



## Report of the Adjudicator

Complaint number	52631
Cited WASPA members	Red27Mobile (1781)
Notifiable WASPA members	Smartcall Technology Solutions (0090)
Source of the complaint	WASPA compliance department
Complaint short description	Non-compliant service
Date complaint lodged	1 June 2021
Date of alleged breach	24 February 2021
Applicable version of the Code	16.16
Clauses of the Code cited	12.1 read with 8.2 and 8.9; 12.2 read with 8.2 and 8.9; 12.4 and 12.5(a); 5.4 and 5.5; 5.8 (b); 5.11; 12.5(a); 15.18(b),(d) – read with 8.2 and (e)
Related complaints considered	N/A
Fines imposed	12.1 read with 8.2 and 8.9; 12.2 read with 8.2 and 8.9; - Fine R5000 12.4 and 12.5(a); - Fine R5000 5.4 and 5.5; 5.8 (b); 5.11; - Fine R5000 15.18(b),(d) – read with 8.2 and (e) – Fine R5000
Other sanctions	N/A

Is this report notable?	Not notable
Summary of notability	N/A

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## Initial complaint

The complainant tested the ChillaxGames service of the member and found the service to be non-compliant. The complainant entered the URL associated with the member's service and subscribed to the service. The complainant found the service to be non-compliant in the following respects:

1. There was no confirmation of subscription.
2. There was no clear and prominent pricing information adjacent to the "call to action".
3. The welcome message was not compliant and did not have a customer support number.
4. The landing page of the service was not compliant, namely:
  - a. For any web page advertising a service for which there is not a subsequent confirmation step containing a link to the terms and conditions, the minimum terms, and conditions for the use of the service must be clearly displayed.
  - b. The minimum terms and conditions displayed on any web page must include at least the following information:
    - i. a customer support number, and
    - ii. a link to a web page where the full terms and conditions for the service are available.
5. The URL provided on the Welcome Message did not work.

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## Member's response

The member advised that the ChillaxGames service is inactive. The member advised further as follows:

"As the test which forms the basis of this complaint was conducted on 24 February 2021, the service in question was in fact active at that time. The tester was able to subscribe to the service and the activation was confirmed on the Cell C USSD self-help portal. The service's inactiveness prior to and post the test being conducted is irrelevant for the purposes of determining whether there were any breaches of the WASPA Code of Conduct at the time when the test was conducted.

For further clarity, the flow experienced by the WASPA tester was not a true consumer journey. All legitimate customers would access the service via a banner advert where pricing information is shown along with the nature of the service.

Clause 12.1 read with clauses 8.2 and 8.9 of the Code of Conduct.

Whilst we note the lack of pricing presented on the initial promotional landing pages, it should be noted that this pricing was presented within the Terms and Conditions (in addition to the payment pages that followed, hosted by the carriers). We once again stress that this page had not been available in the marketplace for several months at the time of WASPA's test, and that the page is under construction whilst we work with the carriers to improve and align the page design (with the carrier-hosted landing pages that follow). Nonetheless, although this page is under active construction and not available to end-users.

Clause 5.4 and 5.5 of the Code of Conduct.

As you can see from <http://za.chillaxgames.com/> we have improved the visibility of the terms and conditions on the page. Please bear in mind that the marketing material shown prior to customer landing on <http://za.chillaxgames.com/> already included pricing information and nature of the service, in addition to the two carrier-hosted payment pages for 3G customers (and carrier SMS confirmation request in the case of Wi-Fi users).

Clause 5.8(b), 5.11 and 12.5 (a) of the Code of Conduct.

As you can see from the <http://za.chillaxgames.com/> we have improved the terms and condition visibility where customer support information is displayed where prior it was shown in the Terms and Conditions footer link. Nonetheless, we stress once again that the customer care information was available on the page and in all SMS messages that followed.

Clauses 15.8 (b), (d) – read with 8.2, and (e) of the Code of Conduct.

Whilst we accept the format of the welcome SMS included some additional information, this was purely for the convenience of the consumer (for example, the consumer's unique service link). We are confident that this inclusion could not possibly cause any consumer harm. Nonetheless, we have revised the welcome MT as per the code of conduct. Below you will note the amended welcome SMS, considering 160-character limit:

"Welcome to ChillaxGames <URL >. Subscription service: First day FREE then R3/day. SMS STOP to 36628 to end. Help: 0115074630"

Clauses 5.1 and 5.2 of the Code of Conduct.

Based on the video test, it appears that the reason for not being able to reach the URL (received upon successful activation of the service) is due to the tester's Internet Connection, which unfortunately RED27 does not control (notably 3G or 4G connection). We have since made several tests of the ChillaxGames sign-up process on 4G and are happy to report that the service is working as expected, and that consumers may successfully access the service portal and all content via their unique access link provided.

Notably, these 'default' URLs are not maintained in accordance with new code provisions as a result, a process of which we will now however address upon revelation that WASPA can seemingly sanction against URLs that are not promoted or genuinely discovered within the

Whilst we note the lack of pricing presented on the initial promotional landing pages, it should be noted that this pricing was presented within the Terms and Conditions (in addition to the payment pages that followed, hosted by the carriers).

