



Adjudicator's Report

Complaint reference	25787
WASPA member(s)	Republic Response (1478) (IP) / Mira Networks (Pty) Ltd (0011) (SP)
Complainant	WASPA Monitor
Type of complaint	Subscription service
Date complaint lodged	2015-01-21
Date of alleged offence	2015-01-21
Relevant Code version	13.1
Clauses considered	4.2, 5.4, 5.5
Related cases considered	25147

Complaint

The Monitor lodged this complaint, initially, against Mira Networks and provided the following particulars:

BACKGROUND:

PLEASE NOTE THIS TEST WAS PERFORMED ON A SAMSUNG.

Whilst browsing, a pop - up identified viruses on my phone more specifically my IPHONE.

I find it confusing that the pop - up displayed viruses on my "iPhone", when the test was in fact being performed on a Samsung.

Clicking through these pages, the information displayed implied a great urgency to fix these viruses

on my phone. However, it also required signing up for a subscription service.

SUMMARY OF PROBLEM AREAS:

The media monitoring team considers this type of marketing extremely misleading and could potentially be in breach of the WASPA Code of Conduct. Communicating to a user that they may have viruses on their phone as a marketing hook to get them signed up for a subscription service, is a strategy we believe to only harm our industry.

Due to the severity of the problems with this service, please may i request a formal complaint is lodged.

The Monitor's screenshots from her tests are annexed to this report and marked "A".

Member's response

Mira Networks responded and asked WASPA to direct the complaint to Republic Response instead, which WASPA did on 2015-01-22.

Republic Response submitted a fairly detailed response to the complaint on 2015-02-03, annexed as annexure "B". It disagreed that it breached the Code on the grounds the Monitor contended and, instead, focused on two themes:

1. The campaign doesn't mislead consumers by confirming the existence of a virus on their mobile phones, it merely warns them about the possibility and offers a solution. This is neither misleading or deceptive.
2. The process of opting in to the IP's subscription service and unsubscribing allegedly complies with the Code's requirements and is, similarly, not a breach of the Code.

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 cited the following provisions of the Code:

Professional conduct

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

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

The IP appears to have interpreted the complaint as targeting a seemingly deceptive or misleading suggestion that a recipient may have a virus on his or her mobile device. This is only a part of the complaint. As the Monitor pointed out, this campaign does not appear to be based on any knowledge of a recipient's actual device type and, despite the IP's point that Android devices frequently pick up viruses, the screenshot the Monitor submitted referred to an iPhone. The device type therefore appears to be largely irrelevant when it comes to identifying appropriate recipients for the campaign.

Beyond this, the IP's campaign is problematic because it uses warnings about a virus on the recipient's mobile phone as a device to engineer subscriptions to its Zwoosj subscription service. According to what appears to be [a version of the Zwoosj website tailored for South Africans](#) –

Welcome to Zwoosj,

Tired of having to hear the standard ringtones on your mobile? With Zwoosj you have the chance of updating your mobile with the newest and hottest ringtones. Making a good impression with your amazing new ringtones is now here, time to be original!

Our Ringtone service provides consumers with the hottest new ringtones, varying from funny sounds to real tone real music tones of famous artists. The consumer can choose a ring tone that matches his personal flavor. The consumer will receive a specified number of ring tones every month.

Are you also tired of looking at the same standard menu screen on your mobile, every day?

Try our new mobile Ringtones and personalize your mobile! We use our mobile phones several times a day so why not make it a part of our personality? Choose an image that reflects your personality and your emotions.

Don't miss out, and make sure you join the Zwoosj family!

Have fun,

The Zwoosj team

In other words, the subscription service which recipients of the mobile phone virus warning message are invited to subscribe to is a content subscription service, specifically ringtones. This service also includes a competition element. The Monitor's screenshots illustrate the following pitch:

1. The campaign warns a recipient that his or her device may have a virus and further suggests that this could have happened when the recipient browsed "adult websites" on a specific date;
2. The recipient is warned about a possible "total system failure" if this issue is not addressed;
3. The recipient is then invited to tap a button to verify his or her phone number and then "[s]can and remove any virus found";
4. Doing this initiates a subscription process where only the name of the service and a daily cost are mentioned.

There is no reference to the service being a content subscription service and I did not see a reference to mobile phone antivirus solutions in the content on the Zwoosj website. This is what makes the IP's campaign problematic.

