



REPORT OF THE ADJUDICATOR

WASPA Member (SP) MiraNetworks
Information Provider (IP) www.eyespy.co.za
(if any)
Service Type Content download
Source of Complaints Public
Complaint Number #0181

Complaint

The Complaint was lodged on 20 February 2006 and relates primarily to section 4 of the WASPA Code of Conduct. It is, perhaps, noteworthy that it appears that the Complainant was advised to pursue the Complaint by one of the cellular network companies.

The detailed description of the Complaint as provided reads as follows:

"We believe most of Section 4 are being breached.

"We believe a service is offered through the short code 40441 which is technically unable to provide the promoted tracking of vehicles. We did a few tests and in each case R20/SMS were charged to the requesting cellphone's account. The information returned to the system were in each the same - "No we do not have any record of car registration number (xxxx), keep checking we update our database every 2 weeks."

The Eyespy Website does not provide the required details to contact them or the service provider."

The "Eyespy Website" referred to above is to be found at www.eyespy.co.za

SP Response

The SP provided the following response:

“1. I am not sure what they mean by section 4 ? Section 4 of what.

2. Contact detail : I will inform the client to put additional contact details on the site / at present there is an email address.

3. Service :

Looking at the complainant they are a telemetric company, operating vehicle management solutions. In this respect, eyespy does not use cellphone tracking what so ever. The system utilises manual collection of locations (e.g. Teasers) and vehicles there. Consumers can check weather cars have been at the location. It is communicated that the database is updated every 2 weeks.

It is hence technically feasible to operate the service.

I suggest that the complainant get their facts straight on this matter, as this is time consuming.

I do believe that the website has enough detail to portray this to a consumer.”

This was later amplified with the following additional comment:

“To Reiterate, information on location is collected manually at locations around the country and updated periodically. This includes most strip places and the like. This is the way they punted the service.

Hence, this is not about vehicle tracking or phone tracking as you can see.”

Sections of the Code considered

The following sections of Version 3.2 of the WASPA Code of Conduct were considered:

3.3. Service levels

3.3.1. Members will not offer or promise services that they are unable to provide.

4. Customer relations

4.1. Provision of information to customers

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

Decision

After reviewing the web site situated at www.eyespy.co.za I am not at all convinced that the information presented on this web site makes the nature of the service offered sufficiently clear to consumers.

The home page of the web site sets out the following information:

“Got a Sneaky Suspicion?

If you suspect your partner of cheating EYESPY may be able to help.

SMS Vehicle Registration Number to

40441

SMS Cost R 20 | Errors are billed

Database updated every 2 weeks.”

“Available from 13th December in South Africa's major centres; Johannesburg - Pretoria - Cape Town - Durban - Port Elizabeth - Bloemfontein.

EYESPY is new, organised technology, at your service.”

Also available for download from the home page is a 1.1 Mb Windows Media format file which is “the first episode from the triptych of EYESPY ads”. Without making any finding on whether the provision of information in this manner is acceptable, it is evident that the advert does very little to clarify the nature of the service being provided.

The “Contact Us” page of the web site (situated at <http://www.eyespysa.co.za/disclaimer-help.html>) sets out the following:

“Disclaimer and Additional Help

We at EYESPY, www.eyespysa.co.za, our advertisers and service providers and for that matter everyone else on our bankroll, does not condone or accept any responsibility for harmful, malicious or illegal activity, damage or injury to persons or property based on or caused by the intelligence, information and services presented by EYESPY. Capiche?

SMS Cost R 20 | Errors are billed

Our tactical support centre's number will be released as soon as we are sure that it is secure and reliable, in the meantime you can email questions to our web goon [webmaster@eyespysa.co.za]....

The only other page on the web site (<http://www.eyespysa.co.za/where-is-my-partner.html>) contains a large picture file and the text “[w]ho is looking after you?”.

There was no further information provided on the web site at the time of review, being 30 July 2006.

Section 4.1.2 of the Code requires that Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission. To my mind the lodging of the Complaint gives at least a prima facie indication that the information provided on the web site is misleading through the omission of information and/or the ambiguity of the information presented.

In reviewing the matter I do not believe that the IP has indulged in false advertising in the sense that it is unable to provide the service which it claims to be able to. Rather

it is a case of the promotional information presented being of such a vague nature that a reasonable consumer coming across the web site is likely to be confused as to how the service actually operates. Given the high cost of access to the service this is a serious matter. Furthermore the relative ease with which further information could have been provided gives rise to an inference that the IP has knowingly attempted to mislead consumers.

It is accordingly found that there has been a breach of Section 4.1.2 of the Code in that the manner in which the information about the service is disseminated is likely to mislead by ambiguity and/or omission. In reaching this conclusion I have not adopted the specific perspective of the Complainant (as a vehicle management solutions company providing telemetry services) but rather the less knowledgeable perspective of the reasonable consumer. There is, in my opinion, a high likelihood of consumers utilising the service without properly understanding the manner in which it operates.

It is also apparent that there is a breach of Section 4.1.3 in that the full contact details are not displayed. It would appear that this failure not been remedied since the time of the lodging of the Complaint notwithstanding the SP's statement that it would request its customer to place additional contact details on the site.

In the Report in respect of Complaint #0045¹ the Adjudicator held as follows:

"The Adjudicator accepted that an SP cannot check every MSISDN that is sent an SMS message using its system, however it is ultimately the SP who is responsible for the actions of its clients. Certain SP's deal with this by contractually binding their clients to the WASPA Code of Conduct, contractually obligating their clients to pay fines that may be levied on the WASPA member, or even taking a security deposit or withholding revenue (if the service generates revenue) to cover possible fines. The responsibility for enforcing compliance with the WASPA Code of Conduct on the SP's clients rests with the SP and not with WASPA.

I cannot find anything to suggest that the SP has taken its responsibility for enforcing compliance on its clients seriously.

¹ See <http://www.waspa.org.za/code/download/0045.pdf>

The Complaint is accordingly upheld in the two respects outlined above.

In considering the imposition of an appropriate sanction I have taken into account the following:

- The absolute paucity of information of the www.eyespy.co.za web site and the relative ease with which further clarifying details in respect of the service provided could have been set out on such web site;
- The failure to take any corrective action subsequent to the lodging of the Complaint; and
- The high access cost of using the service.

The following sanctions are imposed:

- The SP is ordered to ensure that the IP, within five (5) days of date hereof, take such steps to remedy the informational deficiencies on its web site as outlined above;
- The SP is further required to ensure that it takes all reasonable steps to ensure that its clients are aware of the provisions of the WASPA Code of Conduct and that they will comply therewith. This duty extends further to the client's of the SP's clients with which the SP may not have a direct contractual relationship.
- The SP is fined an amount of R12 500.00 in respect of its breaches of clauses 4.1.2 and 4.1.3 of the WASPA Code of Conduct. This fine is payable to the WASPA Secretariat within five (5) days of the date of issue of this Report.