



Wireless Application Service Providers' Association

Report of the Adjudicator

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| Complaint number | #36161 |
| Cited WASPA members | Opera Telecom (Pty) Ltd t/a Opera Interactive / Oxygen8 Communications (0068) |
| Notifiable WASPA members | n/a |
| Source of the complaint | WASPA Media Monitor |
| Complaint short description | Advertising within children's applications; non-compliant landing page for subscription service; and non-functional customer support number |
| Date complaint lodged | 2017-09-14 |
| Date of alleged breach | Same as above |
| Applicable version of the Code | v15.0 |
| Clauses of the Code cited | 1.5; 1.6; 3.1; 3.2; 3.5; 3.6; 3.7; 4.2; 5.12; 5.13; 8.7; 12.1; 12.2; 12.5 (a,b); 15.9; 15.10; 15.11; 22.4 |
| Related complaints | n/a |

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| considered | |
| Fines imposed | R5 000.00 for breach of clauses 5.12 and 5.13; |
| Other sanctions | Member to suspend services to Moonsaver LLC |
| Is this report notable? | No |
| Summary of notability | n/a |

Complaint

1. The complaint lodged against the Member was based on alleged contraventions of the Code by one of its customers, Moonsaver LLC ("Moonsaver").
2. The complainant had been tracking and monitoring Moonsaver's services since April 2017 and had noted a marked increase in the number of instances of subscription services being advertised within mobile applications used by or targeted at children.
3. For the present complaint, the complainant had found a banner advert within the "Talking Pierre the Parrot" mobile application, advertising Moonsaver's Game Mine subscription service. The "Talking Pierre the Parrot" application is advertised as being suitable for children older than 3 years.
4. The complainant alleged that this was a contravention of clause 22.4 of the WASPA Code of Conduct.
5. The complainant also alleged that Moonsaver's service was not compliant with certain other requirements of the Code of Conduct. In particular, the complainant alleged that:

- 5.1 The pricing information and network compatibility notice was not displayed clearly and correctly on the relevant landing page for the service;
 - 5.2 No double opt-in process in place for activating the service; and
 - 5.3 The customer support number provided for the service was not functioning effectively.
6. The basis for the complaint against the Member was that Moonsaver was a customer of the Member, and the Member was therefore liable, under clause 3 of the Code, for any breaches of the Code committed by Moonsaver.
 7. The complainant alleged that Moonsaver were continuously advertising its services in children's applications and that the matter was sufficiently serious to warrant the emergency procedure established under clause 24 of the Code being followed.
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Member's initial response

8. In its initial response to the complaint (and in its subsequent formal response) the Member tried to distance itself from the alleged contraventions by Moonsaver by arguing that it was not acting in the role of aggregator as the service was provided by Moonsaver via Vodacom's new "Charge to Bill" platform.
9. The Member stated that its contractual agreement with Moonsaver was to provide a bulk SMS service for sending a welcome message to new subscribers, and to provide a standard-rated opt-out short code, customer support telephone number, and customer support email address. It was not involved in the marketing of the service, or in the subscription or billing processes associated with the service.
10. With regard to the alleged contravention of clause 22.4 of the Code, the Member argued that clause 22.4 did not contain explicit instructions not to advertise in children's applications.

11. The Member further denied that Moonsaver had contravened the Code in the other respects alleged by the complainant. However due to the time constraints of the emergency process, the Member did not make any further submissions in this regard but reserved their right to do so before the matter was referred to formal adjudication.
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Complainant's further submissions

12. In response, the complainant argued that it made no difference that Vodacom or Moonsaver, and not the Member, were responsible for the billing leg of the service, and that the Member remained responsible for the "workings of its IP" when the IP was not a member of WASPA. If that IP was breaching the Code, the Member was responsible.
13. The complainant then cited the following extract from the terms and conditions for the service in support of its allegation that the pricing information provided was contradictory and confusing:

Fees and Payment

When you subscribe to the GameMine service, you will incur a daily subscription with the first day for free and then a fee at the rate of R5.00 currently listed on the "Join" page of the Site. By subscribing to GameMine, you authorize GameMine, LLC to charge the mobile subscription service, all applicable fees for your subscription and any other purchases you make from GameMine, LLC during the term of your subscription, including all applicable taxes.

