



Report of the Adjudicator

Complaint number	#59770
Cited WASPA members	ADX Digital Membership no: 2006
Notifiable WASPA members (notified of complaint but not respondents)	Mobixone Membership no: 1964
Source of the complaint	WASPA Compliance Department
Complaint short description	Services advertised not rendered Misleading subscription Unfair dealings with customers Insufficient access to information about the service Unauthorized service charges
Date complaint lodged	2023-12-05
Date of alleged breach	2023-11-02
Applicable version of the Code	17.6
Clauses of the Code cited	5.1, 5.4, 5.5, 5.6A 8.7
Related complaints considered	N/A

Fines imposed	<p>The member breached clauses 5.1, 5.4, 5.6A, and partially breached clause 8.7.</p> <p>There are a few mitigating factors and, accordingly, the member is fined:</p> <ul style="list-style-type: none"> - R17 500.00 for the breach of clauses 5.1, 5.4, 5.6A and the partial breach of clause 8.7.
Other sanctions	<ul style="list-style-type: none"> - The Member is ordered to provide those customers who were directly impacted by the non-compliance of its service from commencement of the service to 2 November 2023, with a full immediate refund, relating to the subscription fees, within 5 days of the publication of this report. The triggering clause of the Code for this finding is 24.43(a). - The member is ordered to rectify the breached clauses above before continuation of the service to customers.
Is this report notable?	Not Notable
Summary of notability	N/A

1. Initial complaint

1.1 This complaint was initially lodged by the WASPA Compliance Department against Mobixone on 5 December 2023. Mobixone then informed WASPA that the service in question is, instead, run by one an affiliate member, and the formal complaint was then redirected to ADX Digital PTE LTD on 11 December 2023.

1.2 The WASPA Compliance Department included both comprehensive notes of its examination of the member's service, as well as a video recording of the examination in its formal complaint. The report is comprehensive but can be summarised as follows:

- 1.2.1 On the 2 November 2023 at 16:07, a WASPA Compliance Department tester (“the tester”) used a test device with MSISDN +27xxxxx to conduct manual tests on the Vodacom network. Before the tester proceeded, the airtime balance was established, confirmed that there were no active subscriptions, and cleared the browsing data on the mobile device.
- 1.2.2 The tester then browsed on a website with the url: <http://south-frica.com/qh/download/> which directed the tester to the landing page for a subscription service called Quick Heal. The landing page included the following information:
 - a. Quick Heal. Security Simplified
 - b. 1st Day Free Trial for Vodacom Users
 - c. Complete Mobile Security Solutions
 - d. Subscription R7/day
 - e. Subscribe to Quickheal Mobile @ R7 per day (Terms and conditions section at the bottom of the page).
- 1.2.3 After viewing the T’s and C’s, the tester clicked the “ACCEPT” call-to-action button and was directed to the confirmation page which contained the following:
 - a. Subscribe to QuizChamp for R3.00 per day with Vodacom.
 - b. You are about to subscribe to QuizChamp FREE for 1 day thereafter R3.00 per day.
- 1.2.4 After clicking “ACCEPT” the tester was directed to the Quick Heal homepage. A welcome message to Quiz Champ was received. At the Quick Heal homepage it was unclear to the tester what steps he/she needed to take to access the content and/or service to which he/she had just subscribed. No instructions were provided. The tester then clicked on the “DOWNLOAD QUICKHEAL APP” button on the homepage and was directed to the Google Play Store. The product page was for an app called ‘Antivirus and Mobile Security’ offered by ‘Quick Heal Technologies’. The tester clicked on the “Install” button, but after a couple of seconds an error was displayed on the screen: Your device isn’t compatible with the version. The tester then checked his/her subscriptions and confirmed that he was only subscribed to QuizChamp, not Quick Heal.
- 1.2.5 The following day (but less than 24 hours later), the tester checked and confirmed that he/she was still only subscribed to Quiz Champ and that R3.00 worth of airtime had been deducted. The tester then went back to the Quick Heal homepage to try and access the service and was met with the exact same issues as previously. The tester then attempted to unsubscribe from the Quick Heal home page and was unable to do so. He/she then managed to unsubscribe from the subscription to Quiz Champ via the Vodacom USSD self-help portal.
- 1.2.6 Before moving on to the summary of the issues, I wish to emphasise the testers additional considerations which are that:

