



REPORT OF THE ADJUDICATOR

Complaint reference number:	26420
WASPA member(s):	Liberty Entertainment Limited (IP); Basebone (Pty) Limited (SP)
Membership number(s):	1477; 1344
Complainant:	WASPA Media Monitor
Type of complaint:	Misleading advertising campaign
Date complaint was lodged:	7 May 2015
Date of the alleged offence:	7 May 2015
Relevant version of the Code:	13.6
Clauses considered:	4.2; 4.9; 5.4; 5.5
Related cases considered:	26416

Complaint

1. The WASPA Media Monitor states that it conducted a test on the IP's promotional campaign using short code 47895.
2. The complainant states that a pop-up page appeared on their mobile handset while they were browsing the internet.
3. The page contained a warning that 3 viruses had been detected on the mobile and that if they were not resolved in a few minutes they could cause damage to the user's SIM card and delete their contacts. If the link was accessed, and the given instructions followed, the viruses would be removed.
4. This pop-up page appeared without any interaction by the complainant with any banner or advertisement.
5. The complainant followed the procedure as requested in order to remove these viruses.

6. However, to have access to the anti-virus application, the complainant was required to subscribe to a subscription service at R7/day.
 7. The complainant subscribed to the subscription service and downloaded the anti-virus application from the subscription service homepage and used the anti-virus application to remove the alleged 3 viruses referred to on the first pop-up page.
 8. No viruses were found. The complainant then proceeded to cancel the subscription service.
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IP's response

9. The IP denied that it was responsible for the pop-up page and that this page must have been used by one of its affiliate networks who promote its services via various publishers.
 10. The IP states that it enters into contracts with all of its affiliate networks and that this gives it a level of control over the promotional materials used in campaigns run by the affiliates.
 11. The contracts also include a number of measures and contractual remedies that the IP can implement if an affiliate breaches any of the provisions of the contract when running a campaign.
 12. Through its use of tracking codes for all of its linked campaigns, the IP was able to identify what affiliate was responsible for this particular campaign and the service was suspended immediately.
 13. The IP also believes that the Monitor could have used the Heads Up process or the informal complaint resolution process to alert the IP to this non-compliant campaign and the matter would have been resolved without the need for a formal complaint being issued.
 14. The IP therefore denied that it was responsible for the contraventions of the relevant provisions of the WASPA Code.
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Complainant's reply

15. The Monitor may, at our discretion, file heads ups or make use of the informal/formal process as per the WASPA Code of Conduct. However, they usually file formal complaints when the breaches are either repeated; or when the breaches are of a serious nature.

16. In the complainant's opinion, it does not need to explain or justify to an IP why the formal process is adopted. They believe they have followed due process.
 17. The Secretariat decides when the nature of this complaint is justified in making use of the formal process, not the Monitor. The Monitor merely makes suggestions.
 18. The Monitor referred to at least three other adjudication reports where the adjudicator highlighted the need for some sort of revision around the use of affiliate marketers and that it was "*all too easy for the WASP to look the other way and avoid liability.*"
 19. The fact remains that WASPS should approve / sign off their marketing material. Such measures are in place, if an IP chooses their affiliate marketers more stringently.
 20. It is the Monitor's role to highlight misleading marketing, which it has duly done.
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IP's further response

21. The IP also referred to the same adjudications referenced by the complainant and pointed out that the relevant WASPs were not in breach of the Code if they had done what was required and could not be held liable for the behaviour of third parties.
 22. The IP confirmed that it does pre-approve advertising and promotional materials that are submitted to them but cannot control the conduct of publishers who use other material that has not been approved.
 23. The IP also states that it has stringent affiliate marketing selection procedures which are followed in each case.
 24. The IP believes it has taken all reasonable measures to ensure its services are promoted correctly.
 25. They welcome the Monitor alerting them to non-compliant campaigns.
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Sections of the Code considered

26. The following sections of the WASPA Code were considered:
 - 26.1 Section 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.

- 26.2 Section 4.9 - Members must not provide any services or promotional material that: (c) induces an unacceptable sense of fear or anxiety;
 - 26.3 Section 5.4 - Members must have honest and fair dealings with their customers.
 - 26.4 Section 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.
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Decision

- 27. It is common cause that the promotional campaign in question is not compliant with the provisions of the Code and is, in particular, misleading and deceptive.
 - 28. The IP has stated in its response, as has been the case in a number of other complaints of this nature which have been submitted to adjudication, that it uses the services of affiliate networks to promote its services.
 - 29. The IP has confirmed that it binds its affiliates by way of contracts to follow the requirements of the Code and includes a number of remedies to prevent non-compliant conduct, including the payment of any regulatory fines imposed on the IP.
 - 30. These affiliates, in turn, use the services of various publishers who have no contractual relationship with the IP.
 - 31. Although the IP may have taken steps to try to prevent non-compliant campaigns from being used to promote its services, it is the only party that is best placed to respond to these types of deceptive business practices by enforcing the contractual obligations it has imposed on its affiliates.
 - 31.1 Based on the foregoing, I am satisfied that the IP must be held responsible for the contraventions of the Code and this complaint is accordingly upheld.
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Sanctions

- 32. I am satisfied that the IP has taken steps to suspend the relevant campaign within a reasonable time after being notified of the contravention. I have taken this into account in mitigation.
- 33. However, the level of deception in this case is particularly serious.

34. The IP is therefore fined an amount of R50 000.
35. This fine, once paid can be recovered from the relevant affiliate by the IP in terms of its contract with them. Hopefully once affiliates feel the commercial impact of using publishers who use deceptive and misleading promotional practices, they will in turn stop using those publishers.