Your subscription will automatically renew for the same length of time as your initial subscription term, at the then-current daily membership rate of R5.00 that is posted on the "Join" page of the Site. You authorize GameMine, LLC to instruct your mobile carrier to charge you for the ongoing daily subscription fees unless you cancel your subscription. Charges will appear on your invoice you receive from the carrier or they will be deducted from your prepaid account. Additional charges may apply depending on your mobile data plan.

You acknowledge and agree that GameMine, LLC undertakes no responsibility regarding the payments you make to the carrier you specify for your subscription to GameMine. To access or use GameMine you need to subscribe to GameMine. You acknowledge that GameMine, LLC reserves the right to charge GameMine, LLC services. Your subscription entitles you to access the Service solely for personal, non-commercial use. You are solely responsible for all activities that occur through your subscription account.

In case of billing error due to insufficient funds or technical issues, you will not be billed for the current day and the subscription will continue with the daily billing on the following day.

14. No further submissions were made by the complainant.
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Emergency Panel ruling

15. WASPA instituted the emergency procedure under clause 24 of the Code of Conduct and an Emergency Panel was duly constituted on 18 September 2017.
16. The Panel held that Moonsaver was a customer of the Member and that Moonsaver was providing and marketing services which fell within the ambit of the WASPA Code of Conduct.
17. The Emergency Panel disagreed with the Member that any distinction should be drawn between situations where a member is providing aggregation services versus other services to a customer who is a non-member, and held that the Member remained responsible under clause 3 of the Code of Conduct for any contraventions of the Code by its customer.
18. The Emergency Panel also disagreed with the Member's view that clause 22.4 does not make it clear and explicit that subscription services must not be targeted at children. The

Panel held that placing banner adverts for subscription services in applications intended for children appeared, at face value, to be targeting subscription services at children.

19. The Emergency Panel ordered that the Member immediately cease providing services to Moonsaver, pending the outcome of a formal adjudication.
 20. The Panel also recommended that the WASPA Secretariat should issue a notice in terms of clause 24.77 of the Code to all WASPA members and network operators advising them to exercise caution should Moonsaver approach them to provide services.
 21. The Member duly complied with the Emergency Panel's order by suspending all further services to Moonsaver, pending the outcome of the formal adjudication process.
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Member's formal response

22. In its formal response to the complaint, the Member stated, by way of background, that Moonsaver promoted and offered its subscription services via the new "Charge to Bill" platform offered by Vodacom.
23. The "Charge to Bill" platform enabled content providers to offer and promote their services on the Vodacom's VLive portal without being required to be WASPA members.
24. More importantly, content providers using this platform could activate new subscriptions without providing a second confirmation page as required by the WASPA Code. Vodacom also handled the billing for active subscriptions.
25. The Member stated that this had become a contentious issue for a number of WASPA members who believed that their services were becoming less competitive because they were required to comply with the double opt-in requirements of the WASPA Code, while non-members using the new "Charge to Bill" platform were not.
26. The Member referred to a general meeting of WASPA members which was held on 30 August 2017, i.e. prior to this complaint being lodged, when it was resolved that the

General Manager of WASPA would take the matter up with Vodacom directly to determine how content services offered via Vodacom's "Charge to Bill" platform would be regulated.

