



REPORT OF THE ADJUDICATOR

Complaint reference number:	26003
WASPA member(s):	Westbound Direct (Pty) Ltd (IP) (1436) Basebone (Pty) Ltd (1344)
Membership number(s):	See above
Complainant:	Media Monitor
Type of complaint:	False and misleading services
Date complaint was lodged:	2015-02-23
Date of the alleged offence:	n/a
Relevant version of the Code:	13.6
Clauses considered:	4.2, 4.5, 4.8 (a) (b) (c), 5.1, 5.4, 5.5, 5.7, 5.12 and 5.14.
Relevant version of the Ad. Rules:	
Related cases considered:	25975 and 25976

Complaint 26003 is the formal complaint formal complaint concerning unfair dealings that forces consumers to subscribe to a service.

The formal complaint was sent to the IP and SP on the 2015-02-23.

The Emergency panel notice was sent on the 2015-02-23 to the IP.

The SP and IP replied to the Emergency notice on the 2015-02-23, advising of changes made to service.

The WASPA secretariat emailed the WASPA Head of complaints on the 2015-02-23, advising of changes made by the WASP and possibility of cancelling of Emergency hearing.

The WASPA Head of complaints responded on the 2015-02-23, advising that the Emergency panel is cancelled.

The WASPA secretariat emailed the WASP on the 2015-02-23, advising that the Emergency panel is cancelled.

Both SP and IP replied requesting an extension on the formal complaint on the 2015-03-06.

The WASP emailed their formal response on the 2015-03-13.

The WASP sent a further response on 2015-04-06.

Initial Complaint

The Media Monitor set out as follows:

“We were alerted to a problem by a member of the public who registered for a job on the following sites: Payripo.com, myinvitepays.com, earnings4youth.com.

An adequate description of these sites is as follows (ex Payripo site):

Payripo is a new innovating and internet job site, where you will be hired to do some tasks, different in type and number. and you will be paid an estimated reward for that instant in your account, after it the job poster will review the service and approve the status for your payout, then you will be paid for your work via Cheque. Other Payment options are also coming soon. You have to create an account with us to start and login to your member area, and do daily your jobs and you will be really great after using our service.

Basically, one advertises their links on your facebook, twitter page or any other networking site one is part of. The more people who click on your link, the more money you make.

The user spent hours on these sites, promoting their content and feels not only his time was wasted, but that his reputation was affected as he promoted these links on his private social media sites. Admin time was spent explaining to friends what they had to do.

See screenshots below of the journey on a typical internet job site and how it led him to a mobile content page.

[I have not attached the screenshots as they are in the possession of all parties.]

The consumer experience was as follows:

The consumer created a profile, and performed various tasks as instructed by the site. Once complete the site displayed what his earnings would be. In order to receive payment, following a prescribed amount of effort and time, the site prompted him to a verification page. The verification pages prompted the user to landing pages of mobile content sites. The user felt that in order to receive payment, he clearly needed to subscribe as the process did not allow him to fill out the verification form that would prompt payment.

The Media Monitor then went on to comment as follows:

“It appears that the original “Job internet site” is not a real “Job internet site” and that no moneys ever get paid to users performing certain duties. It is therefore clear that the intention of such a site, whilst incredibly misleading, it to merely hook users into a mobile

content subscription service. The media monitoring team have not seen such extreme levels of deceit, if this is the work of a marketing hook. It is however possible that perhaps the job internet sites have been "hijacked" by marketers of mobile content. We suspect our Service Providers are going to state that this would be the work of their affiliate marketers and that they are/were unaware of such marketing. We have seen a few adjudications where the adjudicator deemed this excuse to be ineffective. It is the responsibility of every WASP in our industry to know how, when and where their services are being marketed.

With this in mind, we would like to request that the EMERGENCY panel considers the following:

1. All job opportunity sites to be de-activated with immediate effect.
2. All promised payouts, to be made to users who "worked for their money"
3. All subscriptions to be stopped, and refunded to all users.
4. All mobile numbers to be removed from databases and to NOT be marketed to in future.