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## Complainant's response

1. The member states: "For WASPA's information, the ChillaxGames service is inactive." The member then proceeds to advise that the service was paused and relaunched between February 2021 and 23 March 2021, whereafter it was paused again. As the test which forms the basis of this complaint was conducted on 24 February 2021, the service in question was in fact active at that time. The tester was able to subscribe to the service and the activation was confirmed on the Cell C USSD self-help portal. The service's inactiveness prior to and post the test being conducted is irrelevant for the purposes of determining whether there were any breaches of the WASPA Code of Conduct at the time when the test was conducted.

2. We note that the member states that this was not a true consumer journey. The non-compliant landing page is allegedly preceded by a banner with pricing information. This may or may not be the case; regardless, the Code is truly clear on the requirements of pricing information – specifically the requirement to have clear and prominent pricing immediately adjacent to the "Call-to-action", which is the action that triggers the confirmation step.

4. As the green "Continue" button on the landing page triggers the Cell C Network Hosted Confirmation Page, this is the page that is required to have the correct pricing information. The presence, or lack thereof, of pricing information on a banner preceding the landing page, is irrelevant when determining whether the consumer flow from the landing page to the confirmation page is compliant with the provisions of the Code or not. The banner is not the "Call-to-action".

5. The member states: "Please bear in mind that the marketing material shown prior to customer landing on <http://za.chillaxgames.com/> already included pricing information and nature of the service, in addition to the two carrier-hosted payment pages for 3G customers..." In some instances, the network would manage and be in control of the landing page (or advertising material that contains the "Call-to-action" which triggers the confirmation step), as well as the confirmation page. In this event, the banner and/or any preceding landing pages to the two network hosted pages would be irrelevant, as the double opt-in would be in the full control of the network. In other instances, the member would be in control of the landing page (or advertising material that contains the "Call-to-action" which triggers the confirmation step), and the network would only host and control the confirmation step. In the second scenario, the member must

make sure the steps preceding the network confirmation step comply with the provisions of the Code. If we review the current service on the Cell C network, this will mean that the landing page needs to contain the pricing information (which the member is in control of). There is no additional “two carrier-hosted payment pages...”, only the one Cell C Network Hosted confirmation page.

6. The member states: “...we stress once again that the customer care information was available on the page and in all SMS messages that followed...”. We specifically challenge this statement. Only once the tester clicked on the ‘Terms and Conditions’ wording on the landing page, did more information display. This information did not contain a customer support number – only a customer support email address. Clauses 12.4 and 12.5 are clear on what is required, and the landing page did not comply with these requirements.

“12.4. For any web page advertising a service for which there is not a subsequent confirmation step containing a link to the terms and conditions, the minimum terms and conditions for the use of the service must be clearly displayed.

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.”

The full terms and conditions, as they were at the time when the test was conducted, also did not contain a customer support number, and the breach of Clause 5.8(b) cannot be contested.

As only a customer support email address was provided, and not a customer support number, the breach of Clause 5.11 also remains relevant at the time when the test was conducted.

7. The member states: ““...we stress once again that the customer care information was available on the page and in all SMS messages that followed...”. Again, we specifically dispute this. The welcome message stated the following:

“Welcome to ChillaxGames. Your unique url: <https://za.chillaxgames.com/?id=E584PD8WCK.subs@R3.00/day>. Stop:send SMS STOP to 36628 or dial \*135\*997#”.

This message does not contain a customer support number, as alleged by the member, and is therefore in breach of the requirements of the Code.

8. With regards to the member’s comments under paragraph “Clauses 15.8 (b), (d) – read with 8.2, and

(e) of the Code of Conduct”, the complaint of a breach did not revolve around what was included in the Welcome Message, but rather related to what was omitted. The amended Welcome Message would now comply with the requirements as set out in the Code.

9. The member states: "...it appears that the reason for not being able to reach the URL (received upon successful activation of the service) is due to the tester's Internet Connection...". We specifically dispute this, as for the duration of the subscription acquisition flow, the tester did not experience any internet connectivity issues. The browser successfully rendered google.com; za.chillaxgames.com; and doi.cmobile.co.za without any issues for an estimated time of 6 minutes. The link to access the service (<https://za.chillaxgames.com/?id=E584PD8WCK>) from the Welcome Message did not work at that time when the tester wanted to access the service.

10. We note that the service is currently inactive and under construction, and that the member has made various amendments to ensure that the service complies with the Code requirements once it is relaunched. However, at the time of testing the active service in February, various elements were non-compliant. We hope that the member will ensure that all active services and campaigns are compliant going forward."

