



REPORT OF THE ADJUDICATOR

Complaint reference number:	16181
WASPA member(s):	Victorious Technologies
Membership number(s):	0138
Complainant:	WASPA Media Monitor
Type of complaint:	Website advertising
Date complaint was lodged:	2012-01-20
Date of the alleged offence:	2012-01-19
Relevant version of the Code:	11.6
Clauses considered:	6.2.2, 11.1.1, 11.9.4
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	Not applicable

Complaint

1. This complaint was lodged by the WASPA Media Monitor ("the Monitor") after a series of tests conducted on the member's website indicated that it was not compliant with the WASPA Code of Conduct. The results of all tests conducted were provided to the Secretariat and are available to the adjudicator.
2. The Monitor highlighted what she regarded as breaches of the following clauses of version 11.6 of the Code:
 - 2.1. 6.2.2: all advertisements for services do not include the full retail price of such services.
 - 2.2. 11.9.4: the opt-out system used did not recognise terms other than STOP in an opt-out request.
 - 2.3. 11.1.1: the subscription service offered by the member was not prominently and explicitly identified as such.

3. The Monitor indicated that tests on the member's mobile service had commenced on 30 March 2011, with the final test being conducted on 19 January 2012. The following summary of the tests undertaken was provided:

"TEST 1: 30 March 2011 no billing information was supplied.

TEST 2: 6 April 2011 the billing information error remained (but could be viewed in the T&C s [in the wrong format])

TEST 3: 11 April 2011 The billing information was put into the correct area, in the correct format.

TEST 4: 26-27 July 2011 The site reverted back to the original state (with no billing information), but did not work (see linked conversation in the mail). The issue was never resolved because the service was inactive.

19 January 2012 The current test as provided."

4. The Monitor expressed the view that the test reports indicated that the member was a repeat offender:

"The adjudicator will see REPEAT OFFENSES from 30 March to current, and it is clear that VT Mobile are disregarding WASPA requirements."

Service provider's response

5. The WASPA member apologised for what it claimed was an unintended technical error which led to the omission of the required pricing information:

"We would like to apologize for the error occurred on our Web page regarding the missing information on our subscription services. I would like to assure you that this was not done deliberately it was an error occurred when upgrading our site and some of the information was omitted when uploading the site on the 10 of January 2012

We take responsibility of our mistake and there for we will refund all clients who subscribed during this period and are not satisfied.

Site was suspended immediately after receiving your email on the 20/01/2012 at 10:20 and we shall notify you by end of business today to be checked before we continue with our subscription.'

6. The member provided screen shots intended to highlight the steps it had taken to remedy the breaches identified by the Monitor. It also provided examples of other advertising materials used to promote its services both as an aggregator and a subscription and content service provider.
7. In conclusion the member stressed that it took compliance with the Code seriously, was implementing changes and would ensure that a breach of this nature did not occur again.
8. The Monitor filed the following rejoinder, whereafter the matter was referred for formal adjudication:

"Neither the old or new website is abiding by the code of conduct and in my opinion is in breach of the following clause:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as \"subscription services\". This includes any promotional material

where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

The blackberry screen shot in their response features copy displayed "R3 for 4 days". This should read "R3 every 4 days". Consumers may think that they'll pay R3 for being part of the service for 4 days, only.

We have been through this process with VT Mobile before, unsuccessfully. With this in mind, please proceed to formal adjudication as soon as possible please."

Sections of the Code considered

The adjudicator regards the test undertaken on 19 January 2012 – as opposed to any of the previous tests – as forming the basis of the complaint. The version of the Code in force at that time was version 11.6 and the following sections were considered:

6.2.2. All advertisements for services must include the full retail price of that service (Repeat offence).

11.9.4. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in a request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

Decision

9. The member has admitted the breaches of the Code raised by the Monitor. This has been done explicitly in respect of section 6.2.2 and implicitly – through its failure to respond with regard thereto – in respect of sections 11.1.1 and 11.9.4.
 10. There is no indication from the member that it has understood the exact nature of the complaints made in respect of the latter two sections. Certainly it does not appear that the amendments made to the site as evidenced by the screenshots provided have had the effect of ensuring that promotional material for subscription services prominently and explicitly identifies the subscription nature thereof.
 11. The member joined WASPA on 10 March 2011 and has had sufficient time to ensure that all of its systems are compliant with the requirements of the Code.
 12. The member's claim that the latest set of breaches occurred as a result of a technical oversight does not excuse conduct which has taken place over an extended period of ten months and which was evident on 19 January 2012. The member's claim relates to January 2012 and does not explain the results of the testing on 26-27 July 2011 which indicated that pricing information previously published was no longer available on the site.
 13. The member is found to have breached sections 6.2.2, 11.1.1 and 11.9.4 of the version 11.6 of the Code, based on the last tests undertaken by the Monitor.
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Sanctions

14. The following factors were considered in arriving at a suitable sanction:

- 14.1. This appears to be the first complaint lodged against the member.
- 14.2. While the Monitor's characterisation of the breaches identified in her last test as "repeat offences" is not completely accurate as the offences alleged by the Monitor have not been confirmed through a formal adjudication, the Monitor has provided the member with a number of opportunities to remedy what are patent defects.
- 14.3. There is evidence that the member has taken some remedial steps and that it is making an attempt at compliance. The adjudicator visited www.vtmobile.co.za on 25 March 2012 and noted that further amendments had been made relating to indicating the nature and cost of the service.
- 14.4. The member's reaction to receipt of the formal complaint – it suspended the service and made an offer to WASPA that it would "refund all clients who subscribed during this period and are not satisfied".
- 14.5. There is a long line of decided adjudications emphasising the seriousness of breaches of sections 6.2.2 and 11.1.1 of the Code. It is critical to the continued success of the industry that WASPA members provide consumers with all required information to allow informed choice when evaluating whether to join a subscription service.
- 14.6. The adjudicator has reviewed sanctions imposed in similar matters.

15. In the circumstances the following sanction is imposed:

- 15.1. The member is fined R20 000, payment of which is suspended subject to the member not being found to have breached sections 6.2.2, 11.1.1 and 11.9.4 of the Code or their successors in respect of conduct occurring before 1 January 2013.
- 15.2. The member is required to send out a once-off SMS message to each person on its subscriber base in the same format as set out in section 11.6.2 of version 11.6 of the Code within five (days) of date of notification of this adjudication. Confirmation that this has been done as well as the text of the message must be provided to the WASPA Secretariat prior to the expiry of this period.
- 15.3. The member is required to follow through on its statement that it will provide a refund to any subscriber that signed up during the period of non-compliance and who indicates that they are not satisfied with the service.

16. The member is strongly encouraged to obtain qualified professional advice relating to compliance with the WASPA Code of Conduct. Future breaches relating to subscription services will be more harshly dealt with.