



Adjudicator's Report

Complaint reference	25147
WASPA member(s)	Mypengo Mobile BV (IP) (1429) / Mira Networks (Pty) Ltd (SP) (0011)
Complainant	WASPA Monitor
Type of complaint	Misleading marketing and a breach of the Code
Date complaint lodged	2014-09-19
Date of alleged offence	2014-09-19
Relevant Code version	13.1
Clauses considered	5.4, 5.5, 12.1 and 12.2
Related cases considered	

Complaint

The Monitor lodged this complaint with the Secretariat concerning Mypengo's subscription service which is presented as a service that identifies viruses on the consumer's mobile phone. The Monitor argued that the service is misleading and doesn't present pricing information in compliance with the Code.

The Monitor submitted screenshots of the service in her complaint specifics which I have attached to this report and marked Annexure "A". Here are the details of the complaint as presented by the Monitor:

The above could potentially lead the service to be found in breach of the following clauses of the WASPA Code of Conduct (version 13.1). See clauses and explanations below.

5.4. Members must have honest and fair dealings with their customers.

1. Using misleading marketing to ensure that the consumer misses billing information is not considered honest dealings with 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.

2. Stating that the customer has 13 viruses on their phone before a scan has been performed is clearly a deceitful act.

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. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action.

3. Pricing information is neither clearly nor 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.

4. Placing pricing below the scroll, requires extra examination to find.

5. Pricing is being obscured by information, due to the fact that all information above it is displacing it below the scroll.

Conclusion:

The cost of access is displayed adjacent to the call to action, however, due to the formatting of information, the cost of access is hidden below the scroll.

This could mislead (by omission) the consumer into thinking this service is free.

Additionally, due to the fact that the marketing leading up to this landing page is of the nature that would incite a feeling of fear due to the "Consumer having 13 viruses on their phone", the consumer would rush through this process missing all billing information.

The above could potentially lead the service to be found in breach of the following clauses of the

WASPA Code of Conduct (version 13.1).

REQUIREMENTS:

The media monitoring team would like to request that this service is suspended with immediate effect, while revision are being made.

Member's response

Mypengo responded to the complaint on 22 September 2014. I have attached Mypengo's response as Annexure "B".

Mypengo's defence, essentially, are that –

1. Mypengo's "external marketing partners" failed to submit the marketing material that forms the subject matter of this complaint for approval before publishing the campaign it forms part of; and
2. the marketing material is not misleading as "the pricing is visible without scrolling".

Mypengo's suggestion that it should not be liable for any breach of the Code because it was not briefed on this specific campaign is disingenuous. Mypengo, as a WASPA member, has a responsibility to ensure that its campaigns and services are compliant with the Code and if its "external marketing partners" fail to submit marketing materials for review, Mypengo must remedy this.

Sections of the Code considered

This complaint is governed by version 13.1 of the Code which is a redraft of the Code. The Monitor identified the following clauses of the Code which, allegedly, have been breached:

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.

12. Web advertising

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. For all other services, where there is a call-to-action,

pricing information must be clearly and prominently displayed immediately 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

The service presents as a sort of anti-virus scan and, as the Monitor pointed out, a consumer is advised that he or she has a number of unspecified viruses on his or her device and should take action to “remove the virus”. This warning is given without the service actually having had an opportunity to scan the consumer’s device so it is not based on a specific device analysis.

This isn’t the entirety of the service, though. The next part of the complaint is that the relevant pricing information is not adequately displayed and the cumulative effect of this is to mislead consumers. Mypengo seems to have focused on the location of the pricing information rather than what the service purports to do. It presumably believes that the service’s messaging is not misleading either.

Mypengo withdrew the campaign after the complaint was lodged.

Is the service misleading?

Between sections 5.4 and 5.5 of the Code, I see section 5.5 as informing 5.4. The central questions are whether Mypengo “knowingly disseminate[d] information that is false or deceptive” or whether the manner in which the service is presented “is likely to mislead by inaccuracy, ambiguity, exaggeration or omission”.

As the Monitor pointed out, the service informs consumers that they have viruses on their devices and ostensibly offers them an opportunity to remove those viruses by submitting their information to the service and, in the process, subscribing to what turns out to be a content subscription service.

