



ADJUDICATOR'S REPORT

Complaint reference number:	24023
WASPA member(s):	Interband Enterprises LLC (IP) (1315) / Mira Networks (Pty) Ltd (SP) (0011)
Complainant:	Monitor
Type of complaint:	Subscription service
Date complaint was lodged:	2014-05-20
Date of the alleged offence:	2014-05-15
Relevant version of the Code:	12.4
Clauses considered:	4.1.1, 4.1.2, 6.5.1 and 11.1.1
Relevant version of the Ad. Rules:	Not relevant to this dispute
Clauses considered:	Not applicable
Related cases considered:	24103 and Appeal panel's report for complaints 15477, 15722, 16851, 16977, 17184 and 17236 dated 2013-10-04 ("Appeal Report")

Complaint

This complaint was lodged by the Monitor. It concerns a campaign which is substantially similar to the campaign addressed in complaint 24103. This complaint was described as follows:

Date of breach: 20 May 2014

WASP or service: Interband (Mira Networks)

Clauses breached: NEW BREACHES:

14.9.7. If the Media Monitor is not satisfied that the \"Heads Up\" complaint has been

satisfactorily resolved then the Media Monitor may either give the member a further two working days to resolve the matter, or proceed to lodge a formal complaint, as described in sections 14.1 and 14.3 of the Code.

ORIGINAL BREACHES:

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential 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.

6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

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

Description of complaint:

Dear Complaints

Please can you escalate Heads Up HU259 to this formal complaint.

Interband undertook to revise on 14 May, but as of today 20 May, NO MARKETING has been changed.

Please include all correspondence from Heads Up HU259. Original test result also attached.

Herewith links again:

http://www.appfree.me/wap3/nomsisdn_norm.php?product=RESOFT&id_tx

http://www.appfree.me/wap2/nomsisdn_norm.php?product=RESOFT&id_tx

http://www.appfree.me/wap4/nomsisdn_norm.php?product=RESOFT&id_tx

http://www.appfree.me/wap6/nomsisdn_norm.php?product=RESOFT&id_tx

http://www.appfree.me/wap7/nomsisdn_norm.php?product=RESOFT&id_tx

http://www.appfree.me/wap8/nomsisdn_norm.php?product=RESOFT&id_tx

http://www.appfree.me/wap9/nomsisdn_norm.php?product=RESOFT&id_tx

http://www.appfree.me/wap10/nomsisdn_norm.php?product=RESOFT&id_tx

PROBLEMS WERE/ARE:

The process used is in clear violation of the WASPA Code of Conduct.

Having billing information shown for a mere 3-4 seconds is not sufficient.

The average customer would overlook/not see all the information and end up subscribing to a service they do not expect to pay for.

Please also note additional breaches for not complying to the heads up process.

The campaign is described in Annexure "A" to this report.

Service provider's response and further developments

Interbrand appears to have given undertakings to make changes to the landing pages the Monitor identified as problematic prior to the complaint being escalated to a formal complaint. Interbrand sent an email to the Secretariat on 20 May 2014 pointing out that only three days had elapsed since it undertook to make changes to the campaign pages. The Monitor wrote to the Secretariat on 28 May 2014, indicating that the changes had still not been made to the landing pages.

Interbrand replied on the following day, refuting the Monitor's contention that the pages had not been altered and, to the contrary, stated that its provider had confirmed that the changes had been made. Interbrand attached a screenshot reflecting terms and conditions and pricing information on the page in which a consumer would type in a phone number to initiate the subscription process.

I attempted to view the pages using the links the Monitor included in her complaint and the pages did not resolve. They seemed to have been taken offline.

Interbrand did not make any submissions regarding the specifics of the complaint aside from its limited correspondence concerning the changes to the relevant pages.

Sections of the Code considered

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential 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.

...

6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

...

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.

Sections of the Advertising Rules considered [if applicable]

Not applicable

Decision

With respect to the clause 6.5.1 complaint, it isn't clear why the Monitor raised this particular issue. Reviewing the screenshots the only conclusion I can draw is that she regards the website domain as a breach of this clause: appfree.me. The service is called "NewApp" in the text on the page, not "AppFree". In the absence of any further submissions regarding this alleged breach of the Code, I don't believe that having the word "free" in the domain name where there doesn't seem to be any other reference to "free" on the various mobile pages to be a breach of this clause of the Code.

With respect to the balance of the complaint, a portion of the report on complaint 24103 is both relevant and applicable here too as the underlying campaign in that complaint was substantially similar to the campaign that gave rise to the present complaint. In 24103, I considered input from an emergency panel which didn't assess this complaint.

Based on the Monitor's and emergency panel's description of the initial encounters with the subscription service mechanism, the one page that displays the subscription cost, describes the service as a subscription service and sets out important terms and conditions is automatically replaced by the next page that contains the so-called "call to action" link that triggers the subscription mechanism the IP describes in its response to the complaint.

Even if I accept that the page with the call to action link lacked this important subscription information and terms and conditions due to a "design error" (this is somewhat dubious), the automatic transition to this erroneous page coupled with the lack of meaningful information about the service places prospective subscribers at a disadvantage.

