



## Adjudicator's Report

<b>Complaint reference</b>	25349
<b>WASPA member(s)</b>	Mypengo Mobile BV (1429) (IP) / Mira Networks (Pty) Ltd (0011) (SP)
<b>Complainant</b>	WASPA Monitor
<b>Type of complaint</b>	False or deceptive marketing practices
<b>Date complaint lodged</b>	2014-10-28
<b>Date of alleged offence</b>	2014-10-28
<b>Relevant Code version</b>	13.1
<b>Clauses considered</b>	5.4 and 5.5
<b>Related cases considered</b>	25147

### Complaint

The Monitor lodged this complaint with the Secretariat concerning Mypengo's subscription service, Sonxxie, which at first glance looks like the mobile page for the popular messaging service, WhatsApp. The Monitor argued that the service is misleading.

The Monitor submitted screenshots of the service which I have attached to this report and marked Annexure "A". It is important to review the Monitor's screenshots and findings based on the Monitor's investigation. The visual similarities are striking. The Monitor's conclusion, after presenting the service as it appeared to consumers and arguing why it is in breach of the Code, is as follows:

*The initial page is in no way connected to Whatsapp, see the link [vwww.vv\(veevee\)hatsapp.co](http://vwww.vv(veevee)hatsapp.co).*

*As seen within, the consumer is being tricked into believing that they are downloading Whatsapp from a reputable (FREE) update facility.*

*The misleading affiliate advertising is a carbon copy of the Official Whatsapp Home Page (when viewed on a mobile handset).*

*The misleading advertising connected to landing page on the page before, would mislead the consumer into missing the billing information (even though the billing information is adjacent to the call to action).*

*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).*

As is evident from the Monitor's report, the service is a partial clone of the WhatsApp mobile site (it seems to be a copy of the top part of the WhatsApp landing page). This gives the impression that the service is either the official WhatsApp landing page or is closely associated with it.

The service also makes use of a very specific website address which can only have been calculated to confuse consumers: <http://vvvvw.vvwhatsapp.co>. The official WhatsApp landing pages are accessible through <http://whatsapp.com>.

## Member's response

Mypengo responded to the complaint on 28 October 2014. I have attached Mypengo's complete response as Annexure "B". The salient portions of the response are as follows (my emphasis):

*We are very sorry to receive this formal complaint against our service. This advertisement shown in the complaint was never seen nor approved by me or someone in my team. This means our marketing partner put this live without our approval. Because we take this matter very seriously, we have taken the page offline immediately. Can you please verify this from your end as well?*

*We can confirm that 12 customers subscribed through this advertisement. What we have done right after receiving this complaint is the following:*

*1: The WhatsApp wallpaper page was taken offline immediately to prevent any new subscribers to enter via that promotion.*

*2: We are contacting the particular network who sent us this publisher to inform them about this misconduct and demand action to prevent this from happening again in the future.*

*3: The partner responsible for this advertisement will be blocked from working with us again. No*

*funds will be paid to this partner.*

*4: You can find the MSISDN's below that were affected. My suggestion is to unsubscribe them and give them a callback to offer them a full refund. What are your thoughts on this?*

I highlighted part of the response which is very similar to the like Mypengo took in another complaint I considered, complaint 25147. Mypengo's defence, essentially, is that Mypengo's "marketing partner" failed to submit the marketing material that forms the subject matter of this complaint for approval before publishing the campaign it forms part of.

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 "marketing partner" fail to submit marketing materials for review, Mypengo must remedy this.

Mypengo does not seem to have addressed the central concern in this matter, namely whether the similarities between the Sonxxie landing pages and the official WhatsApp landing pages breach the Code? When asked whether its response on 28 October 2014 was its formal response, Mypengo expanded somewhat on that response and advised WASPA that it had taken further steps to ensure that future campaigns are compliant with the Code. It confirmed that the campaign was taken offline and that it had refunded many of the 12 consumers affected by the campaign.

At no point has Mypengo addressed the campaign itself and given any indication why the campaign was presented in such a confusing manner.

## 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.*

## Decision

Clearly, the intention behind the service's landing pages' design and the domain name used was to give

visitors to the website the impression that the websites belonged to WhatsApp Inc, the proprietor of the WhatsApp service. A close examination of the landing pages and the website address would reveal the ruse but not all consumers would conduct such a careful examination and, I suspect, that was the idea.

This sort of phenomenon has become common in a variety of fraudulent schemes and is known as “[phishing](#)”. I found a few definitions of “phishing” or “phish” online and they share a common theme:

1. “the fraudulent practice of sending emails purporting to be from reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers, online.<sup>1</sup>”
2. “to try to obtain financial or other confidential information from Internet users, typically by sending an email that looks as if it is from a legitimate organization, usually a financial institution, but contains a link to a fake website that replicates the real one.<sup>2</sup>”
3. “The act of sending email that falsely claims to be from a legitimate organization. This is usually combined with a threat or request for information: for example, that an account will close, a balance is due, or information is missing from an account. The email will ask the recipient to supply confidential information, such as bank account details, PINs or passwords; these details are then used by the owners of the website to conduct fraud.<sup>3</sup>”

Phishing is synonymous with “spoofing”. The verb, “spooft” is defined as follows<sup>4</sup>:

*to fool by a hoax; play a trick on, especially one intended to deceive*

What all of these definitions have in common is the practice of passing one thing off as another, typically legitimate, thing with the intention of deceiving people into believing the thing being presented is the authentic thing with the result that those people rely on that deceit.

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”.

