



Wireless Application Service Providers' Association

Report of the Appeals Panel

Complaint number	26846 and 26919
Cited WASPA members	R&D Media Europe
Notifiable WASPA members	
Appeal lodged by	R&D Media Europe
Type of appeal	Written Appeal
Scope of appeal	<input checked="" type="checkbox"/> Review of the adjudicator's decision <input checked="" type="checkbox"/> Review of the sanctions imposed by the adjudicator
Applicable version of the Code	13.9 and 14
Clauses considered by the panel	4.2, 4.5, 5.5, 12.4, 18.6
Related complaints considered	26820
Amended sanctions	<p>The Appeals Panel replaces the findings and sanctions of the adjudicator with the following findings and sanction:</p> <ol style="list-style-type: none"> 1. The member is held to have breached sections 4.2, 5.5, 12.4 in case 26846 and 4.2, 5.5 and 18.6 in case 26919 and is fined R100 000 for each case. 2. The suspended fines are upheld.
Appeal fee	Appeal fee not to be refunded.

Is this report notable?	Not notable.
Summary of notability	

Introduction

The rulings of the adjudicator in matters 26846 and 26919 were appealed in one appeals submission by the member. Accordingly, this appeals panel is going to deal with both in one appeals report, the facts of both cases being, in material respects, the same.

In the matters currently under appeal, sometime during July 2015 the WASPA Media Monitor tested a Whatsapp campaign. This campaign promoted a service via Whatsapp end users. In order to "qualify" for the services in question, Whatsapp end users had to share a link with 10 "Whatsapp friends". The link stated in case 26846: "Take a 1 minute survey to get a chance to win a R6,500 Woolworths Giftcard. Woolworths is expanding in Roodepoort. Therefore we need your feedback. Answer 4 simple questions to qualify for 1 of the (150 available) R6,500 Woolworths Vouchers". The link stated in case 26919: "Take a 1 minute survey to get a chance to win a R6,500 Shoprite Giftcard. Shoprite is expanding in Roodepoort. Therefore we need your feedback. Answer 4 simple questions to qualify for 1 of the (150 available) R6,500 Shoprite Vouchers".

The issue with the campaigns was in both respects they utilized the name and logo of reputable South African companies to get the Whatsapp end users to participate in the survey when nothing about the survey or the services had anything to do with such companies.

In addition, the nature of the campaign was, in the view of the adjudicator, a promotional competition and should have complied with the requirements of running such a competition. The link, when opened, seemed to be a gift card promotion. After completing all the survey questions as a participant in the survey, the media monitoring team was then required to enter a mobile number. This then redirected them to a play.mobi.com website which is suddenly a confirmation for a subscription service at R7 per day. The brief terms and conditions at the bottom of the page provide information about the cost of the service and contact numbers but not a description of what the subscription service is or what services will be provided. There is also no further mention of the gift card promotional marketing offer.

In matter 26846 the following welcome message was sent and received: "Welcome 2 Glomobi!content:http://m.za.glomobi.com.
T&C's:http://glomobi.com/subscription_R7/day/stop?sms_stop_to_39326/Help?
[0112185618.info.za@glomobi.com.](mailto:0112185618.info.za@glomobi.com)"

In case 26919, following on the adjudication in 26846, the terms and conditions section at the bottom of the play.mobi.com website page (to which participants are redirected) had been amended to read: "The costs of the service are 7R per day or 10R per day. If you join this subscription service, you will be entered into a draw for the promoted incentive / prize."

Adjudicator's findings

The adjudicator ruled as follows:

1. In case 26846-
 - a. The member was in breach of sections 4.2, 4.5 and 5.5 and was accordingly fined R100 000 (one hundred thousand rand). This amount was determined in the context of the fine imposed in matter 26919 and was considered reasonable by the adjudicator.
 - b. The member was fined R25 00 (twenty five thousand rand) for a breach of section 12.4. This fine was suspended for a period of 6 (six) months provided the member did not infringe this section of the Code again.

