



Report of the Adjudicator

Complaint number	#59772
Cited WASPA members	Cookies Factory S.R.L (2037)
Notifiable WASPA members	Not applicable.
Source of the complaint	WASPA Compliance Department
Complaint short description	Misleading advertising
Date complaint lodged	2023-12-05
Date of alleged breach	2023-11-23 and 2023-11-08
Applicable version of the Code	17.7
Clauses of the Code cited	5.1, 5.4, 5.5, 5.6B, 8.8, 12.1
Related complaints considered	#58517
Fines imposed	R5 000.00 for breach of clause 5.4 of the Code; R10 000.00 for breaches of clauses 5.1, 5.5, 5.6B, and 8.8 of the Code; and R5 000.00 for breach of clause 12.1 of the Code.
Other sanctions	Not applicable.
Is this report	Not notable.

notable?	
Summary of notability	Not applicable.

Initial complaint

1. Whilst monitoring, testing services, and conducting compliance checks of test results, the WASPA Compliance Department ("the Complainant") identified a subscription service which they believed did not comply with the requirements of the WASPA Code of Conduct ("the Code").
2. On 2023-11-23 and 2023-11-08, a tester from the WASPA Compliance Department ("the tester") conducted manual tests on the MTN network regarding the Member's service, on URL <http://exbowl.com/adult-whatsapp>, which directed the tester to the ExBowl website.
3. It was alleged that the Member's banner advertisement referred to a WhatsApp Update, and its subscription service landing and confirmation pages were designed in such a way as to appear to be linked with the WhatsApp chat platform. It was also alleged that the tester uncovered that the Member's the subscription service offered gaming content, and there was no WhatsApp related content, services, or updates available to the tester, which was misleading advertising.
4. The Complainant complained that the Member's landing and confirmation pages clearly stated that the first day of its subscription service was free, however, the tester was immediately charged R5.00 upon subscribing to the Member's service.
5. It was also alleged that the pricing information on the landing and confirmation pages were neither clear, nor prominent, and the colour and size of the font against the background made it difficult to read.

Member's response

6. The Member responded that the non-compliance of its subscription service with the Code was associated with a residual campaign that was inadvertently activated during a testing phase and that the incident was an isolated matter.
 7. The Member also stated that the affected campaign, including both advertisements and the landing pages, had been completely removed from online traffic to prevent any further impact.
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Complainant's response

8. The Complainant did not deem it necessary to respond to the Member's submission.
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Sections of the Code considered

The following sections of the Code are considered:

“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.

5.6B. Where a member passes on information about a service and/or content to a mobile network operator, for example for display in a confirmation step presented to a customer, that information must be relevant to the service being provided and must not be misleading to the customer.

8.8. Content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service. Advertising must not mislead consumers into believing that it is for an entirely different service or for different content.

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, provided that the mobile network operator does not prescribe any specific advice of charge requirements. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action”.

Decision

9. It is clear from the Member's response that it did not deny the breaches of the Code as listed in the formal complaint by the Complainant, and that it had made the necessary amendments to its service to prevent further breaches from occurring.
10. The Member's banner advertisements and confirmation pages clearly stated that the first day of its subscription service was free, however, the tester was immediately charged R5.00 upon subscribing to the Member's service in contradiction with this advertisement term put forward by the Member. In terms of 5.4 the Code the Member must have honest and fair dealings with its customers which is in stark contrast with the Member's dishonest dealings. The Member is therefore found in breach of clause 5.4 of the Code.

11. The Member's banner advertisement misled the customer to believe that the subscription service was linked to a WhatsApp Update, when the Member's subscription service was for gaming. Furthermore, the Member's landing and confirmation pages were also designed in such a way as to appear to be linked with the WhatsApp chat platform, displaying the Whatsapp logo, font and green colouring associated with the Whatsapp brand. The Member was offering a service it could not provide, the information it provided to the mobile network provider was misleading, and it misled its customers into subscribing to an entirely different service through inaccurate advertising. Therefore, the Member is found in breach of clause 5.1, 5.5, 5.6B, and 8.8 of the Code.
 12. The Member's pricing information on the MTN confirmation and landing pages were not clear, nor prominent, and required closer examination as per the use of font and colouring. Members must not knowingly disseminate information that is likely to mislead customers by ambiguity or omission. By not providing clear and prominent information regarding the subscription nature of the service and the associated cost, the Member disseminated ambiguous and incomplete information to its consumers. Therefore, the Member is found in breach of clause 12.1 of the Code.
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Sanctions

13. The Member has been found in contravention of numerous clauses cited herein within the same year of the current complaint, which is an aggravating factor and the contravention of the Code in this manner cannot be deemed to be an isolated incident.
 14. The Member is fined as follows:
 - 13.1 R5 000.00 for breach of clause 5.4 of the Code;
 - 13.2 R15 000.00 for breaches of clauses 5.1, 5.5, 5.6B, and 8.8 of the Code; and
 - 13.3 R5 000.00 for breach of clause 12.1 of the Code.
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Matters referred back to WASPA

15. Not applicable.
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