The service is not affiliated with WhatsApp Inc, as far I can tell, and the sole purpose for the deception is to persuade consumers to click on the “Download” button on the misleading web page which then directs the consumers to another landing page which offers wallpapers for WhatsApp users as part of a subscription

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<sup>1</sup> Obtained from the Mac OS Yosemite Dictionary app

<sup>2</sup> <http://dictionary.reference.com/browse/phishing>

<sup>3</sup> <http://en.wiktionary.org/wiki/phishing>

<sup>4</sup> <http://dictionary.reference.com/browse/spoofing?s=t>

service. The wallpaper offer pages are not styled as WhatsApp Inc web pages and are accessible at a completely different domain.

The service is not only misleading, it is deceptive. It is virtually identical to common Internet frauds calculated to persuade unsuspecting consumers to part with money, personal information or both. In this case the purpose of the deceit seems to be to persuade consumers to subscribe to Mypengo's content subscription service at R5 per day. The service only appears to have affected a dozen consumers, if Mypengo's calculations are correct, but this doesn't detract from my concern about how the service was designed and presented in the first place.

I am also concerned that Mypengo seems to habitually shift responsibility for misleading services to its "marketing partner[s]". This is not the behaviour of a member committed to "honest and fair dealings" with its customers.

Misleading consumers through poorly designed landing pages or misconceived campaigns is certainly problematic but a service such as the Sonxxie service that is specifically designed to deceive consumers in order to increase a subscription base is even more objectionable. I have no difficulty finding that the service breached section 5.5 of the Code and, flowing from this finding, I also find that Mypengo has not maintained "honest and fair dealings" with its customers and has breached clause 5.4 of the Code.

## Sanctions

I view Mypengo's breach of the Code as particularly serious given the nature of the deception. Accordingly, I impose the following sanctions:

1. A fine of R75 000 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; and
2. Mypengo's membership of WASPA is to be suspended for a period of no less than 3 months.

Given that Mypengo withdrew the service very soon after the complaint was lodged and Mypengo appears to be intent on remedying the service's flaws (despite neglecting to address them in much detail), Mypengo's suspension in part 2 of the sanctions, above, is to be suspended for a period of 6 months from the date on which these sanctions are communicated to Mypengo subject to the condition that Mypengo is not be found to have breached clauses 5.4 and/or 5.5 through a service that is so confusingly similar to another provider's service that consumers would be deceived into thinking Mypengo's service is the other provider's service within this 6 month period.

## 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.

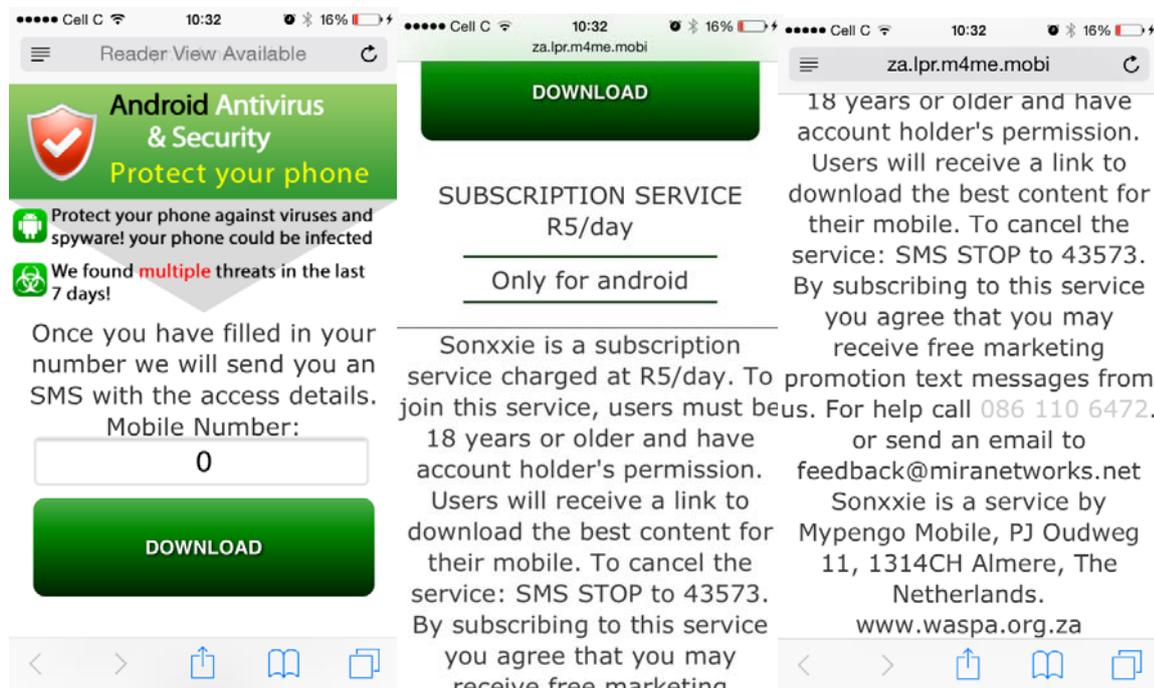
A scan has not yet been performed on my phone by the application described in this process, therefore, the application is unable to know whether I have viruses on my phone (and more so, how many there are) or not.

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>



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). See clauses and explanations below.

**5.4. Members must have honest and fair dealings with their customers<sup>1</sup>.**

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<sup>2</sup>.**

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**<sup>3</sup> 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**<sup>4</sup>. **Pricing information must not be obscured by any other information**<sup>5</sup>. 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 revisions are being made.

**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,