This complaint is similar to [complaint 25147 which dealt with a similar service operated by another WASPA member, Mypengo](#). A portion of the adjudicator's report is worth repeating here because it is applicable to this complaint:

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.

...

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.

The IP's campaign is substantially similar to the service the adjudicator dealt with in complaint 25147. The IP's argument that it the recipient doesn't necessarily actually have a virus on his or her device and only implies that this is a possibility is immaterial. The IP's campaign exploits consumers' concerns about viruses on their mobile devices to entice them to subscribe for a service which it does not identify as a content subscription service.

A prospective subscriber would likely believe that the IP's service has something to do with antivirus protection but this is not at all what the person would be opting into if the recipient follows the steps to subscribe.

Conclusions

The IP's service is a breach of sections 5.4 and 5.5. The service is both deceptive and misleading. It uses concern about viruses to induce subscriptions to a content subscription service, the nature of which the IP fails to adequately communicate.

As far as section 4.2 is concerned, I don't see evidence of unprofessional conduct on the IP's part. It responded fairly comprehensively to the complaint and presented its arguments. I therefore do not agree that the IP has breached section 4.2 based on the evidence before me.

Sanctions

The IP is fined R50 000 for its breach of sections 5.4 and 5.5 of the Code. This fine is payable on demand by the WASPA Secretariat.

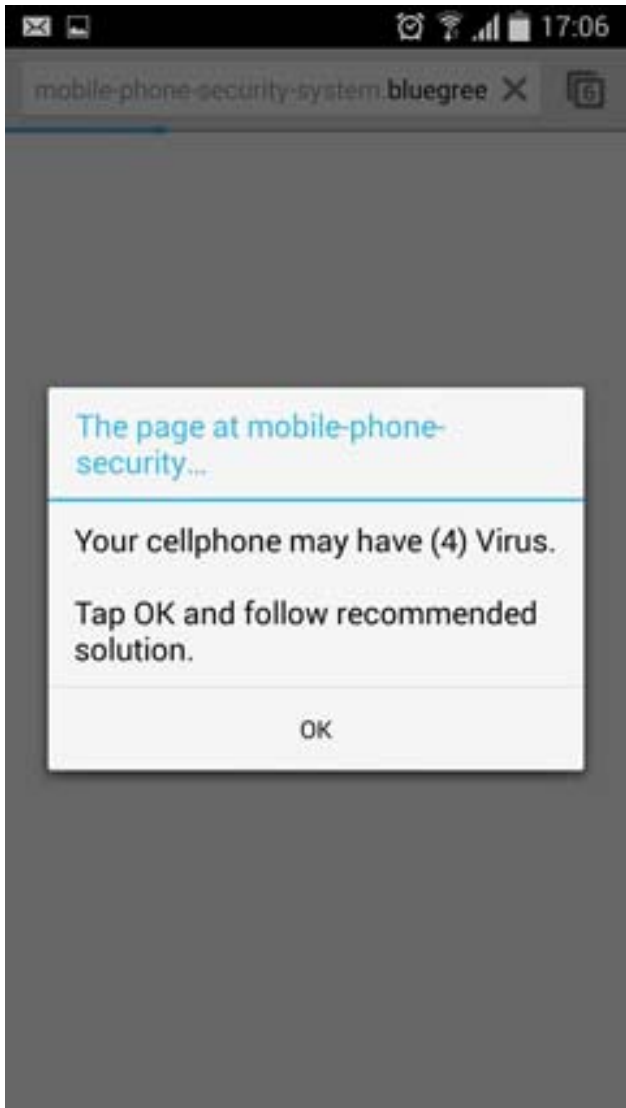
Annexures

SERVICE PROVIDER: MIRA NETWORKS

21 January 2015

HANDSET USED FOR TESTING: A Samsung

Pop-up while browsing:



Subject: [WASPA.complaints] Formal Complaint Notice #25787
From: "Republic Response" <operations@republicresponse.com>
Date: 2015/02/03 05:32 PM
To: <complaints@waspa.org.za>

Dear sir/madam,

As a WASPA member we regret you've chosen to send out this formal complaint against our service. We as Republic Response try to communicate as transparent as possible towards the consumers and other third parties like yourself. Republic Response will happily provide the WASPA with any additional information if needed.

After receiving complaint #25787, we have immediately taken the advertisement, "Android Antivirus Mobprotector", offline in order to gain clarification during this process.