27. The Member then referred to a subsequent email that had been circulated by the General Manager of WASPA on 22 September 2017. The Member stated that this email confirmed that complaints regarding services offered via Vodacom's "Charge to Bill" platform would be reported by the Media Monitor to Vodacom directly and Vodacom would then review and act accordingly.
28. The Member believed that this rendered this complaint against it "*null, void and unwarranted*", and that the complaint should then have been withdrawn in its entirety.
29. The Member again denied that it acted as an aggregator for Moonsaver and that it was involved in any way in the marketing of Moonsaver's services, or in the subscription process, or in the billing of active subscriptions.
30. The Member reiterated that it was only engaged by Moonsaver to provide bulk SMS services and customer support functionality.
31. The Member alleged that the only compliance requirement for a service offered via the "Charge to Bill" platform was to send a welcome message to new subscribers to the service. The Member stated that the format of the required welcome message had not been defined by Vodacom, but that Moonsaver had modelled their welcome messages in line with the requirements of the WASPA Code of Conduct, and was therefore overly compliant.
32. With reference to the specific contraventions of the Code of Conduct, the Member responded as follows:
 - 32.1 *Re. clause 1.5 and 1.6* – The Member stated that Vodacom's "Charge to Bill" platform did not require a content provider, such as Moonsaver, to be a WASPA member.

- 32.2 The Member argued further that at the time this complaint was lodged WASPA had not clarified whether services offered by content providers using the “Charge to Bill” platform fell within the ambit of the Code.
- 32.3 Based on the email circulated by the General Manager of WASPA on 22 September 2017, the Member believes that WASPA have now clarified that complaints regarding services offered via the “Charge to Bill” platform would be handled by Vodacom and that this complaint should have been withdrawn.
- 32.4 *Re. clause 3.1* – The Member believes that these provisions are not applicable as there is now a separate procedure for resolving complaints involving services on the “Charge to Bill” platform which is handled by Vodacom and not WASPA.
- 32.5 *Re. clause 3.2* – The Member confirmed that there had been compliance with the provisions of this clause pursuant to the Emergency Panel ruling. The Member added that compliance with the ruling was not required now that it had been clarified that these matters would be handled by Vodacom directly; however Moonsaver had complied anyway as a gesture to show good faith.
- 32.6 *Re. clause 3.5* – The Member confirmed that Moonsaver were previously a WASPA member and is aware of the requirements of the WASPA Code of Conduct.
- 32.7 *Re. clause 3.6* – The Member reiterated that the complaint against it was lodged prior to WASPA engaging with Vodacom to establish how services offered via the “Charge to Bill” platform would be regulated.
- 32.8 *Re. clause 3.7* - The Member referred to the fact that Moonsaver had previously blocked adverts appearing in children’s applications after receiving a Heads-Up from the complainant. The Member argued that Moonsaver had no control over the placing of adverts when using services such as Google Adwords and Vodacom Vlive and that it could only block the relevant adverts on an ad hoc basis after they had been detected. The Member argued that this constituted taking reasonable steps to address the complainant’s concerns relating to such advertising.

- 32.9 *Re. clause 4.2* – The Member argued that both Moonsaver and itself had continuously acted in a professional manner and had not intentionally enticed any member of the public to subscribe to any services. It referred to the 3 (three) methods of contact which were provided to subscribers showing their bona fides and professionalism. These included the standard-rated opt-out short code, the customer support telephone number, and the customer support email address provided.
- 32.10 *Re. clause 5.12* – The Member stated that it runs a fully functioning call centre that was available to customers subscribed to Moonsaver’s services. The Member highlighted that the complainant had not provided any call logs relating to the unsuccessful calls allegedly made to the customer support number provided.
- 32.11 *Re. clause 5.13* – The Member confirmed again that it runs a fully functioning call centre that was available to customers subscribed to Moonsaver’s services.
- 32.12 *Re. clause 8.7* – The Member denied that the pricing information provided for Moonsaver’s subscription service is misleading. The Member argued that the screenshots provided for the tests performed by the complainant clearly show the pricing information on every landing page and banner. The pricing information is adjacent to the call-to-action and is in the correct format as per the WASPA Code of Conduct.
- 32.13 *Re. clause 12.1* – The Member denied that the pricing information was not clearly and prominently displayed. The screenshots provided for the tests performed by the complainant clearly show the pricing information on every landing page and banner. The pricing information is adjacent to the call-to-action and is in the correct format as per the WASPA Code of Conduct.
- 32.14 *Re. clause 12.2* – The Member denied that the pricing information was obscured and not visible. The screenshots provided for the tests performed by the complainant clearly show the pricing information on the landing page.