WASP Response

The WASP firstly raised the issue of the Media Monitor not having done sufficient research, setting out that certain of these types of websites are legitimate. They then went on to discuss the issue of affiliate marketing practices and went to lengths to demonstrate how their services are advertised and the impossibility of being able to ensure compliance with the code through the networks utilised in this method of marketing.

They then set out that due to the above, they cannot be held in breach of the following sections of the Code:

- 4.2 They feel their dealings were professional and they cannot be held liable for the acts of third parties.
- 4.5. They feel the clause is not applicable to their services.
- 4.8. The fact that they use the word "may" and follow accepted advertising practices that this cannot be held to "induce an unacceptable sense of fear or anxiety".
- 5.1 They feel that this is not applicable due to the fact that the antivirus is available immediately after completing the subscription.
- 5.4 They feel that the aspects of their services comply with the Code. It is the marketing aspect that is non-compliant.
- 5.5. They raised the same argument as with 5.1 and 5.4 above.
- 5.7 They state that they fully comply with the provisions of the Code in this regard.
- 5.12 They stated that they fully comply with the provisions of the Code in this regard.
- 5.14 They stated that they fully comply with the Code in this regard.

Sections of the Code considered

- 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.
- 4.5. Members must respect the intellectual property rights of their clients and other parties and must not knowingly infringe such rights.
- 4.8. Members must not provide any services or promotional material that:
- a. results in any unreasonable invasion of privacy;
 - b. induces an unacceptable sense of fear or anxiety;
 - c. debases, degrade or demeans.
- 5.1. Members must not offer or promise services that they are unable to provide.
- 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.
- 5.7. A web page containing the full terms and conditions of a service must be readily available to current and potential customers of that service.

5.12. Telephonic support must be provided via a South African telephone number and must function effectively. Customer support must be provided via standard rated numbers, and may not be provided via premium rated numbers. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers must not forward to full voice mailboxes.

5.14. Members must have a procedure allowing consumers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

Decision

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.

I find no breach. The WASP did what was required of them to ensure compliance with the Code inter se third parties. The behavior in question relates to such third party and if the WASP cannot be held liable for the third parties' behavior they cannot be held to be in breach of this clause.

4.5. Members must respect the intellectual property rights of their clients and other parties and must not knowingly infringe such rights.

I find no breach. The WASP did what was required of them to ensure compliance with the Code inter se third parties. The behavior in question relates to such third party and if the WASP cannot be held liable for the third parties' behavior they cannot be held to be in breach of this clause. It is important to draw a distinction between the advertising of websites which leads you to the services of the WASP and the WASP service in question.

4.8. Members must not provide any services or promotional material that:

- a. results in any unreasonable invasion of privacy;
- b. induces an unacceptable sense of fear or anxiety;
- c. debases, degrade or demeans.

I find no breach. The WASP did what was required of them to ensure compliance with the Code inter se third parties. The behavior in question relates to such third party and if the WASP cannot be held liable for the third parties' behavior they cannot be held to be in breach of this clause.

5.1. Members must not offer or promise services that they are unable to provide.

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.

I find no breach. The WASP did what was required of them to ensure compliance with the Code inter se third parties. The behavior in question relates to such third party and if the WASP cannot be held liable for the third parties' behavior they cannot be held to be in breach of this clause. The WASP provided what they promised in terms of their element of the complaint.

5.7. A web page containing the full terms and conditions of a service must be readily available to current and potential customers of that service.

5.12. Telephonic support must be provided via a South African telephone number and must function effectively. Customer support must be provided via standard rated numbers, and may not be provided via premium rated numbers. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers must not forward to full voice mailboxes.

5.14. Members must have a procedure allowing consumers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

I find no breach of the above three clauses as the WASP has demonstrated that they do comply and although the Monitor asserts that this was not the case at a specific point in time I have no means of verifying that and as such cannot find the WASP in breach.

Sanctions

No sanctions. However as an aside this case highlights the need for some sort of revision around the use of affiliate marketers. It is all too easy for the WASP to look the other way and avoid liability.