However we would like to make it abundantly clear that we do not agree to either of the points raised in the lodged complain #25787. Please find our elaborate explanation and argumentation below:

- **"4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA"**
- **"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."**

After clicking on our banner, we don't mention in the pop-up that the user has an actual virus on their cell phone. We are only implying that this might be the case, which could be harmful, therefor we offer a solution by providing an anti-virus app, which the consumer can download to check if they are actually infected. We only state the obvious, quote: **"If virus are not removed, they can cause the device to slow down and eventually lead to total system failure."** which isn't misleading but just a common occurrence on Android devices. This information is neither false nor deceptive as mentioned in the code in point **5.5. of the code of conduct.**

- 1) Once the customer clicks on **"continue"** they are forwarded to the product page, where the subscription service and the price frequency is mentioned.
- 2) When the user fills in their MSISDN number, they are prompted with another message, quote: **"You will receive a confirmation sms shortly. Please reply yes to that SMS to subscribe to our service."**
- 3) They receive a SMS text message on their phone, where we mention again, quote; **"Confirm your request for Republic Response Zwoosj 41485 ZA @R5.00 per day. Reply "YES"to confirm/"NO" to cancel. Free SMS"**

We informed the public and customers in a professional manner by honestly mentioning about the subscription service and the pricing info with our customers according to point **4.2 and 5.4 of the code of conduct.**

- 4) The user at this point still accepts to subscribe to our service by sending the subscription confirmation keyword **"YES"** to our shortcode **"41485"**, therefor agreeing to the terms and conditions of our service. Once subscribed, we send out a confirmation about the subscription service and the billing information. Quote: **"Welcome! You are subscribed to the Zwoosj Service R5/day. To unsubscribe SMS STOP to 41485. Help: 0861106472"**

To ensure you that we are taking matters very seriously, a description of our procedure hereafter;

- 1) Our highly experienced marketing team is monitoring any advertisement placed by Republic Response with our publishers
- 2) In case of a breach we are able to track all the consumers related and not pay out the CPA to the respective affiliate /publisher, this to prevent them from reaching any financial gain when using misleading marketing material.
- 3) We are connected to a third party (Empello) who is independently auditing our promotions in South Africa. This company is monitoring our marketing activities day and night, seven days a week. Which means they will actively search out our promotions and advise us from a compliance perspective. Empello is a renowned monitoring company, with which we are also working in other countries to our full satisfaction.
- 4) It is mandatory for all affiliate partners to show us any pre-landers or banners they might use for advertisements commissioned by Republic Response, prior before going live, in order for us to double check for any compliance issues. In case of unauthorized marketing materials, beyond our knowledge, or in case of a breach in compliance caused by the affiliate, we will penalize them accordingly; **point 2** as a penalty for their negligence.
- 5) All of our pages are submitted for approval with the aggregator, before Republic Response will publish them with the affiliate partner.

In summary, we have been communicating with the public consumers, other service providers and WASPA in a professional manner through the service, where we are being honest and fair without being misleading by inaccuracy, ambiguity, exaggeration or omission according to the WASPA Code of conduct regulations for WASPA Members as Republic Response, according to the WASPA code of conduct regulations points **4.2, 5.4 and 5.5**. Therefor Republic Response does not agree or share the complaints stated in your lodge #25787.

We hope this clarification has given you a clearer view on our perception of the service provided by Republic Response and erased most (if not all) of the concerns. We are eagerly awaiting your response and are keen to keep the dialogue running.