Clauses 4.1.1 and 11.1.1 have a similar theme. They either require text that "clearly and accurately" conveys pricing information or that "prominently and explicitly identify the services as

'subscription services'. In the Appeal Report, the appeal panel provided guidance on clause 11.1.1, in particular the prominence requirement, which included the following:

We considered these arguments and wish to provide the following guidelines:

1. The purpose of the prominence of the subscription services is to alert the consumer to the potential cost in a manner that would not be easily overlooked. As a result the caveat subscriptor rule is not an appropriate test. Rather, adjudicators should prefer the more recent approach of the Consumer Protection Act in ensuring that important or unusual terms are highlighted and drawn to a consumer's attention.

2. We consider the cost of the subscription to be a very important aspect of the service and this aspect must always be highlighted. The requirement to highlight the fact that this is a subscription service and what the cost of the subscription service is, is emphasised by chapter 9 of the Advertising Rules (version 2.3).

The automatic transition away from a landing page that contains the information about the subscription service and its applicable terms and conditions glosses over that important information in favour of progressing a prospective subscriber to a stage in the process where he or she would be enticed to click on the call to action link and initiate the subscription process. The IP essentially argued that the double opt-in process that follows would satisfy the Code's requirements for an informed and deliberate subscription but that process does not form part of the complaint. That said, glossing over the catalyst for the subscription on the assumption that the balance of the subscription process will meet the Code's compliance requirements does not constitute "honest and fair dealings" with consumers.

The Appeal Report continued with the following as part of its guidance on the "prominence" requirement in clause 11.1.1:

5. As a result it would appear that WASPA members have assumed that the subscription services text may be placed anywhere on the email or Web page if no unique access number or Content access code exists. We can not support this approach. Clearly a member is still required to place the subscription service text in a position of prominence

...

The IP's assumption that the subsequent subscription process, compounded by the fleeting subscription information on the initial page is analogous to the sort of assumptions that the appeal panel dealt with in the Appeal Report. "[H]onest and fair dealings" with consumers include giving consumers an opportunity to manually advance a page containing subscription information and important terms and conditions, not automatically advancing the page in a rush to reach the call to action page that triggers the subscription process. Going further, the automatic transition de-emphasises the information on that page, it doesn't make it prominent.

The IP's failure to include this important subscription information on the page containing the call to action link, its "design error", coupled with the impression the content on that page is likely to create (namely that by submitting a phone number, the consumer will be granted access to "the Virus Scan App") is an omission "that is likely to mislead" consumers.

In the circumstances, I find the IP has breached clauses 4.1.1, 4.1.2 and 11.1.1 of the Code.

I similarly find that Interbrand has breached clauses 4.1.1, 4.1.2 and 11.1.1 of the Code with the campaign that underpins this complaint.

Sanctions

In complaint 24103 I fined Interbrand R50 000 for its breaches of clauses 4.1.1, 4.1.2 and 11.1.1. Taking this sanction into account and this complaint's proximity with complaint 24103, I do not believe it is appropriate to impose a further fine on Interbrand. Doing so may well constitute a double penalty for what is essentially the same complaint.

I also understand that Mira Networks no longer renders services to Interbrand and, as I mentioned earlier in this report, the campaign no longer seems to be online. The potential harm to consumers appears to have been substantially curtailed.

Mira Networks– Interband WhatsappService Test

15 May 2014

Number: NA

AirtimeBalance: NA

SMS Code: 44558

Name: Mira Networks

Marketing:

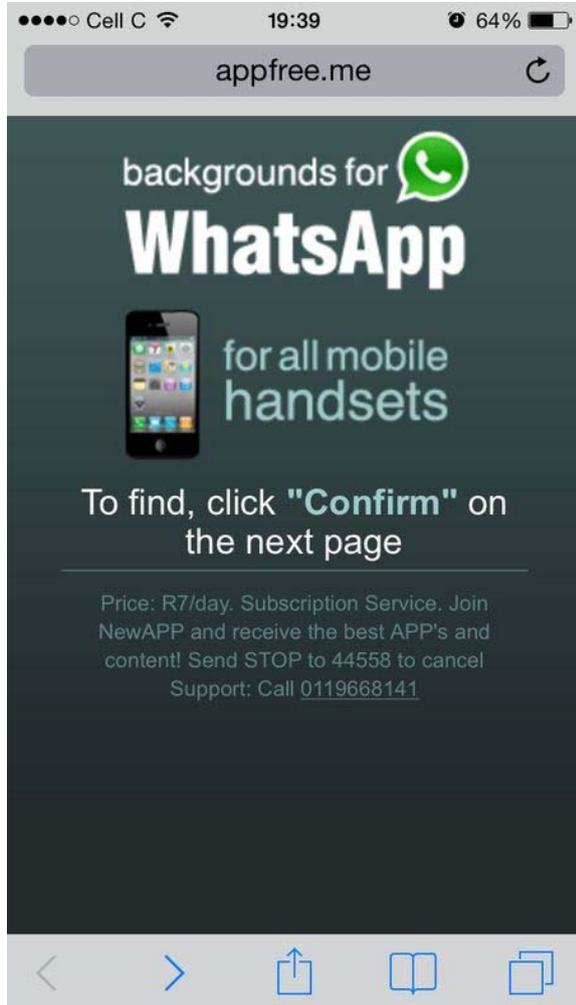
I came across the following banner advert.