1.2.6.1 The service advertised for (“Quick Heal”) is available on the Google Play Store for free, so the tester finds it concerning that a consumer could subscribe to an advertisement for the service, be charged for this, and then merely be redirected to the Google Play Store to download an application which is already available and has no associated cost; and

1.2.6.2 After further review of the T’s and C’s, the tester noted that the subscription service is described as a content service providing antivirus and security products/services. Very specifically, it is stated that the service may only be accessed via the home page and no other method – which is confusing as when the tester visited this page, nothing was provided, and the tester could not access the content service. The only action to take was to click on the download link which redirects to the Google Play Store – where the tester can download an App which is free of charge. In addition, there is an error with the download and the tester could again not access the content service.

1.2.7 In summary, the WASPA Compliance Department identified the following problem areas and breaches:

1.2.7.1 The name of the service on the landing page, subscription service homepage and terms and conditions – Quick Heal – differs from the name of the service on the confirmation page, welcome message and Vodacom USSD self-help portal – QuizChamp;

1.2.7.2 The pricing information on the landing page and the terms and conditions – R7.00 per day - differs from pricing information displayed on the confirmation page, welcome message and other communications – R3.00 per day;

1.2.7.3 The landing page, terms and conditions, confirmation page and welcome message all advise that the first day is free of charge, however, the tester was charged the daily subscription fee within the first 24-hour period after the subscription was initiated;

1.2.7.4 No clear instructions were provided on how to access the content/product/service, alternatively, the information that was provided was insufficient;

1.2.7.5 The tester was unable to access and/or use the product/service, despite being charged for it;

1.2.7.6 The unsubscribe functionality on the subscription service homepage does not work.

1.2.7.7 The tester is hooked into a charged for subscription service for a product/service which is freely available on the Google Play Store with no associated cost.

1.2.8 WASPA's Compliance Department thus believes that the member has breached several clauses of the WASPA Code of Conduct ("the code") (stated at section 5 below), believing that the service is generally deceitful, non functional and financially harmful to consumers.

2. Member's response

2.1 Following receipt of the formal complaint from the WASPA compliance department on 11 December 2023, the member responded to the complaint on 11 December 2023. The response is summarised as follows:

2.1.1 The member acknowledges the technical issues experienced by the tester and submits that a similar complaint was received from MCP (a third party monitoring service) on 2 November, and immediately corrected. They provide proof of these corrective measures. They submit that the technical issues were caused by an anomaly wherein 2 headers were received for the same visit during these two tests. They further submit that this can only happen if the header is manually updated in the testing software or if Vodacom sends two headers from their GGSN, thus absolving themselves of the responsibility. Due to the corrective measures already made, they request that the formal complaint be treated as an anomaly and closed. They also provide further responses to the initial complaint in an attachment.

2.1.2 Regarding the testers assertion that the name of the service on the landing page, subscription service homepage and terms and conditions – Quick Heal – differs from the name of the service on the confirmation page, welcome message, and Vodacom USSD self-help portal – Quizchamp, the member responds by saying this was caused by the technical error caused by the "2 headers" anomaly, which was not their fault or intentionally deceitful.

2.1.3 With regards to the tester's observation that the pricing information on the landing page and the terms and conditions – R7.00 per day - differs from the pricing information displayed on the confirmation page, welcome message and other communications – R3.00 per day, the member responds as follows: this was due to the direction to the wrong service. Had the user been directed to the right service, the pricing information and charge would have been correct.