- 32.15 *Re. clause 12.5* – The Member denied that the terms and conditions do not depict the customer support number or the URL to the full terms and conditions for the service. The screenshots provided for the tests performed by the complainant clearly show this information on the landing page.
- 32.16 *Re. clause 15.9* - The Member argued that the screenshots provided for the tests performed by the complainant clearly shows that they would have clicked (explicit response) from the one page to the other in order to complete the subscription, which was the only requirement for activating services via the “Charge to Bill platform”. The Member argued that this clause has been unnecessarily cited by the complainant and should not form part of this complaint.
- 32.17 *Re. clause 15.10* – The Member argued that this clause is not applicable since the required double opt-in process is not required for activating services via the “Charge to Bill” platform. Instead, a separate confirmation page is hosted and provided by Vodacom to subscribers for Moonsaver’s services. The Member again argued that this clause has been unnecessarily cited by the complainant and should not form part of this complaint.
- 32.18 *Re. clause 15.11* – The Member submitted that if there was any issue with the activation of a subscription, it would be for Vodacom to determine whether or not there was indeed a discrepancy. The Member reiterated that the “Charge to Bill” platform does not require a double opt-in process to be followed.
- 32.19 *Re. clause 22.4* – The member states that Moonsaver purchases banner adverts from Google Adwords and Vodacom and is therefore not aware of or in control of where these adverts are placed as this is determined by the relevant algorithms used on these platforms.
- 32.20 The Member also argued that clause 22.4 does not explicitly state that marketing within children’s applications is not allowed, which leaves room for argument that the clause is extremely vague.
- 32.21 The Member again referred to the previous dealings that Moonsaver had with the complainant to address the latter’s concerns regarding adverts appearing in

children's applications and the fact that such adverts were blocked as soon as Moonsaver was notified. However, Moonsaver would not be aware of all applications available in the App and Play Stores and could only deal with the problem on an *ad hoc* basis and relying on further information provided by the complainant. The Member believes that Moonsaver had shown a willingness to cooperate even though WASPA has no jurisdiction over "Charge to Bill" content providers. Moonsaver have now queried with WASPA why it is still being subjected to Heads-Up complaints even though it is still willing to block any applications suggested by the complainant when applicable.

33. The Member stated further that it felt aggrieved that the current complaint had been lodged against it while this process of engaging with Vodacom was still underway.
34. The Member alleged that its reputation had been tarnished and that it had suffered severe financial loss as a result of the manner in which WASPA has handled this complaint.
35. The Member also stated that as a long-standing member of WASPA for the past 12 (twelve) years, it felt victimized and believes that common sense should have prevailed by the WASPA team dealing with this complaint, as there were many factors to be considered as this can be regarded as "unchartered territory".
36. In the light of the above, the Member requested that the formal complaint be withdrawn in totality and that the sanction of the Emergency Panel be lifted.

Sections of the Code considered

37. The complainant cited the following clauses of the WASPA Code of Conduct as the basis for their complaint:

- 37.1 Clause 1.5: The WASPA Code of Conduct is binding on all WASPA members.