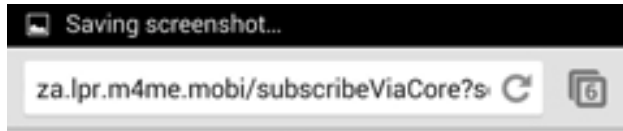
Awaiting your decision,

Kind regards,

Tristan de Wit

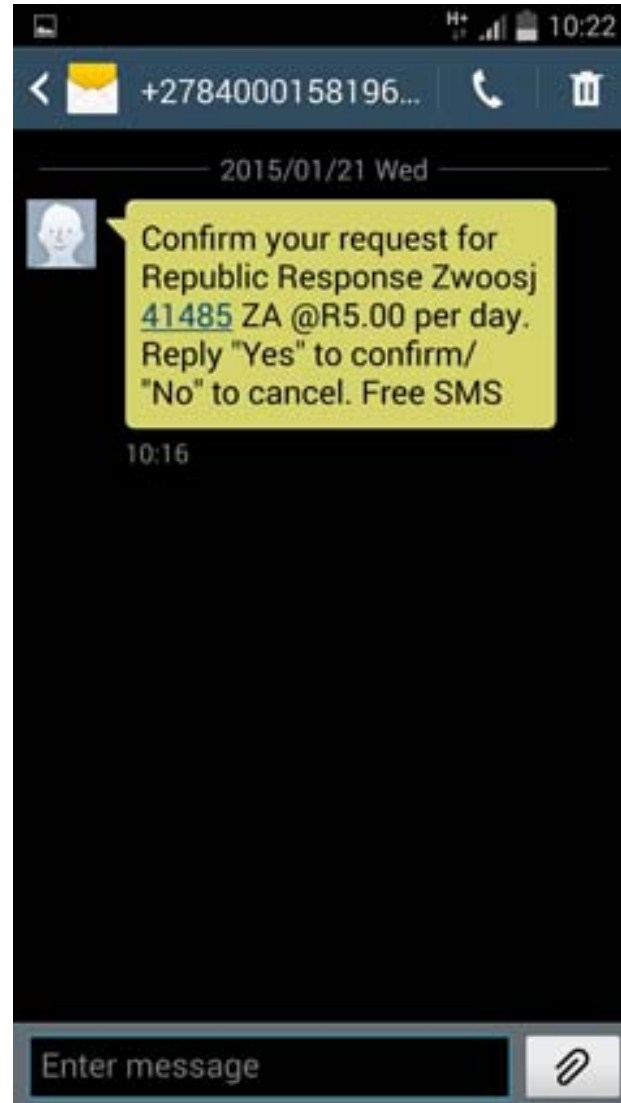
Republic Response

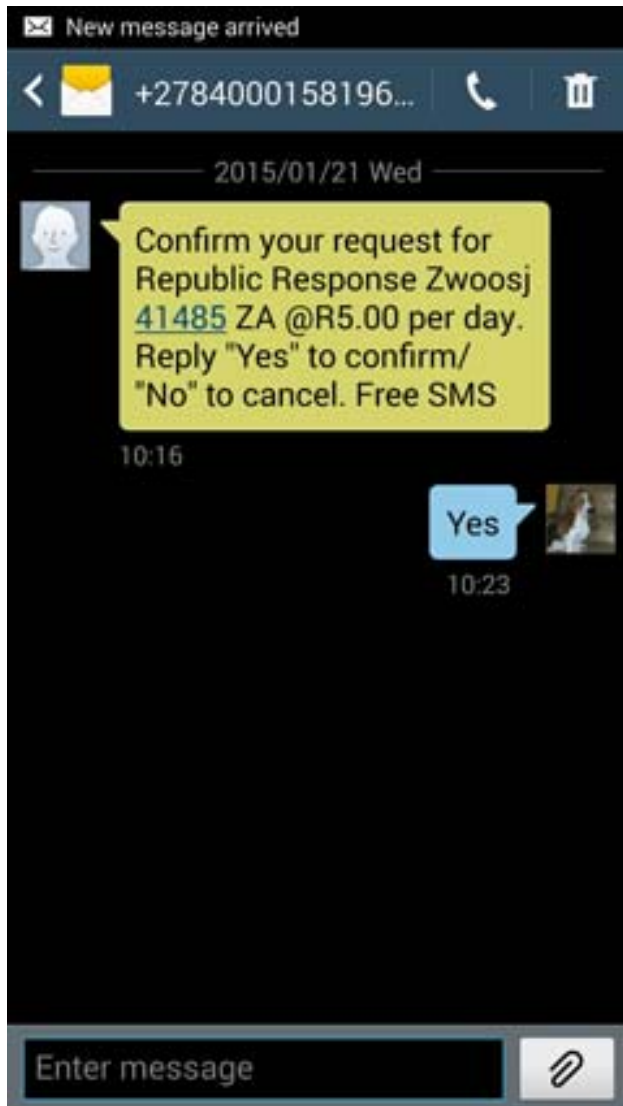
*Smederijstraat 2
4800DD Breda
The Netherlands*