2.1.4 Regarding the observation that the tester was charged the daily subscription fee within the first 24-hour period after the subscription was initiated, despite being advised at all stages that the first day is free, the member responds by

stating that Quiz Champ service is still in the testing phase and hence these parameters are yet to be properly tested.

- 2.1.5 Regarding the observation by the complainant that no clear instructions were provided on how to access the content/product/service, alternatively, the information that was provided was insufficient, the member rebuts by saying that since the user never subscribed to the Quick Heal service, they never got a chance to share the post subscription page with the user which has the instructions and the service key needed to access the App.
 - 2.1.6 Regarding the complainant's observation that the tester was unable to access and/or use the product/service, despite being charged for it, the member points out that the tester was never subscribed to or charged for the Quick Heal service, but rather another one, as previously discussed.
 - 2.1.7 Regarding the allegation that the unsubscribe functionality on the subscription service homepage does not work, the member points out that this was because the member never actually subscribed to the Quick Heal service.
 - 2.1.8 Regarding the contention, by the complainant, that the tester was hooked into a charged for subscription service for a product/service which is freely available on the Google Play Store with no associated cost, the member responds by saying that only a freemium version is available on the Google Play Store which has only limited features but if the Vodacom user buys the service using DCB then such users get the full version with the proper licence key of the service.
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3. Complainant's response

- 3.1 In response to the member's submissions in response to its initial complaint, the WASPA Compliance Department responded on 10 January 2024 as follows:
 - 3.1.1 They don't dispute the members observations but point out that, by the members own admission, the issues were pointed out by another third-party monitoring company and were, thus, not isolated.
 - 3.1.2 The complainant then notes that, in their response, the member states, in essence, that all the issues were occasioned by the technical errors/issues between their systems and Vodacom's systems. Be that as it may, the complainant points out that, in doing so, the member doesn't dispute the issues or numerous breaches of the code. The complainant contends that is ultimately the member who remains responsible for their services and to ensure that they are set up correctly.

3.1.3 The complainant further takes note of the corrective action taken by the member to eliminate this technical error for future interactions with the Quick Heal subscription service but, ultimately still believes that the code was breached and that the original complaint was sufficient to warrant this finding.

4. Member's further response

4.1 The member stands by its original response, intimating that this matter has a technical flavour rather than a compliance one, and further doubles down on the fact that they were not at fault and, thus, can't be liable for the breaches.

5. Sections of the Code considered

5.1 As the conduct complained of took place on or around 2 November 2023, version 17.6 of the WASPA Code of Conduct applies to this complaint.

*5.2 It is alleged that the member has infringed clauses **5.1, 5.4, 5.5, 5.6A** and **8.7** of the Code of Conduct. The clauses read as follows:*

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

***5.4.** Members must have honest and fair dealings with their customers.*

***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.*

***5.6A.** Members must ensure that customers have ready access to information on how to access and use services.*

***8.7.** Pricing information must not be misleading. The price must be the full retail price of the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.*

6. Decision

6.1 Having reviewed the complaint and responses from the complainant and member, I have reached the conclusions set out below wherein I deal with the relevant clauses of the code in order.

6.2 Before dealing with the relevant “breach” clauses, in order, I wish to initially opine on an issue that the member repeatedly brought up in their responses; this being the fact that the “technical issues” were due to no fault of their own and couldn’t be prevented or known about. I have not been asked to adjudicate upon whether the “technical issues” were the members fault or not, and preventable or not, and, without making a fault or preventability determination, it bears mentioning that it is, ultimately, the members responsibility to do sufficient testing and set up their services correctly, before they are brought to market for consumers to purchase.

Clause 5.1

6.3 Whether or not we are to accept that without the “technical error” the member would be able to provide the service, in this instance, due to the “technical error”, the member offered/promised/advertised a service (that being the Quick Heal subscription service) that they are unable to provide.