The landing pages indicate that the service is both a sort of advisory service in that it informs consumers about viruses on their devices (which doesn’t appear to be factually correct or technically possible given that the consumer has not given the service an opportunity to interface with his or her device) and then offers to remove them when the consumer submits his or her mobile number to the service. Submitting a mobile number seems to lead to an activation of a content subscription service. This consequence is not

apparent from the virus/antivirus messaging.

The service's messaging is both factually incorrect (regarding the presence of viruses), misleading (in that it presents as a means to remove viruses while being a content subscription mechanism) and fails to adequately inform consumers about its underlying nature as a content subscription service. This is a breach of section 5.5 of the Code.

Flowing from this breach of section 5.5 of the Code, I also find that Mypengo has not maintained "honest and fair dealings" with its customers and has breached clause 5.4 of the Code.

Is pricing information adequately displayed?

In this case, the key requirement is in section 12.1 of the Code:

where there is a call-to-action, pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action

In this case the call to action appears to be a "Download" button. Pricing information is presented immediately below this button, namely "Subscription service R5/day". When it comes to pricing information, the Code specifies the following formatting requirements:

8.2. For a subscription service, the "pricing information" consists of the word "subscription" and the cost to the customer and frequency of the billing for the service. The cost and frequency portion of the pricing information must follow the following format, with no abbreviations allowed: "RX/day", "RX/week", or "RX/month" (or RX.XX if the price includes cents). For services billed at an interval other than daily, weekly or monthly, the required format is "RX every [time period]", with no abbreviations permitted when specifying the time period. Examples of pricing information: "Subscription R5/week", "R1.50/day subscription", "RX every three days", "RX every two weeks".

It appears that Mypengo has satisfied this particular requirement. The pricing information is immediately below the call to action and conforms to the Code's formatting requirements. Section 12.2 expands on 12.1.

I don't agree that the service has breached clause sections 12.1 and 12.2.

Summary

I find that the service has breached sections 5.4 and 5.4 of the Code.

I do not find a breach of sections 12.1 and 12.2 of the Code.

Sanctions

I impose a fine of R25 000 on Mypengo on the basis of its breach of sections 5.4 and 5.5 of the Code. This fine is payable on demand by the Secretariat.

Annexures

Mypengo Mobile–Anti-Virus Service Test

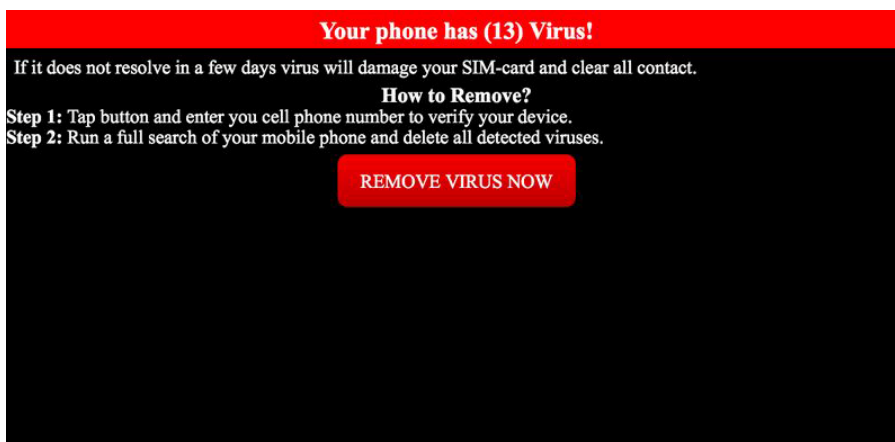
19 September 2014

IP: Mypengo Mobile

SP: Mira Networks

MSISDN: NA

The following page was reached after clicking an in-app banner advert.



The marketing above is considered misleading.

