



Report of the Adjudicator

Complaint number	53300
Cited WASPA members	BasePlay Ltd (1795) Basebone (Pty) Ltd (1344)
Notifiable WASPA members	N/A
Source of the complaint	WASPA compliance department
Complaint short description	Misleading advertising
Date complaint lodged	1 July 2021
Date of alleged breach	24 February 2021
Applicable version of the Code	16.16
Clauses of the Code cited	4.9 (c); 5.1; 5.4; 5.5; 8.8; 12.1 and 12.2.
Related complaints considered	N/A
Fines imposed	<p>The Member breached sections 4.9 (c), 5.4; 5.5; 8.8; 12.1 of the Code.</p> <p>Accordingly I fine the Member:</p> <ul style="list-style-type: none"> a) R 10 000.00 for a breach of 4.9 (c); b) R 10 000.00 for a breach of 5.4; c) R 10 000.00 for a breach of 5.5; d) R 10 000.00 for a breach of 8.8; and

	e) R 5 000.00 for a breach of 12.1.
Other sanctions	N/A
Is this report notable?	Not notable
Summary of notability	N/A

Initial complaint

The Complainant complained that whilst scrolling on the website, a pop-up notification message with a red exclamation triangle appeared on the screen. The pop-up message read as follows: “! Your SIM card is locked UPDATE YOUR PHONE NOW”.

The tester clicked on the pop-up notification message and was redirected to another page which alleged that the device had a virus and should be cleaned immediately. The pop-up message read as follows:

“ATTENTION

Your phone has a virus

You should immediately clean the system from (10) viruses.”

The tester clicked on the “OK” button. There was a timer counting down from 10 seconds. Based on the information displayed and presented to the tester, it was alleged that the test device may be infected with viruses and needed to be cleaned, after which speed and battery power of the device would increase.

The timer reached 0:00 seconds. At this point, the tester believed that the sim card was locked and that the test device needed to be updated and cleaned from viruses.

After several seconds of nothing happening, the tester refreshed the page and was directed to a page which had the following wording:

“baseplay.games

Games, Apps, Videos and Community

Scan now to PROTECT YOUR DATA”

Below the wording was a big green button with the words “ACCESS NOW”

Based on the preceding pages and notifications, and the information on this page, the tester believed the following:

- The device’s SIM card was locked;

- The device needed to be updated;
- The device had viruses on;
- The device needed to be cleaned immediately.

The tester believed that by clicking the “ACCESS NOW” button, the following actions would occur:

- The device would be scanned;
- The device would be cleaned and viruses removed;
- The device would be updated;
- The SIM would be unlocked;
- The data on the device would be protected if the above action is taken.

The tester scrolled down on the page, and upon closer inspection, was for the first time alerted that this offer/product/action was linked to a subscription service offered by Baseplay Games. The landing page does not display the pricing information on the screen – the tester must specifically scroll down before it becomes visible. The pricing information is not clear and prominent; it is not adjacent to the call-to-action button; and requires closer examination before the tester is informed of the cost associated with the offer/product/action.

The tester clicked on the link to access the terms and conditions. Below an excerpt:

“...baseplay.co With more than 600 games, you can find everything in gaming scenario. baseplay.co is not just a huge collection of games, it’s a scene with it’s own community...”

The tester clicked on the link to access the full terms and condition of the subscription service. Under the Service Description section, it was stated that the subscription service has more than 600 games. On the bottom of the subscription landing page, it also states the following: “Join Baseplay Games and Enjoy”

No mention is made of any anti-virus or virus cleaning/removing service.

The way in which the promotional material has been designed – warning notifications, countdown timers, etc. – also creates an unnecessary level of fear and anxiety that if no action is taken, detrimental effects would follow, pressuring the tester into clicking on the prompts and completing the procedure.

The tester returned to the subscription landing page and clicked on the green “ACCESS NOW” call-to-action button. The following appeared with further prompts/call-to- actions:

- Opening Access. Remember to Click YES in the new window TO ACCESS
- Do you want to continue?
 - The tester clicked on the orange “OK” call-to-action button
- Opening Access. Remember to Click YES in the new window TO ACCESS
- Click on numbers 1 2 3 to continue
 - The tester clicked on the green “1 2 3” call-to-action button
- Opening Access. Remember to Click YES in the new window TO ACCESS

- f. Click on numbers 1 2 3 to continue
 - The tester clicked on the green “1 2 3” call-to-action button
- g. Opening Access. Remember to Click YES in the new window TO ACCESS
- h. Please confirm below to continue
 - The tester clicked on the pink “yes, continue” call-to-action button.
- i. Opening Access. Remember to Click YES in the new window TO ACCESS

At this point, the tester is still trying to get access to the service which will clean the device and remove the viruses.

The tester was then redirected to another page which had the following words:

“you cannot pass

This content is not available.”

After all the interactions with the promotional material, the tester was not able to access the service.

Member’s response

The member stated as follows:

“WASPA stated that they conducted the test on February 24th 2021, however did not inform their member of any issue related to a campaign until a Formal Notice was received on July 1st 2021.

Our internal monitoring team continuously monitors the market through direct testing, as well as use of external parties such as Empello and MCP.

Based on processes surrounding our market monitoring, we actively remove campaigns that do not fall within our advertising guidelines.

Should we detect campaigns that do not conform to our advertising policies, run by partners, such as Google, Facebook or preferred DSP’s, we automatically deactivate URL’s linked to the campaign in order to mitigate risk to consumers.

Unfortunately, due to the time span between WASPA’s Compliance department detecting the campaign flow, as documented, and the date in which we were informed of the Formal, we are unable to identify the advertiser who was promoting the campaign on our behalf.

