



## Report of the Appeals Panel

Complaint number	#53300
Cited WASPA members	Baseplay Limited (Membership no. 1795)
Notifiable WASPA members	Basebone Pty Ltd (Membership no. 1344)
Appeal lodged by	Baseplay Limited
Type of appeal	Written appeal
Scope of appeal	<input checked="" type="checkbox"/> Review of the adjudicator's decision <input checked="" type="checkbox"/> Review of the sanctions imposed by the adjudicator
Applicable version of the Code	v16.6
Clauses considered by the panel	8.8
Related complaints considered	n/a
Amended sanctions	R10,000.00 fine for breach of clause 8.8 set aside.
Appeal fee	Appeal fee to be refunded in full.
Is this report notable?	Not notable.
Summary of notability	n/a

## Initial complaint

1. The Member was found by the Adjudicator to have breached clauses 4.9 (c), 5.4; 5.5; 8.8; 12.1 of the WASPA Code of Conduct and was fined a sum of R10 000 for each breach. However, the Member has only appealed the Adjudicator's finding in respect of a breach of clause 8.8.
2. The relevant submissions made by the Complainant in the initial complaint in regard to the alleged breach of clause 8.8 may be summarized as follows:
  - 2.1 The tester clicked on a link on a landing page used to promote the service which is the subject matter of the initial complaint and which appeared below the following 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..."*
  - 2.2 The tester clicked on the link to access the full terms and conditions for the Member's subscription service.
  - 2.3 Under the "Service Description" section in the full terms and conditions, it was stated that the subscription service has more than 600 games.
  - 2.4 On the bottom of the subscription landing page, it also states the following: *"Join Baseplay Games and Enjoy"*.
  - 2.5 No mention is made of any anti-virus or virus cleaning/removing service.
3. In its response to the initial complaint, the Member submitted that the landing page gives a description of the offering, that being: *Games, Apps, Videos and Community*. The service offered in the landing page, called Mobile Shield, is a virus detection application which is available to members of the Baseplay Games service and can be accessed in the "Apps" section of the portal. Therefore, the Member does not perceive itself to be in breach of clause 8.8 of the Code.

4. The Member also submitted that the Complainant claimed that the terms and conditions for the service does not state Virus Scanner, but instead refers to 600+ Games, and claimed that the terms only mentioned games. But the tester only reviewed the abbreviated terms and appears not to have reviewed the full terms. The Member submitted that there is nothing under clause 5.7 of the WASPA Code that states that a member has to define the product within the terms and conditions.
  5. The Member also noted that since no subscription was initiated by the tester, they could not claim that the Member was not offering the service advertised on the landing page. The Member confirmed that users who successfully subscribe would have access to the advertised product.
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### **Adjudicator's findings**

6. In respect to the alleged breach of clause 8.8 of the Code of Conduct, the Adjudicator made the following finding:

*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.*

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### **Appeal submissions**

#### *Member's submissions*

7. Although the Member has stated that it is appealing the sanctions imposed under clause 8.8, it is clear from the substance of the Member's appeal submissions that it is also appealing the findings of the Adjudicator on the merits in respect of the breach of clause 8.8 and not just the sanctions imposed by the Adjudicator for this breach.
8. The Member made the following further submissions on appeal:

- 8.1 The product advertised on the landing page is available within the portal “*Baseplay Games*”, and forms part of the products available to consumers who become subscribers to the Baseplay Games service.
- 8.2 The Member again referred to the text displayed on the landing page, which clearly provides a description of products available within the portal, being *Games, Apps, Videos & Community*.
- 8.3 Baseplay Games is a store where subscribers can access a range of products and services for use.
- 8.4 By the fact that the portal contains a solution allowing users to download an application that can help protect their device from viruses or such like, the Member does not perceive there to be a breach of clause 8.8 of the WASPA Code.
- 8.5 In all the Member’s advertising, a user, potential user or even a tester, has the ability to view the abbreviated terms displayed on the landing page, which in turn contains a link to the full terms and conditions of the service.
- 8.6 The tester was “fixated” with the description relating to the number of games available within the portal and did not highlight in their report that the terms and conditions also highlighted other products available to users, such as videos and apps, as was advertised on the landing page.
- 8.7 The Member argues that, based on the tester’s theory and the subsequent viewpoint of the Adjudicator, it would appear that having any apps within the portal would be in breach of clause 8.8, as would be the case if there were video tutorials relating to games or video reviews of games available across all platforms e.g. Playstation, Nintendo etc.
- 8.8 The advertising does promote products that are available within the portal.
- 8.9 The tester did not complete the journey and therefore it would be impossible for them to state if the content advertised was not offered.

- 8.10 In conclusion, the product advertised was available to the user, and forms part of the product set across the greater product range on offer, and the clause in itself relates to the product and/or content offered, which we have stated is readily available within the portal.
- 8.11 The name of the service is irrelevant as the service offers a wide range of products.
9. The Member requests that the findings made by the Adjudicator in this case are reversed based on the fact that the content promoted and offered is available to a subscribed user.

#### *Complainant's submissions*

10. The Complainant was given an opportunity to respond to the Member's submissions on appeal, but did not offer any further submissions.

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### **Deliberations and findings**

11. On the basis of the evidence presented, the panel is satisfied that the Member is not in breach of clause 8.8 since the application promoted on the landing page is offered as part of the subscription service promoted.
12. The landing page clearly states that the subscription service promoted gives a customer access to other products and services, not only games. It is also not reasonable to expect the Member to list all of the apps, games and videos that may be offered after subscription to the service takes place.
13. The Complainant did not provide any evidence in the initial complaint that the tester was not able to download or access a virus scanner application after subscribing to the service.

14. The Complainant also did not offer any evidence to contradict the Member's evidence that a virus detection application, called Mobile Shield, was made available to subscribers of the Baseplay Games service.
  15. The panel is therefore satisfied on the basis of the information and evidence provided that the Member is not in breach of clause 8.8 of the Code of Conduct and the findings of the Adjudicator in this regard are overturned.
  16. The Member's appeal is accordingly upheld.
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### **Amendment of sanctions**

17. Based on the finding of this panel on the merits, the sanction imposed by the Adjudicator for the Member's breach of clause 8.8, i.e. a fine of R10 000, is also reversed.
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### **Appeal fee**

18. The Member has been successful with its appeal and is therefore entitled to a full refund of the appeal fee.
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