



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#30986
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	30985

considered	
Fines imposed	n/a
Other sanctions	n/a
Is this report notable?	No
Summary of notability	n/a

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.
 6. This complaint was lodged together with complaint #30985 against the same member and arises from the same circumstances.
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Member's response

7. 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.
 8. The member confirmed that it had "fired" the affiliate and withheld the payment of any monies due.
 9. The member also stated that it had hired a compliance consultant to monitor this going forward.
 10. 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

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

- 11.1 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;
- 11.2 Clause 5.4: Members must have honest and fair dealings with their customers;
- 11.3 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;
- 11.4 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”;
- 11.5 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;
- 11.6 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;

- 11.7 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
- 11.8 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

12. The allegations made against the member have not been disputed.
13. 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".
14. No further evidence was presented by the member to support its explanation.
15. 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.
16. Regarding the alleged contravention of clauses 4.2, 5.4 and 5.5 of the WASPA Code, I refer to the statements made in my decision in complaint #30985, and confirm that the complaint is also upheld with regard to these clauses too.

Sanctions

17. The current complaint is based on the exact same grounds as complaint #30985. The only distinction to be made is that the complainant conducted another test at a different time and the results were the same.
 18. Although, strictly speaking, the complaint has been formally upheld in respect to each of the contraventions of the Code complained of, I see no reason why any further fines need to be imposed against the member in addition to the fines that have been imposed pursuant to complaint #30985 being upheld.
 19. Similarly, the exact same list of affected users has been attached to the member's response to this complaint as was attached to its response in complaint #30985. Therefore, no further refunds need to be sanctioned.
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