- 37.2 Clause 1.6: Unless otherwise specified, this Code of Conduct applies to all mobile application services offered by WASPA members to customers in South Africa.
- 37.3 Clause 3.1: If a customer, supplier, affiliate or sub-contractor of a member provides or markets services covered by this Code of Conduct, those services are subject to the relevant provisions of this Code, as if the party providing or marketing them was a member.
- 37.4 Clause 3.2: If a customer, supplier, affiliate or sub-contractor of a member is found to have breached this Code of Conduct, that member must abide by any order to suspend or terminate the services offered by that party.
- 37.5 Clause 3.5: Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.
- 37.6 Clause 3.6: Members must ensure that any customer, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of this Code of Conduct.
- 37.7 Clause 3.7: A member is liable for any breaches of this Code of Conduct resulting from services offered or marketed by a customer, supplier, affiliate or sub-contractor if that party is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches.
- 37.8 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.

- 37.9 Clause 5.12: Telephonic support must be provided via a South African telephone number and must function effectively. Customer support must be provided via standard rated numbers, and may not be provided via premium rated numbers. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers must not forward to full voice mailboxes.
- 37.10 Clause 5.13: The option of speaking to a call centre consultant (or leaving a message for a call centre consultant) should be obvious to the caller and available during business hours.
- 37.11 Clause 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.
- 37.12 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 adjacent to the call-to-action.
- 37.13 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.
- 37.14 Clause 12.5: The minimum terms and conditions displayed on any web page must include at least the following information: (a) a customer support number, and (b) a link to a web page where the full terms and conditions for the service are available.
- 37.15 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.

37.16 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.

37.17 Clause 15.11: A confirmation page must contain the following information: (a) the name of the service, (b) the pricing information, (c) a customer support number, (d) instructions for confirming the initiation of the subscription service, and (e) a link to any applicable terms and conditions. Additional information about the service may also be included, provided it follows the above information.

37.18 Clause 22.4: Subscription services must not be intentionally targeted at children.

38. No further clauses were assigned by WASPA.

Decision

WASPA's jurisdiction over "Charge to Bill" services

39. Before addressing the alleged contraventions of the WASPA Code of Conduct, it is necessary to address the issue of whether WASPA has the jurisdiction to entertain this complaint in the first place.

40. Clause 1.6 of the Code expressly states that unless otherwise specified (my emphasis), this Code of Conduct applies to all mobile application services offered by WASPA members to customers in South Africa.

41. Therefore, unless otherwise specified in the Code, the services provided and marketed by Moonsaver are subject to the requirements of the Code of Conduct.
42. The Member has argued that Moonsaver's services, which are offered via Vodacom's "Charge to Bill" platform, are no longer regulated by WASPA.
43. To support this contention, the Member relied on its own interpretation of the email circulated by the WASPA General Manager to all members on 22 September 2017.
44. The relevant extract from this email reads as follows:

3. Charge to bill (CTB) and Online Billing System (OBS)

- *OBS business partners – required to be WASPA members, whereas CTB business partners are not.*
 - *Vodacom advised that CTB platform is currently in trial mode.*
 - *Vodacom reconfirmed that they expect CTB clients to follow best practice, which at this stage is the WASPA Code.*
 - *Any non-compliant activity identified by WASPA linked to CTB clients, must be escalated to Deon for review and action.*
45. The Member has interpreted this email to mean that WASPA no longer has any jurisdiction to deal with complaints involving content providers using Vodacom's "Charge to Bill" platform and that these complaints should be referred by WASPA to Vodacom.
46. This is not my interpretation of what is stated in the email. The email clearly states that the requirements of the WASPA Code will still be applicable to these services. This corresponds with the provisions of clause 1.6 and confirms that all mobile application services offered to the public in South Africa are covered by the Code.
47. The part of the email that states that any non-compliant activity identified by WASPA can be escalated to Vodacom does not, in itself, serve to exclude the application of the informal and formal adjudication processes set out in the Code in the normal course.

48. I therefore disagree with the views expressed by the Member that Moonsaver's services are not covered by the WASPA Code by virtue of the fact that they are offered via Vodacom's "Charge to Bill" platform.
49. There is nothing specified in the version of the Code applicable to this complaint that such services are excluded from the application of the Code.
50. Therefore, until such time as the Code of Conduct has been amended to expressly exclude the application of the Code, in whole or in part, to mobile application services provided by content providers via Vodacom's "Charge to Bill" platform, the provisions of the Code remain applicable in their entirety to Moonsaver's services.