However we can confirm that we detected a campaign of a similar nature during the period in which WASPA conducted its test and deactivated the campaign.

As we offer services and run campaigns across 20+ territories, our advertising teams conduct regular briefings with the advertisers (Google, Facebook or preferred DSP’s) to ensure compliance to rules are adhered to.

We believe that we take all reasonable steps to ensure that our campaigns conform to applicable standards.

The Landing Page clearly states the service name, in this case Baseplay Games, as well as a brief description of the offering, that being: Games, Apps, Videos and Community. Therefore we do not perceive ourselves to be in breach of clauses 5.4, 5.5 and 8.8

The service offered in the Landing Page, Mobile Shield, a virus detection App, is available to members of the Baseplay Games service and can be accessed in the Apps section of the Portal. Therefore we do not perceive ourselves to be in breach of clauses 5.4, 5.5 and 8.8

The Landing Page conforms to the requirements as set out in the Business Rules by the Mobile Network Operator, has a Call To Action Button, as well as stipulating that it is a Subscription Service and applicable cost displayed underneath the CTA as per the WASPA Code of Conduct. Therefore we do not perceive ourselves to be in breach of clauses 5.4, 5.5, 12.1 and 12.2

The WASPA Tester states that they had to scroll down the page to identify that the Landing Page was part of a subscription service. We configure rendering of all our assets across mobile devices. It is not always possible to render exactly per screen size, but we take all reasonable steps to ensure rendering is applicable to popular models in the marketplace. Therefore we do not perceive ourselves to be in breach of clauses 5.4, 5.5, 12.1 and 12.2

Furthermore the WASPA Tester is claiming that the Terms & Conditions for the service don't state Virus Scanner, but instead refer to 600+ Games. The Terms are related to the service, that being games, and the WASPA Tester only reviewed the abbreviated Terms and appears not to have reviewed the full Terms. There is nothing under Clause 5.7 of the WASPA Code that states that the member has to define the product within the terms. Therefore we do not perceive ourselves to be in breach of clauses 5.4, 5.5 and 8.8 13 - It is worth noting that no subscription was initiated by the Tester.

As no subscription was initiated by the tester, we are surprised that the tester is claiming that we are not offering the service as advertised on the Landing Page. Users who successfully subscribe, would be directed to the product upon successful completion of the subscription process. Therefore we do not perceive ourselves to be in breach of clause 5.1

Due to the behaviour of the tester, the usage and interactions with our systems was flagged by our Anti-Fraud detection solution, Baseblock and Captcha was deployed. This is highlighted in the Testers report under point 18. As the Tester did not complete the captcha correctly on more than one occasion, they were blocked on our system. Due to this action, we believe that we were adhering to clause 4.11 of the WASPA Code, and preventing potential fraudulent activity

on our system. This will explain the journey the tester was being taken on as they weren't able to interact properly or complete a subscription. Therefore we do not perceive ourselves to be in breach of clause 5.1

In respect of the initial campaign, highlighted by the Tester, we agree with the misleading element, and as stated in points 2-4 (above) we actively deal with such issues proactively. Had WASPA reached out at the time of the testing, we would have been able to explain the journey experienced as well as provide details relating to the advertiser. This could have been achieved through the HU process.

In conclusion, to reiterate, we agree with the campaign findings set out by the tester relating to the advertiser activity before being directed to the Landing Page hosted by us, but refute all claims following that juncture, based on user behaviour and assumption. The tester was not subscribed to any service, and nor were they billed. In fact, as we have stated, we detected a potential fraudulent breach and handled this as set out by our processes, ensuring no consumer harm occurred.”

Complainant's response

The Complainant had no further response.

Member's further response

The Member had no further response.

Sections of the Code considered

Decency

4.9. Members must not provide any services or promotional material that:
(c) induces an unacceptable sense of fear or anxiety;

Service levels

5.1. Members must not offer or promise or charge for services that they are unable to provide.

Provision of information to customers

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.

Accuracy of services and content advertised

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.

Display of pricing information

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, provided that the mobile network operator does not prescribe any specific advice of charge requirements. 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.

Decision

Decency

4.9. Members must not provide any services or promotional material that:

(c) induces an unacceptable sense of fear or anxiety;

- I find a breach of this clause. The alerts provided about the impact of a locked SIM card, lost data and a virus infected phone would induce an unacceptable level of fear and are not based on reality but on promoting a product that was not requested.

Service levels

5.1. Members must not offer or promise or charge for services that they are unable to provide.

- I find no breach. Although it looked like the tester followed the captcha steps this is no fool proof and could fail.

Provision of information to customers

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.

- I find a breach of this clause. The tester did not have a virus and their SIM card was not locked. The member was using fear of these eventualities possibly happening to

promote a product even though the tester did not have a virus and their SIM was not locked.

Accuracy of services and content advertised

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.

- The promotion was for the Baseplay games platform. The fact that you may be able to access anti-virus as part of this services does not render the service one of anti-virus. It is a games platform and the hook to get people to subscribe was promotion of anti-virus.

Display of pricing information

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, provided that the mobile network operator does not prescribe any specific advice of charge requirements. 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.

- I find a breach of this section. The pricing was not adjacent to or prominently displayed.

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.

- I find no breach.

Sanctions

The Member breached sections 4.9 (c), 5.4; 5.5; 8.8; 12.1 of the Code.

Accordingly I fine the Member:

- f) R 10 000.00 for a breach of 4.9 (c);
- g) R 10 000.00 for a breach of 5.4;
- h) R 10 000.00 for a breach of 5.5;
- i) R 10 000.00 for a breach of 8.8; and
- j) R 5 000.00 for a breach of 12.1.

Matters referred back to WASPA

Not applicable.