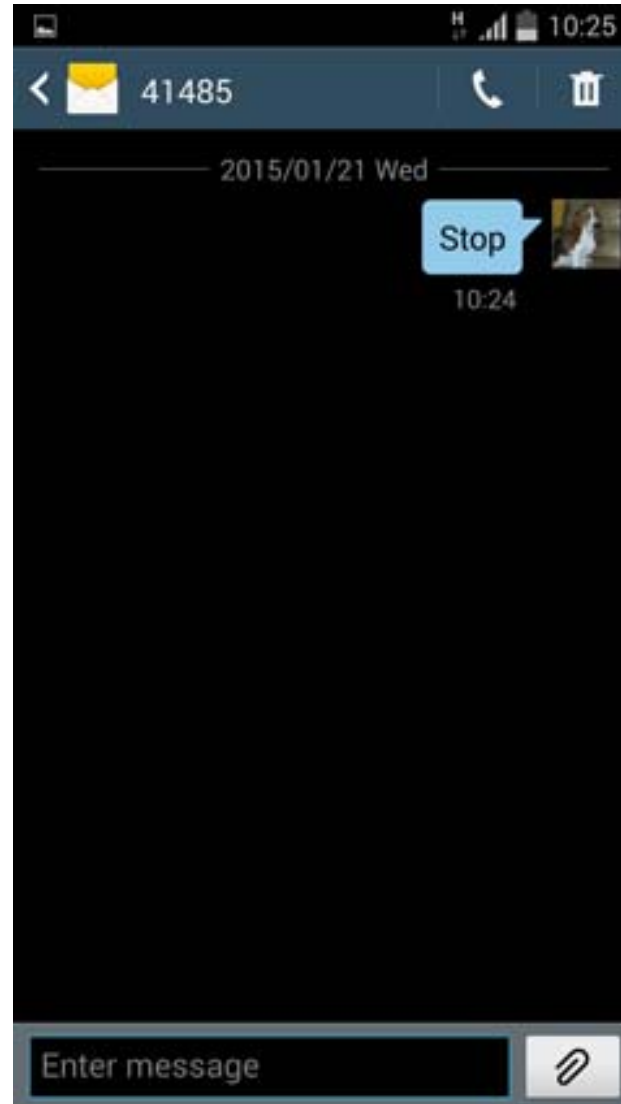
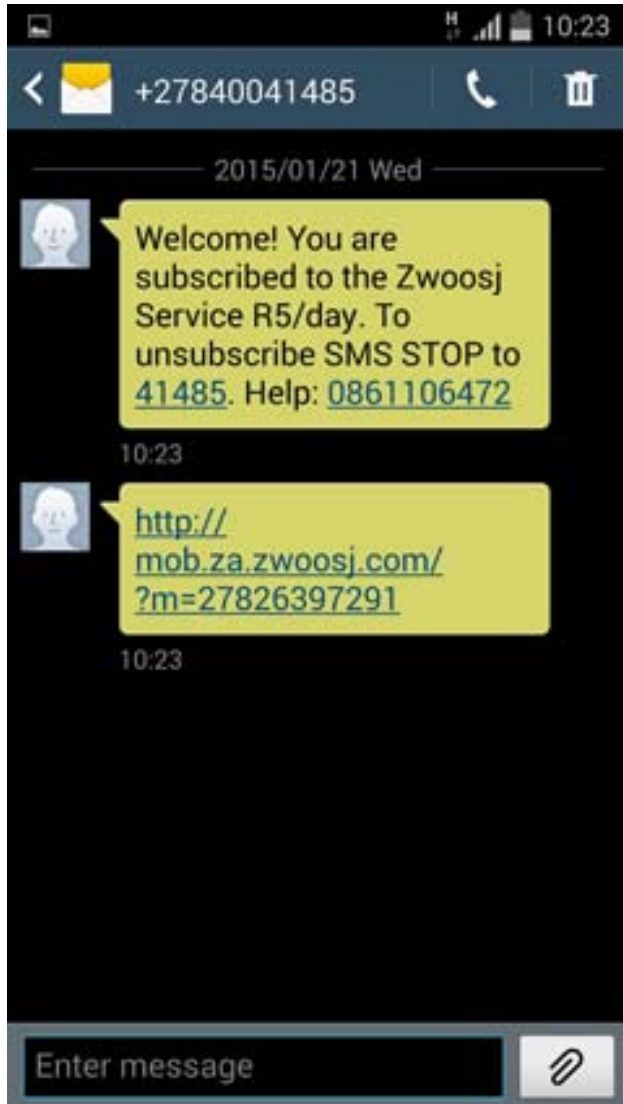


Zwoosj41485ZA

You will receive a confirmation sms shortly.
Please reply yes to that sms to subscribe to our
service.











Credits Remaining: 6

NEWS  DOWNLOADS 

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