



REPORT OF THE ADJUDICATOR

Complaint reference number:	19373
WASPA member(s):	MobileNOBO (IP) / Integrat (Pty) Ltd (SP)
Membership number(s):	(IP) 1091 / (SP) 0030
Complainant:	Public
Type of complaint:	Banner Ads
Date complaint was lodged:	2013-02-11
Date of the alleged offence:	N/A
Relevant version of the Code:	12.1
Clauses considered:	3.1.2; 3.9.1; 3.9.2; 4.1.1; 4.1.2; 11.2.2; 14.3.14 & 14.4.1
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	14599 & 15268

Complaint

The Complainant in this matter, a member of the public, levied his complaint against the IP in this matter who according to him breached several clauses / sections of the Code.

These breaches are in connection with banner ads that are allegedly misleading in its way of subscribing customers / users.

The Complainant felt that although the IP had attempted to assist him, their / their affiliates' actions must not go unnoticed and should therefore be dealt with appropriately.

Information and Service provider's response

The SP referred the matter to the IP and iterated that from their side they can confirm that the advertisement was removed before they received the complaint.

The IP in return did not deny the allegations levied against them, but brought it to the attention of the Complainant in this matter, that the offence was caused by one of its affiliates.

It subsequently suspended the affiliate's service.

The IP, in its response, further provided a very detailed version of its account of events and stressed the fact that they do whatever reasonably they can to prevent affiliates from abusing their service.

The IP also pointed out the fact that it is pro-actively engaged with its South African aggregator to trace non-compliant advertisements.

Sections of the Code considered

2.14. An “**information provider**” is any person on whose behalf a wireless application service provider may provide a service, and includes message originators.

3.1.2. Members are committed to lawful conduct at all times.

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct or the Advertising Rules.

3.9.2. Where any information provider that is not a WASPA member conducts any activity governed by the provisions of this Code, and makes use of the facilities of a WASPA member to do so, that member must ensure that the information provider is made fully aware of all relevant provisions of the Code and the member shall remain responsible and liable for any breach of the Code resulting from the actions or omissions of any such information provider.

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.2.6. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

14.4.1. An adjudicator finding prima facie evidence that any member may have breached clause 3.1.2 of the Code of Conduct must request that WASPA refer the breach to the relevant statutory or regulatory authority, unless that authority has already made a ruling on that particular case. If the relevant authority has already made a ruling on that particular case, then the adjudicator may find a breach of clause 3.1.2.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP' and IP's subsequent reply.

The IP provided a detailed analysis of its own account of events.

The IP in this matter also did not deny the occurrence of the alleged breach / breaches, and confirmed that it was committed by one of its affiliates with which it had entered into an agreement.

It further explained the relevant actions undertaken by it, preventing the continuation of such breach / breaches.

One of these actions included the immediate suspension of the affiliate's services.

The Adjudicator wants to commend the IP on its pro-active efforts in aligning its affiliates.

However, as can be seen from the relevant sections of the Code, a WASPA member, irrelevant of their own actions, shall be deemed responsible and liable for any breaches of the Code resulting from any actions or omissions committed by entities associated with, or which utilise their services.

Therefore, by its own admittance of a breach / breaches, there cannot be any doubt that a breach / breaches of sections 6.2.6 and 11.2.2 of the Code did occur, and that the IP, by virtue of section 3.9.2, should be held liable for the said breaches.

The Complaint is therefore upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the IP with regard to breaches of the relevant sections of the Code of Conduct;
- The IPs' subsequent response.

The Adjudicator has taken note of the fact that there have been a number of previous complaints levied against the IP which were very serious in nature.

One of these resulted in the subsequent suspension of the IP for a period of six months and some other decisions necessitated referrals to the Police and Consumer Protection Commissioner.

It must however be noted that these complaints and decisions dated back to 2011.

This does not however deter from the fact that those breaches were of a serious nature and that the breaches in this matter are not to be made light of either.

The Adjudicator is therefore of the opinion, even after having considered all the actions taken by the IP in stemming non-compliant behavior, that the IP should understand the seriousness of ANY offence committed by itself, or any of its affiliates, and that such actions or omissions, will carry heavy sanctions by WASPA.

The IP is therefore fined R 75 000-00 for its relevant breaches of sections 6.2.6 and 11.2.2, suspended for a period of 3 months, from receiving notice hereof by the WASPA Secretariat.

Should similar breaches occur within the three months, the suspension shall be lifted and the IP shall be compelled to pay the fine of R 75 000-00.