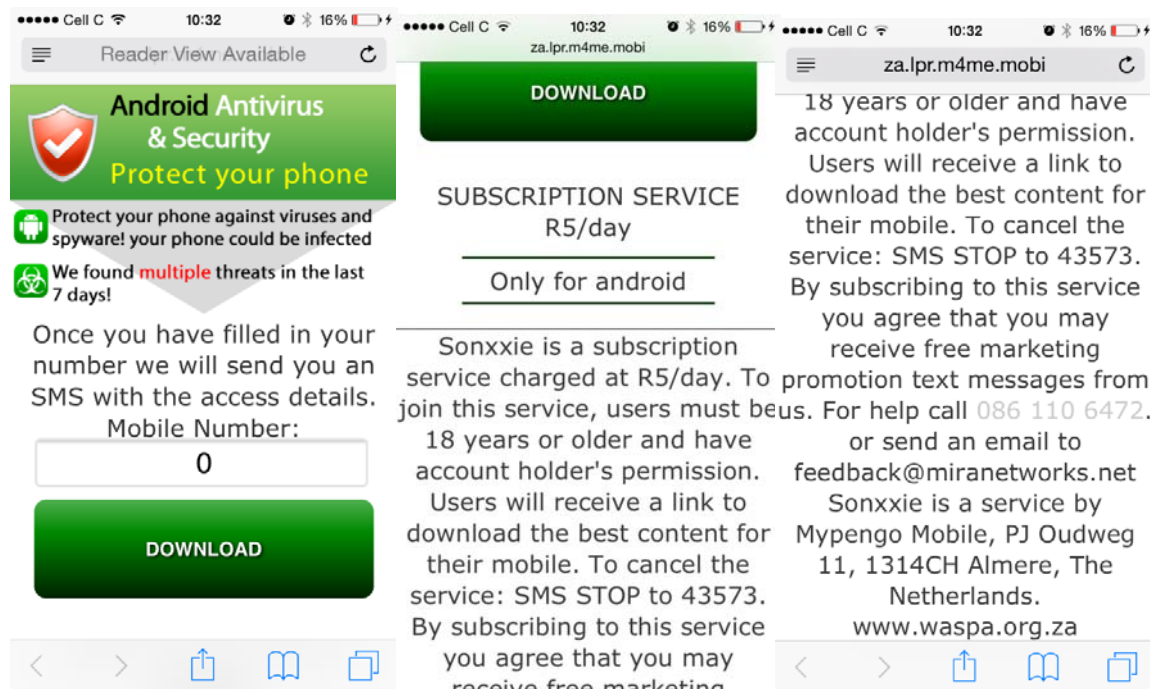
A scan has not yet been performed on my phone by the application described in this process, therefore, the application is unable to know whether I have viruses on my phone (and more so, how many there are) or not.

I then clicked on REMOVE VIRUS NOW.

I was taken to the following landing page:

URL:

<http://za.lpr.m4me.mobi/render/land?service=Sonxxie&product=Virus1&customerID=8c520f9198b9f7c868b8ddd45ee8d66>



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Additionally, due to the fact that the marketing leading up to this landing page is of the nature that would incite a feeling of fear due to the "Consumer having 13 viruses on their phone", the consumer would rush through this process missing all billing information.

The above could potentially lead the service to be found in breach of the following clauses of the WASPA Code of Conduct (version 13.1). See clauses and explanations below.

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1. Using misleading marketing to ensure that the consumer misses billing information is not considered honest dealings with 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 omission².

2. Stating that the customer has 13 viruses on their phone before a scan has been performed is clearly a deceitful act.

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. For all other services, where there is a call-to-action, pricing information must be **clearly and prominently³ displayed immediately adjacent to the call-to-action.**

3. Pricing information is neither clearly nor 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 examination⁴. **Pricing information must not be obscured by any other information**⁵. 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.**

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Subject: Re: [WASPA.complaints] Subject: [Formal] Aggregator notification for Affiliate member - Complaint #25147

From: "Operations" <operations@mypengomobile.com>

Date: 2014/09/22 04:13 PM

To: <complaints@waspa.org.za>

CC: Poovassan Pillay <poovassanp@miranetworks.net>

Dear Members of WASPA,

We have received the email about the formal complaint lodged against our service. We are very sorry to hear this complaint was filed against our service. We are taking this matter very seriously.

To the accusation about misleading marketing material our response and course of action is as follows:

We work with external marketing partners on who we rely to get traffic to our landingpages. We always request examples of the marketing material to be used, which will need to be approved by us before allowed to use. This material that was attached to the email has not been seen or approved by us. So our partner was running with it without our approval. We have notified the partner responsible and demanded the page to be taken offline immediately. We have received confirmation that this was done. We will take the appropriate action against the marketing partner responsible to prevent this from ever happening again in the future.

As for our landing pages, we do not agree that our pages are misleading. When the page is opened on our iPhones the pricing is visible without scrolling as you can by the screenshot attached. The same goes for Android devices. So we are looking into why in your tests it isn't. We will keep you updated on our progress.

Because of these reasons we ask you to not suspend our service as we did not mislead our customers on our landingpage and have been unaware of the marketing material found by your WASPA team.

Kind regards,