2. In case 26919-
 - a. The member was in breach of sections 4.2, 4.5 and 5.5 and was accordingly fined R150 000 (one hundred and fifty thousand rand).
 - b. The member was fined R25 00 (twenty five thousand rand) for a breach of section 18.6. This fine was suspended for a period of 6 (six) months provided the member did not infringe this section of the Code again.

Appeal submissions

The member's appeal seems to turn mainly on the issue of a disproportionate fine and feeling they have been sanctioned twice for the substantially same offence. They also found the adjudication to be procedurally unfair because they had been monitored without having their side of the story heard.

They also felt that they had been unfairly prejudiced and punished due to the negative perception of affiliate marketers where other members had not been sanctioned for similar behaviour. In this regard they reference Crazy4Media who had not been sanctioned in Case 26820 because R&D Media were a member of WASPA.

Specifically, in respect of section 4.2 they argue that they should not be liable because they felt the survey with a draw at the end for a gift card was not a promotional competition. Further, that the fact that the service was not mentioned and described at any time was not unprofessional or

misleading as the Code does not specifically require that the service is described prior to subscribing.

In respect of 4.5, because there was no evidence that Woolworths/Shoprite had not given permission to use their name and logo the adjudicator cannot rule on this point due to insufficient evidence.

Due to the fact that they updated their terms after the complaint, they feel they should not be liable in terms of section 12.5.

Finally, they feel that they have been over sanctioned due to the fact that they had insufficient time between the adjudication in 26846 and the ruling in terms of 26919 to rectify their campaigns with the affiliate marketer.

Deliberations and findings

Sections 4.2, 4.5, 5.5, 12.4 and 18.6 of the Code were considered.

1. The Appeals Panel concurs with the findings of the adjudicator that sections 4.2, 5.5, 12.4 and 18.6 were breached.
2. The Appeals Panel has noted that the grounds of the appeal lodged by the member but feels that their arguments hold little sway. Raising the case of 26820 is not relevant as the parties are different and the member was not sanctioned in that matter. Further, asserting that the Code doesn't specifically require a member to describe their service does not mean a misleading lack of description exculpates members from being honest and professional in their dealings with the public. For this reason 4.2 and 5.5 breaches are upheld. With regard to the member appealing the decision in respect of 12.4 because they updated their terms after the infringing activity does not make the activity in itself non-infringing. At the time of the complaint the terms were not in compliance with the Code and as such we agree with the adjudicator's decision with regards to section 12.4. Finally, we find no valid or persuasive argument put forward that a survey leading to a draw of a gift card is not a promotional competition and as such we uphold the decision of the adjudicator in respect of section 18.6.

3. Unfortunately, because we doubt permission was given, we over turn the decision of the adjudicator in respect of a breach of 5.5 because there is no evidence before us that Woolworths and Shoprite had not given their permission for their names and trade marks to be use.
 4. We will deal with the issues of over sanctioning and not being given sufficient opportunity to remedy the campaign in 26919 together. Due to the fact that the adjudicator specifically sanctioned the member in terms of 26846 knowing that a sanction was going to be imposed additionally in 26919 means we agree with the adjudicator and find the sanctions fair. This also means that the behaviour was sanctioned as one event in essence and the argument about opportunity to amend is nullified.
 5. The appeal against a finding of breach of sections 4.2, 5.5, 12.4 and 18.6 cannot succeed.
 6. The appeal against a finding of breach of sections 4.5 succeeds.
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Amendment of sanctions

The Appeals Panel replaces the findings and sanctions of the adjudicator with the following findings and sanction:

1. The member is held to have breached sections 4.2, 5.5, 12.4 in case 26846 and 4.2, 5.5 and 18.6 in case 26919 and is fined R100 000 for each case.
 2. The suspended fines are upheld.
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Appeal fee

The appeal fee will not be refunded.
