



**Wireless Application Service Providers' Association**

## Report of the Adjudicator

Complaint number	#30985
Cited WASPA members	Classic Mobile LLC (1571)
Notifiable WASPA members	Opera Telecom (Pty) Ltd (0068)
Source of the complaint	WASPA Media Monitor
Complaint short description	Non-compliant subscription service
Date complaint lodged	2016-07-08
Date of alleged breach	2016-06-14
Applicable version of the Code	v14.5
Clauses of the Code cited	4.2., 5.4., 5.5., 8.2., 8.8., 12.1., 12.2., 15.9., 15.10.(i, ii, iii)
Related complaints	30986

considered	
Fines imposed	R15 000 for breach of clauses 4.2, 5.4 and 5.5  R75 000 for breach of clauses 8.2, 12.1, 12.2, 15.9 and 15.10
Other sanctions	Full refund to be paid to the list of affected users provided by the member within 30 business days from date of publication of this report
Is this report notable?	No
Summary of notability	n/a

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## Initial complaint

1. On 14 June 2016, the complainant conducted a comprehensive test of the subscription process for the member's "Droiderator" subscription service using Recordable.mobi video capturing software and PacketCapture interception software.
2. The complainant alleges that the landing page for the member's service is non-compliant for the following reasons:
  - 2.1 *Subscription reference not immediately adjacent to the call to action button;*
  - 2.2 *Pricing and billing frequency not immediately adjacent to the call to action button;*
  - 2.3 *Terms and conditions displayed at the bottom of the page (too many line spacing between call to action button and terms and conditions).*

3. The complainant also alleges that after clicking on the '*Continue*' call to action button on the landing page, they were not presented with or re-directed to the network-hosted confirmation page where they should have been given the opportunity to accept or reject the request to join the member's Droiderator subscription service at R5/day.
  4. The complainant was subscribed to the service without confirmation being given.
  5. The complainant alleges that the member has contravened clauses 4.2, 5.4, 5.5, 8.2, 12.1, 12.2, 15.9 and 15.10 of the WASPA Code of Conduct.
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### **Member's response**

6. The member did not dispute the allegations made by the complainant and instead stated in its response to the complaint that one of its affiliates was responsible for the issues with the landing page and subscription process.
  7. The member confirmed that it had "fired" the affiliate and withheld the payment of any monies due.
  8. The member also stated that it had hired a compliance consultant to monitor this going forward.
  9. The member provided a list of the affected users which were tied to the affiliate, and confirmed that these users would receive a full refund.
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### **Sections of the Code considered**

10. The following clauses of the WASPA Code of Conduct were considered:

- 10.1 Clause 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;
- 10.2 Clause 5.4: Members must have honest and fair dealings with their customers;
- 10.3 Clause 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;
- 10.4 Clause 8.2: For a subscription service, the “pricing information” consists of the word “subscription” and the cost to the customer and frequency of the billing for the service. The cost and frequency portion of the pricing information must follow the following format, with no abbreviations allowed: “RX/day”, “RX/week”, or “RX/month” (or RX.XX if the price includes cents). For services billed at an interval other than daily, weekly or monthly, the required format is “RX every [time period]”, with no abbreviations permitted when specifying the time period. Examples of pricing information: “Subscription R5/week”, “R1.50/day subscription”, “RX every three days”, “RX every two weeks”;
- 10.5 Clause 12.1: For any web page, pricing information does not need to be displayed for services which are free, or which are billed at standard rates. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action;
- 10.6 Clause 12.2: There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated. It must not be a requirement that the viewer of an advert has additional software installed in order to see pricing information in the advert;

- 10.7 Clause 15.9: The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer; and
- 10.8 Clause 15.10: For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:
- (i) The customer's mobile carrier may implement the confirmation step.
  - (ii) The member can provide the customer with a "confirmation page".
  - (iii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.
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## Decision

11. Firstly, thank you to the complainant for the comprehensive manner in which this complaint was compiled and the rigorous testing process that was undertaken.
12. I am also grateful to the complainant for the technical explanations given for the methods used to bypass the network-controlled subscription procedures, including "click-jacking" and "Javascript Same Origin Bypass".
13. The allegations made against the member have not been disputed.
14. Instead, the member has merely stated that one of its affiliates were responsible for the issues complained of, and that the relevant affiliate has been "fired".
15. No further evidence was presented by the member to support its explanation.
16. Based on the evidence presented, which remains uncontested, I am satisfied that there has been a contravention of clauses 8.2, 12.1, 12.2, 15.9 and 15.10 of the WASPA Code

of Conduct, and the complaint is accordingly upheld in regard to these clauses of the Code.

17. Regarding the alleged contravention of clauses 4.2, 5.4 and 5.5 of the WASPA Code, I am not satisfied with the member's response insofar as it has attempted to shift responsibility to an affiliate (and without providing any evidence in support of its contention in this regard).
18. It is general practice for members to contract with third party affiliates to promote the member's services, and that these affiliates often use campaigns to direct potential subscribers to the member's landing page for the relevant service.
19. There have been a number of complaints made to WASPA regarding affiliate campaigns which do not comply with the WASPA Code. The point has repeatedly been made in the adjudication of these complaints that the member is ultimately responsible for the actions of its affiliates and for any contraventions of the Code, unless they have taken reasonable steps to prevent such contraventions from taking place.
20. Even if I were to accept that the member's explanation in this complaint is true (which is highly improbable in the absence of any supporting evidence), it does not absolve the member of responsibility for the aforementioned contraventions of the Code.
21. What is of further concern is that the member has made no attempt to investigate this matter further, taking into account the seriousness of the allegations and the seriousness of the harm that has been caused to consumers of the member's services by this alleged affiliate.
22. The member is the party best placed to conduct such an investigation and to refer any fraudulent activity to the necessary authorities.
23. Instead, the member simply states that it has "fired" the affiliate and that it will now appoint someone to monitor future compliance.
24. In light of the foregoing, I am not satisfied that the member has met the standards of conduct expected of it in terms of clauses 4.2, 5.4, and 5.5 of the Code.

25. I am therefore satisfied that the member has also contravened clauses 4.2, 5.4 and 5.5 of the Code, and the complaint is therefore also upheld with regard to these clauses too.
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## Sanctions

26. The prescribed subscription procedures set out in the WASPA Code are aimed at ensuring that consumers are not subscribed to services without their knowledge and express consent.
27. The activities that are used by unscrupulous parties to bypass the required procedures, as described by the complainant, pose a real threat of serious harm to consumers.
28. The member's abject failure to take any steps to investigate the matter further and to bring the guilty party to book, as it were, is a serious omission and this has been taken into account as an aggravating factor.
29. It has also been noted that this complaint, together with complaint #30986, which were both lodged simultaneously and which both largely emanate from the same activities, are the only complaints that have been lodged with WASPA against the member. This has been taken into account as a mitigating factor.
30. I have also taken into account the member's offer to refund all affected users.
31. The following sanctions are therefore imposed:
- 31.1 A full refund is to be paid to the affected users as per the list provided by the member and attached to its response to the complaint. Proof of payment of such refunds must be given to the WASPA Secretariat within 30 (thirty) business days from the date of publication of this report;

31.2 The member is fined the following amounts, which are payable immediately on publication of this report:

31.2.1 R 15 000.00 for the breach of clauses 4.2, 5.4 and 5.5; and

31.2.2 R 75 000.00 for the breach of clauses 8.2, 12.1, 12.2, 15.9 and 15.10.

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