The Member's liability under clause 3.7

51. The basis for the complaint against the Member is that it is liable for any contraventions of the Code by Moonsaver by virtue of the provisions of clause 3 of the Code.
52. Clause 3.1 extends the applicability of the Code to mobile application services provided and marketed by non-members.
53. Clause 3.5 creates a positive obligation on members to ensure that their customers, who are not members of WASPA, but who are providing or marketing services covered by the Code of Conduct, comply with requirements of the Code.
54. Clause 3.7 goes further and holds a member liable for any breaches of the Code resulting from services offered or marketed by their customers who are not members of WASPA.
55. The Member has taken great pains in its responses to this complaint to draw a distinction between situations where it is providing aggregation services to a customer, and when it is only providing certain other value-added services.
56. Although not expressly argued by the Member, it appears that the Member believes that its responsibilities (and liability) under clause 3 of the Code should be excluded unless it is acting as an aggregator for a customer; or, alternatively, that its responsibilities (and

liability) under clause 3 should be limited to ensuring that only those services that it does provide to or on behalf of its customer are compliant with the requirements of the Code.

57. In the present complaint, this would apply only to the welcome messages sent by the Member to new subscribers and the customer support services made available for the service on behalf of Moonsaver. The Member believes that there has been full compliance with the Code in these respects.
58. It is not necessary for me to determine whether the Member acted as an aggregator or not for Moonsaver. The pertinent issue is whether Moonsaver was a customer of the Member. There can be no doubt that this has been established.
59. There is no provision in the Code, and specifically in clause 3.7, that limits the liability of the Member only to situations where it is providing aggregation services to a customer.
60. There is also no provision in the Code which restricts the Member's liability to breaches of the Code related to the specific services provided by the member to or on behalf of a customer.
61. The Member would therefore be liable for any breaches of the Code by Moonsaver when the latter provides and markets services covered by the Code.
62. However, the role played by the Member in relation to this particular service, as well as the specific services performed by the Member for Moonsaver, may be relevant factors when determining whether the Member took any reasonable steps to ensure that Moonsaver provided and marketed its services in a manner consistent with the requirements of the Code, and/or when determining the extent of its liability for any breaches committed by Moonsaver.
63. I will now deal with each of the alleged contraventions of the Code by Moonsaver as set out in the complainant's complaint.

Alleged contraventions of clauses 5.12 and 5.13 of the Code

64. The primary issues to be determined in this regard is:

- 64.1 Whether the complainant's failed attempts, on 14 September 2017, to get through to the relevant customer support number constitutes sufficient proof that Moonsaver (and/or the Member) failed to provide customer support via a South African telephone number that functioned effectively?
- 64.2 Whether the complainant's failed attempts, on 14 September 2017, to get through to the relevant customer support number constitutes sufficient proof that Moonsaver (and/or the Member) failed to provide customers with the ability to leave a message if they were unable to provide immediate support to that customer? and
- 64.3 Whether the option of speaking to a call centre consultant (or leaving a message for a call centre consultant) was made available by Moonsaver (or the Member) during business hours?
65. According to the complainant, they tried to contact the given customer support number without success on 4 separate occasions on 14 September 2017. They were met with a voice recording as follows: *"We are sorry, your call cannot be completed at this time. Please hang up and try your call again later"*. There was no option to leave a message.
66. The complainant did call the number later on the same day and were able to speak to a call centre operator.
67. The Member stated that it operates a fully functioning call centre which was made available to Moonsaver's customers for this particular subscription service, and denied that no customer support services were available on the date and time alleged. The Member suggested that the complainant should have produced call logs to prove otherwise.
68. The Member appears to have misunderstood the basis for the complaint in this regard. The complainant is not contending that no customer support services were available, but rather that the number provided was not functioning effectively.

