



**Wireless Application Service Providers' Association**

## Report of the Adjudicator

Complaint number	27012
Cited WASPA members	Westbound Direct Limited (1436) Basebone (Pty) Limited (1344)
Notifiable WASPA members	n/a
Source of the complaint	WASPA Media Monitor
Complaint short description	Misleading affiliate marketing
Date complaint lodged	29 July 2015
Date of alleged breach	Unknown
Applicable version of the Code	14.0
Clauses of the Code cited	4.2, 4.9, 5.5
Related complaints considered	26416, 26420
Fines imposed	Westbound Direct Limited: R25 000.00 fine for breach of sections 4.2, 4.9 and 5.5 of the WASPA Code.
Other sanctions	n/a
Is this report notable?	Not notable

Summary of notability	n/a
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## Initial complaint

1. The complainant alleges that a pop-up advert appeared on their mobile's screen when they were browsing the internet, which advised that their mobile device might be infected by viruses.
2. The complainant clicked on the call-to-action ("OK") button on the advert and was directed to a page where the mobile device was purportedly scanned for threats. The page then reported that the complainant's mobile was infected with 3 viruses.
3. The complainant alleges that this in itself is misleading because the device cannot physically be scanned for threats.
4. A further pop-up then appeared on screen informing the complainant that the problems could be corrected by entering their mobile number on the next page and downloading an anti-virus application.
5. The complainant then clicked "OK" and was directed to a landing page promoting Westbound Direct Limited's (Westbound Direct) Chatpose subscription service at R7/day.
6. The complainant then clicked "CONTINUE" and was required to insert their mobile number and clicked the "CONTINUE" call-to-action button.
7. The complainant then received a double opt-in request and subsequently replied with the keyword "Yes". The complainant then received the Welcome SMS on their mobile phone.
8. Before visiting the subscription service, the complainant ran a virus scan using their own AVG software and found that there were no viruses found.
9. The complainant alleges that Westbound Direct's services have repeatedly been promoted by misleading affiliate marketing and that this harms the industry as a whole and creates a lack of confidence on the part of consumers making use of mobile content services.

10. The complainant stated further that the processes Westbound Direct has put in place to control their affiliate marketers and publishers are not sufficient.
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### **Member's response**

11. Westbound Direct stated in its response that upon being notified that an affiliate network was using unauthorised assets linked to its campaign through the "*adepc.com*" website, it immediately notified the affiliate to stop such marketing and after conducting its own investigations, has terminated its contract with the affiliate.
12. The "*adepc.com*" website is not owned by Westbound Direct and it has no association with this site.
13. Westbound Direct has drawn a distinction between the marketing used by the affiliate and the subscription process used by Westbound Direct. It has conceded that the affiliate's strategy was to mislead consumers. However, it maintains that the subscription process was not misleading.
14. Westbound Direct also stated in its response that when a user arrives at the first landing page for its subscription service, the user is informed that the previous pages might be unapproved and/or unrelated to the subscription offer made and the user is encouraged to check the relevant terms and conditions before starting the subscription process.
15. Westbound Direct also addressed the issue of members being held liable for the misleading marketing activities of affiliates and repeated earlier statements made in response to previous complaints that the WASPA Media Monitor lacks an understanding of marketing practices commonly used in the industry.
16. Westbound Direct stated that it does enter into a written contract with all affiliate marketers and that a breach of the contract carries penalties, the most severe being termination of the contract. However, it does not implement any pre-emptive measures to prevent a breach being committed.
17. It also employs a monitoring team to monitor publishers to detect unauthorised assets, including unauthorised banner adverts and flows leading to its subscription service landing pages.
18. Westbound Direct concludes that it should not be held liable for the misleading nature of the marketing of the affiliate marketers as it was completely unaware of this and that reasonable measures were taken by it to ensure that only approved assets were used on campaigns for its subscription services.

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## Complainant's response

19. The complainant questioned Westbound Direct's statement that it had suspended the affiliate marketer in question or the affiliate network because another "virus" campaign was found less than 3 weeks later by the complainant.
20. The complainant was aware of the distinction between the marketing employed by the affiliate and the member's own subscription process. However, the complainant argues that the member is still responsible for the affiliate's marketing.

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## Member's further response

21. Westbound Direct responded to the complainant's further allegation that the misleading campaign had not been suspended by stating that it enters into contracts with an affiliate network, who in turn independently contract with various affiliate marketers.
22. Westbound Direct provides the affiliate network with the campaign they wish to make available to affiliate marketers, which includes all assets relevant to that campaign. 99% of the affiliate marketers use the authorised assets but unfortunately there is that 1% who don't, and who take it upon themselves to change the assets leading to the initial landing pages belonging to the campaign.
23. Westbound Direct also stated that it is continuously improving its processes and measures to identify unscrupulous affiliate marketers and remove them from having access to their campaigns. These measures include imposing fines and/or suspending payments to the affiliates.
24. Additionally, they have implemented further processes that will help to proactively prevent the problem of misleading affiliate marketing, including real time risk cross checks, and affiliate marketing monitoring by a dedicated team of experts who analyse the fluctuations in the traffic relating to each affiliate who sends traffic to the subscription landing pages. If unlikely volumes of traffic are detected, the team cross checks the assets used.

## Sections of the Code considered

25. The following sections of the WASPA Code of Conduct, version 14.0, were 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.*

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

*(c) induces an unacceptable sense of fear or anxiety;*

*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

26. It is common cause that the assets used by the affiliate marketer were blatantly misleading and deceptive, and are clearly in contravention of the provisions of sections 4.2, 4.9, and 5.5 of the Code.

27. As has been stated in previous adjudications, WASPA has no power to combat against misleading marketing activities by affiliate marketers who are not members of WASPA.

28. To meet its mandate to protect consumers from such misleading and deceptive marketing, WASPA has to look to its members to stop this.

29. Westbound Direct has again acknowledged that it has a contract with the affiliate networks who in turn contract with these rogue affiliate marketers, and that it is able to use these contracts to implement punitive sanctions against misleading marketing which should eventually be passed on to the ultimate wrongdoer.

30. It is therefore the party who is best placed to stop these marketing activities by enforcing the terms of its contracts.

31. This adjudicator understands the frustrations of members in this regard and commends the additional processes and measures that are being taken to stop these marketing practices. However, the member must ultimately be held responsible to WASPA and the consumers it is mandated to protect.

32. Based on the foregoing, Westbound Direct is held liable for the contravention of sections 4.2, 4.9 and 5.5 of the Code, and the complaint is accordingly upheld.
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### **Sanctions**

Westbound Direct is fined the sum of R 25 000.00 for the contravention of sections 4.2, 4.9 and 5.5 of the Code.

It is noted that the contract with the affiliate network in question has already been terminated. However, the member should still have a legal cause of action under said contract to claim payment of this fine from the affiliate network.

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