For ease of reference I shall label the following screenshots.

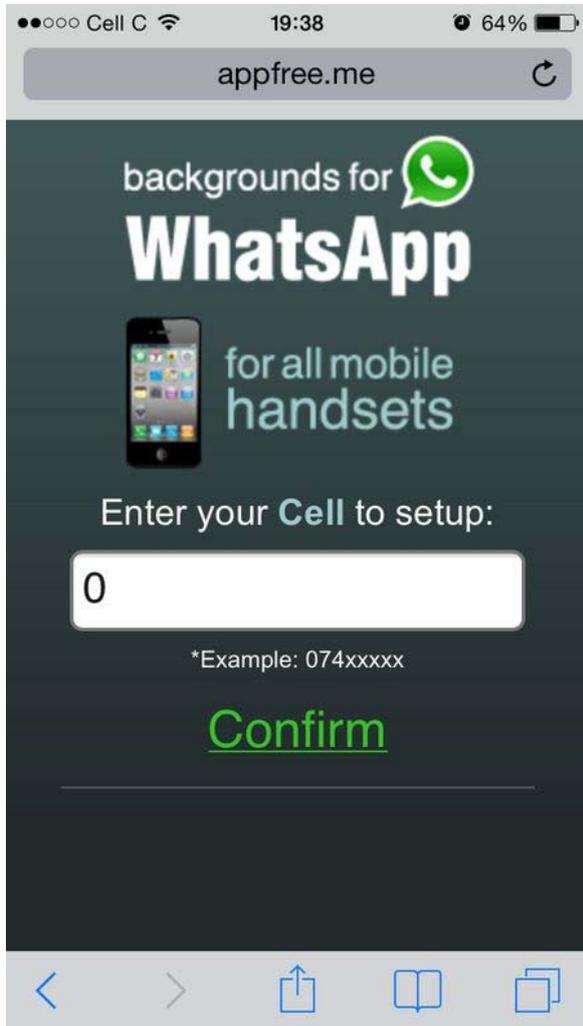
I click on the link and am taken to the following page:

1.



The user is then, instantly, redirected to a second landing page (see below 2.) – the page above (1.) is seen for a brief moment.

2.



As is required by the WASPA Code of Conduct, the page depicted in screenshot 2. should feature all information.

The page above has no billing information.

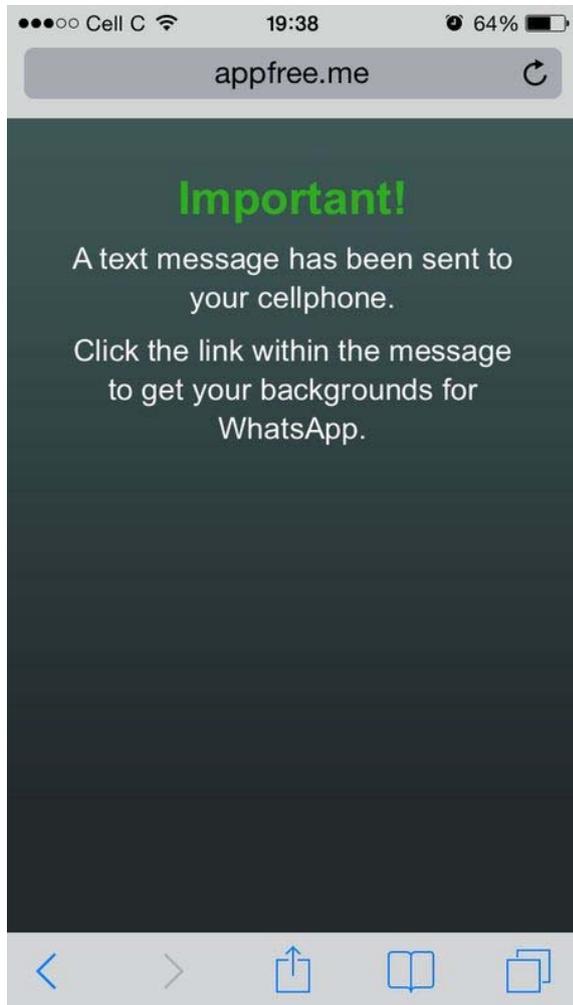
4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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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.

Once your number has been input the user is taken to the following page:

3.



The process shown above is a clear violation of the WASPA Code of Conduct.

Having billing information shown for a mere 3-4 seconds is not sufficient.

See below for another example of a non-compliant landing page supplied by Interband:



Conclusion:

The process used is in clear violation of the WASPA Code of Conduct.

Having billing information shown for a mere 3-4 seconds is not sufficient.

The average customer would overlook all information and end up subscribing to a service they do not expect to pay for.

Breaches in the Code:

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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