69. There is no reason why I should not accept the complainant's version at face value without any call logs being provided. Even if the number provided was functioning correctly and the operator was engaged with another call, the complainant should have been given the option of leaving a message.
70. The complaint in respect to the alleged contravention of clause 5.12 and 5.13 of the Code of Conduct is therefore upheld.

Alleged contraventions of clauses 8.7, 12.1, 12.2 and 12.5

71. The main issues to be determined here is whether the pricing information provided was misleading; and whether the pricing information and network compatibility notice was displayed clearly and correctly on the relevant landing page.
72. I have considered the screenshots provided by the complainant, as well as the extract from the terms and conditions for the service referred to by the complainant.
73. The landing page contains the following wording "*Subscribe for R5/day. First day free*" (my emphasis).
74. It is also stated in the terms and conditions that the "first day is free".
75. However it is then stated in the welcome message after the subscription is activated that it is only the first downloaded game that is free.
76. This distinction is significant because if the first day was free, one would assume that multiple games could be downloaded on the same day, and not just one game.
77. Based on the foregoing, I find that the pricing information provided is misleading and in contravention of clause 8.7 of the Code. The complaint in this regard is therefore upheld.
78. I do not agree with the complainant that the pricing information is not clearly and prominently displayed adjacent to the call-to-action on the relevant landing pages. I also cannot find any instance of any intervening text or images between the call-to-action and the pricing information.

79. The pricing information is also legible, arranged horizontally, and has been presented in a way that does not require close examination.
80. The pricing information is also not obscured by any other information and is not animated.
81. It is also not a requirement that the viewer of the landing page has additional software installed in order to see pricing information.
82. It also does not appear from the screenshot provided that the terms and conditions displayed on the landing page did not include the required customer support number and a link to a web page where the full terms and conditions for the service are made available.
83. The complaint in relation to the alleged contravention of clauses 12.1, 12.2 and 12.5 are accordingly dismissed.

Alleged contravention of clauses 15.9, 15.10 or 15.11

84. It is evident from the screenshots provided by the complainant when the service was tested that that no confirmation step is provided. The customer is automatically subscribed to the service after they press the “Confirm” call-to-action button.
85. Although further steps need to be taken before a game can be downloaded, these steps are not relating to the activation of the subscription itself.
86. Based on the email sent by the WASPA General Manager on 22 September 2017, it appears to have been resolved with Vodacom that its “Charge to Bill” content providers are expected to follow best practice, which at this stage is the WASPA Code.
87. This would include the requirements set out in clauses 15.9 and 15.10.

88. Until such time as the WASPA Code has been formally amended to permit subscriptions being activated on the "Charge to Bill" platform without a separate confirmation step and confirmation page being provided, the requirements of clauses 15.9, 15.10, and 15.11 must be adhered to.
89. The complaint in respect of the contravention of clauses 15.9, 15.10, and 15.11 is accordingly upheld.

Alleged contravention of clause 22.4

90. I agree with the Emergency Panel's view that placing adverts in mobile applications targeted at or used by children would constitute a contravention of clause 22.4.
91. The Member has stated that Moonsaver uses online advertising services such as Google Adwords to purchase banner adverts which are then placed by algorithms used with such services. The Member is suggesting that Moonsaver has no control over the placement of banner adverts for its subscription services.
92. However it is generally known that customers using Google Adwords and similar services can target the placement of their adverts, including according to age and other demographic factors. I therefore do not accept the Member's explanation in this regard.
93. It is evident from the previous correspondence between the complainant and Moonsaver that Moonsaver is fully aware of the problem. Despite showing its willingness to block and remove adverts appearing in children's application when alerted by the complainant, Moonsaver has not taken reasonable steps to prevent its subscription services from being targeted at children.
94. The number of instances detected by the complainant where adverts promoting Moonsaver's services in applications which are clearly targeted at or used by children (often as young as 3) is telling.
95. Even if I accept the Member's further submission that platforms and services are evolving rapidly as the available technology advances, this does not detract from WASPA's mandate to safeguard consumers of mobile services, especially children.

