



Wireless Application Service Providers' Association

Report of the Adjudicator

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| Complaint number | 27199 |
| 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 | 17 August 2015 |
| Date of alleged breach | Unknown |
| Applicable version of the Code | 14.0 |
| Clauses of the Code cited | 4.2, 5.1, 5.5, 22.4, 22.10 and 22.11 |
| Related complaints considered | 26416, 26420, 27012 |
| Fines imposed | Westbound Direct Limited: R25 000.00 fine for breach of sections 4.2 and 5.5 of the WASPA Code. |
| Other sanctions | n/a |
| Is this report notable? | Not notable |

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| 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 requested whether they wanted WhatsApp numbers for women near them.
2. The complainant clicked on the call-to-action ("OK") button on the advert and was directed to a page. The complainant was then directed to a web page with a XXX18 animated banner informing them that it was not a dating site and the complainant should be discreet.
3. The complainant then clicked the "OK" button and was directed to a page where they were informed that they will be asked a few questions. The complainant was then directed to a page where a survey had started. The complainant then proceeded to answer all the questions.
4. The complainant answered all the questions posed and was informed on the last page they could then view the photos of the women in their area. When the complainant clicked on the "CONTINUE" button, they were then directed to a page promoting Westbound Direct Limited's NowCeleb subscription service at R7/day and also promoting backgrounds for WhatsApp.
5. The complainant entered their mobile number and clicked the "CONTINUE" call to action button. They were then directed to a page providing them with a MTN USSD code to dial.
6. The complainant was able to dial the USSD in session, however, the format of the code didn't appear correct after clicking the "Confirm" call to action button. The complainant then clicked the "Dial" button. After clicking the dial button, the handset's dialler opened and they noticed that USSD string was then in an invalid format. They then had to dial the MTN *141*5# string manually to accept the subscription request from the USSD menu.
7. The complainant then received the Welcome SMS on their mobile phone and proceeded to open the URL link provided in the SMS. They were then directed to the homepage for the NOW CELEB subscription service which was a WhatsApp wallpaper service of celebrities.

8. The complainant then browsed the website and was able to download a wallpaper item of a celebrity. However, they were unable to locate the WhatsApp number for women in their area as advertised on the initial banner advert and by the survey.
 9. The complainant then elected to cancel the subscription by replying to the Welcome SMS with the keyword "Stop". They received a SMS informing them that the subscription had been cancelled.
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Member's response

10. Westbound Direct stated in its response that upon being notified that an affiliate network was using unauthorised assets linked to its campaign through the "*whatsapp.com-fucklist.mobi*" website, it immediately notified the affiliate to stop such marketing and after conducting its own investigations, has terminated its contract with the affiliate.
11. This website is not owned by Westbound Direct and it has no association with this site.
12. 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.
13. It also requested that the impact of the misleading advertising on the public be considered as a factor, taking into account the difference between the number of sign-ups from authorised and unauthorised marketing campaigns for the same subscription service.
14. When comparing the numbers of this particular campaign, Westbound Direct illustrated that the signups from the misleading affiliate campaign was far less than from authorised advertising channels.
15. Westbound Direct also alleged that its business was damaged by the low signups from the misleading campaign.
16. Westbound Direct also referred to a previous adjudication report for complaint # 26003 as authority for the position that it could not be held liable for the misleading marketing activities of its affiliates where it had taken reasonable measures to ensure that only authorised assets were used by its affiliates.

Sections of the Code considered

17. 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.

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

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.

22.4. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.

22.10. Members may not offer adult content which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.

22.11. Marketing material for any adult services may not make use of material which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.

Decision

18. 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 and 5.5 of the Code.
19. 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.
20. To meet its mandate to protect consumers from such misleading and deceptive marketing, WASPA has to look to its members to stop this.

21. 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.
 22. It is therefore the party who is best placed to stop these marketing activities by enforcing the terms of its contracts with the affiliate network.
 23. 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.
 24. Based on the foregoing, Westbound Direct is held liable for the contravention of sections 4.2 and 5.5 of the Code, and the complaint is accordingly upheld in this regard.
 25. Regarding the alleged contraventions of section 22.4, 22.10 and 22.11, I am not satisfied that the initial pop-up advert was of an adult nature. There was no reference, direct or implied, to content of a sexual nature and the advert itself is not of a sexual nature. The complaint is therefore dismissed in this regard.
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Sanctions

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