 - 9.3 the nature and severity of the breach; and
 - 9.4 any efforts made by the Member to resolve the matter; and
10. No previous complaints, including complaints of a similar nature, have been upheld against the Member.
11. The Member's failure to make any effort to resolve the complaint after it was lodged and its failure to respond to the formal complaint must be viewed as an aggravating factor.
12. In determining appropriate sanctions previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions have also been taken into account.
13. Based on the foregoing, the Member is fined an amount of R10 000 for its contravention of clause 5.8.