6.4 Accordingly, I find a breach of this clause.

Clause 5.4

6.5 With regards to whether the member had honest and fair dealings with the tester (a customer as the transaction was entered into), regardless of the fault or knowledge of the technical errors in the service, it has already been established that the member, ultimately, bears responsibility to do sufficient testing and set up their services correctly. As such, due to the fact that, when attempting to subscribe to a service, the tester was then directed to be subscribed to a completely different service (with the subscription for the original service not even being possible when attempted via another means). As such, this is clearly unfair and dishonest dealings with a customer.

6.6 Accordingly, I find a breach of this clause.

Clause 5.5

6.7 With regards to whether the member knowingly disseminated information that was false or deceptive, or that would be likely to mislead by inaccuracy, ambiguity, exaggeration or omission, I am convinced by the member’s evidence and argument that the provision of the incorrect service was occasioned by “technical errors” that were not known to the member and, as such, I am not convinced that the member **knowingly** disseminated information that was false or deceptive, or that would be likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.8 Accordingly, I do not find a breach of this clause.

Clause 5.6A

6.9 Regarding the accusation by the tester that customers did not have readily available access to information on how to access and use services, it is not contested that the T's and C's on the landing page didn't provide this information, nor was it available at the app home page. Neither was it available on the Google Play Store app, which didn't work. I am conscious of the member's argument that this information would have been made available had the correct app actually been subscribed for, but am unconvinced by this argument as the fact of the matter is, based on this case, there was no information available at any stage of the transaction process. The T's and C's should have, at the very least, provided this information.

6.10 Accordingly, I find a breach of this clause.

Clause 8.7

6.11 On the basis of the evidence presented, I am satisfied that, for the most part, the pricing information provided was not misleading. Even though the prices advertised for on the landing page and confirmation page were different, that was because a different service came up on the confirmation page. It wasn't intentionally misleading and differing prices for the same service.

6.12 Where the pricing information was misleading was the fact that the tester was charged R3, for the Quiz Champ subscription, prior to 24 hours having elapsed. The confirmation page clearly indicated that the first day was free. The member didn't dispute this and states that this is because the Quiz Champ service is still in the testing phase. This is not a valid reason to avoid breaching clause 8.7.

6.13 Accordingly, I find a partial breach of this clause.

7. Sanctions

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct of the member in the form of any prior contraventions of the WASPA Code of Conduct and any mitigating or aggravating circumstances.

7.2. This is not the first upheld complaint against the member when it comes to WASPA violations. There have been 4 previously upheld complaints against the member so that is somewhat aggravating in nature.

7.3 When it comes to mitigating factors in this case, the following are present:

7.3.1 After being informed of the “technical issues” by another third party monitoring company, the member promptly corrected the issues on 2 November 2023;

7.3.2 As a result of the contraventions all being occasioned by “technical issues” that the member was unaware of, there was no evidence of deceit or intent when it comes to the contraventions of the WASPA code in this instance.

7.4 As such, I feel, on the whole, that there are more mitigating factors than aggravating when it comes to this case.

7.5 I find that the Member breached clauses 5.1, 5.4, 5.6A, and partially breached clause 8.7.

7.6 Due to the mitigating factors I, accordingly, fine the Member R 17 500.00 for the breach of clauses 5.1, 5.4, 5.6A and the partial breach of clause 8.7.

7.7 There is no indication of the prejudice suffered by consumers generally due to the member’s breaches of the Code of Conduct. The tester was charged for a day of the member’s incorrect subscription service and this could very well have been the experience of many consumers. Thus, the Member is ordered to provide those customers who were directly impacted by the non-compliance of its service from commencement of the service to 2 November 2023, with a full immediate refund, relating to the subscription fees, within 5 days of the publication of this report. The triggering clause of the Code for this finding is 24.43(a).

7.8 Furthermore, the member is ordered to rectify the breached clauses above, if not done so already, before continuation of the service to customers.

8. Matters referred back to WASPA

N/a