96. The complaint in regard to the contravention of clause 22.4 is accordingly upheld.

Member's liability under clause 3.7

97. Clause 3.7 clearly states that the member will be held liable for any breaches of the Code resulting from services offered or marketed by that customer.

98. The Member is therefore liable for Moonsaver's breaches of clauses 5.12, 5.13, 8.7, 15.9, 15.10, 15.11 and 22.4.

Sanctions

99. In establishing the extent of the Member's liability for the contraventions of the Code referred to above, I must consider whether the Member has demonstrated that they have taken reasonable steps to ensure that Moonsaver provides and markets its services in a manner consistent with the requirements of the Code.

100. If they have taken any such reasonable steps, this must be seen as a mitigating factor.

Breach of clause 5.12 and 5.13

101. With regard to the contravention of clause 5.12 and 5.13, the Member was directly responsible for ensuring that the customer support services for Moonsaver's service functioned effectively and in line with the requirements of the Code.

102. Therefore, the Member has not demonstrated that it has taken any reasonable steps to prevent the breach of these clauses.

103. The Member is fined an amount of R5 000.00 for the breach of clauses 5.12 and 5.13 of the Code.

Breach of clauses 8.7

104. Regarding the provision of misleading pricing information by Moonsaver on its landing page, I am satisfied that the Member was not directly involved in the marketing of the service and/or the provision or hosting of the relevant landing page.
105. The relevant pricing information had to be correctly displayed on the welcome message sent in terms of clause 15.17, and I am satisfied that the Member has, when sending these welcome messages on behalf of Moonsaver, ensured that they comply with the provisions of the Code.
106. This has been taken into account as a mitigating factor and despite the Member being found to be liable for this breach of the Code by Moonsaver, no further sanction is given.

Breach of clauses 15.9, 15.10 and 15.11

107. Regarding the breach of clause 15.9, 15.10 and 15.11 by Moonsaver, it is clear that this has become a contentious issue and one where there is definitely a degree of uncertainty, specifically around the question of whether services offered via the Vodacom "Charge to Bill" platform must meet the requirements set out in these sections of the Code.
108. Although the WASPA management team have engaged with Vodacom on this issue and agreement has been reached that content providers on the Vodacom platform must still follow best practice, it appears that Vodacom are allowing new subscriptions to be activated without any "double opt-in" process being followed.
109. I have taken note of the fact that the complaint in this regard was lodged against the Member while these matters were being resolved. I think that it would be unfair to sanction the Member for Moonsaver's failure to comply with clauses 15.9, 15.10 and 15.11 under the present circumstances.

Contravention of clause 22.4

110. Regarding the contravention of clause 22.4 by Moonsaver, I am satisfied that the Member was not involved in the marketing of these services, and specifically was not responsible for the placement of advertising for Moonsaver's services.
111. However, Moonsaver continued to advertise its subscription services within children's applications up to the date of the emergency panel ruling on 18 September 2017, despite being notified on numerous previous occasions by the complainant that this was taking place.
112. As previously stated, I do not accept the explanation that Moonsaver has no control over where its adverts are placed.
113. I also don't believe that it is reasonable that Moonsaver can continue to simply block or remove adverts on an ad hoc basis when these adverts are detected by the complainant.
114. The sheer volume of these adverts occurring in children's applications leads me to the conclusion that this conduct on the part of Moonsaver is intentional.
115. I therefore see no reason why the ruling of the Emergency Panel on 18 September 2017 should not be confirmed. The Member is therefore ordered to continue to suspend all services to Moonsaver.
116. No further sanctions against the Member are necessary, taking into account the mitigating factors referred to above.