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## Member's further response

"With regards to the first point, we accept that the service was active and that WASPA were able to subscribe. We however respectfully remind WASPA that the URL and page accessed (being the default page) was in fact not the page active (live) at the time and was simply used for original testing and approval processes. This once again is demonstrated by the fact that the WASPA tester did not come directly from a genuine advertisement (or any advertisement whatsoever for that matter), since a genuine advertised link (Google or other) would include parameters, which dictate the content of the page. This could, for example, be a mobile (cell) game, specific to the banner advert clicked. Example, a Garfield game promotional banner and corresponding 'link' (URL) would include a unique 'campaign ID' (CID) dictating the appropriate Garfield game page (e.g. KDS1234567890). Since the WASPA tester accessed the service directly, via the non-advertised 'default' URL, the test URL contained no such parameters (campaign ID). Therefore, due to our relationship with WASPA (whereby the default URLs are shared upon request by WASPA), it is an unnatural and incorrect representation of a true consumer journey and should therefore not be considered when assuming the true nature of a genuine consumer experience. Notably, these 'default' URLs are not maintained in accordance with new code provisions as a result, a process of which we will now however address upon revelation that WASPA can seemingly sanction against URLs that are not promoted or genuinely discovered within the public domain.

For the next point (point 2), this is also explained in the above point and in relation to a banner prior to the page in question, WASPA state that 'this may or may not be the case'. This is deeply concerning, since this is the case, and is the key point integral to this case. Furthermore, this underlines the fact that WASPA's test experience was not a fair representation of a true consumer journey and should therefore be disregarded.

To respond to your next point (point 4), WASPA references the 'banner preceding the payment page', although we respectfully remind WASPA that they were presented with no 'preceding banner', since the test was not conducted in a true consumer environment, but instead via a legacy default URL that is not advertised or promoted in any capacity. Regardless, as WASPA also accept, the consumer is unable to activate his subscription without a correct validation via the respective network's-controlled payment page (in this case Cell-C). Thus, regardless of the legacy nature of the preceding page in question, the consumer (in this case the WASPA tester) is considerably protected by an extremely explicit and compliant pre-payment page, bearing all mandated information. It is therefore our strong position that, regardless of the unnatural consumer journey simulated by WASPA's tester, no consumer harm could occur due to the fail-safe of the respective operator's strict payment page.

As to point to 5 of WASPA's response, please refer to our explanation in the first point and regardless, we emphasize once again that the simulated consumer journey is protected by the Cell-C payment page.

Regarding point 6, indeed the customer care information is shown in the Terms and Conditions, and it was primarily focus on ways to unsubscribe and customer support email address. Most of the users who reach out to our Customer Care support mainly requested details of the service, refund, or cancellation, and therefore we focus on customer support email address instead to have the full request from them and provide answer in written clearly. Nevertheless, we have improved this area as we mentioned in our initial response to WASPA where visibility is improved, and customer support number is added to comply with the latest requirement.

As for point 7, we confirmed in our previous response to WASPA dated 23 June 2021 where we customer support number is added, considering 160-character limitation which you now confirmed that this modification complies with the latest requirement.

With regards to point 9, we reviewed the video test once again, the issue seems to be connectivity related. Since there are several elements at play here (connection, servers, systems of both third parties and us), we can do very little except for reassuring WASPA that full tests were since conducted without issue. Should WASPA experience a similar issue again, feedback would be appreciated for prompt investigation.”

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## **Sections of the Code considered**

12.1 read with 8.2 and 8.9; 12.2 read with 8.2 and 8.9; 12.4 and 12.5(a); 5.4 and 5.5; 5.8 (b); 5.11; 12.5(a); 15.18(b),(d) – read with 8.2 and (e)

## **Display of pricing information (read with 8.2 and 8.9)**

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.

5.8. The full terms and conditions for any service provided by a member must contain:  
(b) a customer support number;...

5.11. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to. (Example: support should not be limited to email if a significant number of customers do not have access to email).

12.5. The minimum terms and conditions displayed on any web page must include at least the following information:  
(a) a customer support number,...

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”. In a case where the total amount is billed in smaller increments over the subscription period, the pricing must still reflect the full price and not the incremental amounts (“R30/month” and not “6 x R5 per month”).

8.9. A “call-to-action” is any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service. In the case where a mobile network operator provides a two-stage confirmation process for the service, the first page of this confirmation process may be considered to be the call-to-action.

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.

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.



12.4. For any web page advertising a service for which there is not a subsequent confirmation step containing a link to the terms and conditions, the minimum terms and conditions for the use of the service must be clearly displayed.

12.5. The minimum terms and conditions displayed on any web page must include at least the following information:

(a) a customer support number,...

15.18. The “welcome message” must be a single message and may not contain any line breaks or carriage returns. The welcome message must contain only the following additional information:

(b) confirmation that the customer has subscribed to a service,

(d) the pricing information,

(read with 8.2) and

(e) a customer support number,...

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## Decision

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.

5.8. The full terms and conditions for any service provided by a member must contain:

(b) a customer support number;...

5.11. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to. (Example: support should not be limited to email if a significant number of customers do not have access to email).

12.5. The minimum terms and conditions displayed on any web page must include at least the following information:

(a) a customer support number,...

- I find a breach of all of the above due to the fact that no customer support number was available.

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”. In a case where the total amount is billed in smaller increments over the subscription period, the pricing must still reflect the full price and not the incremental amounts (“R30/month” and not “6 x R5 per month”).

8.9. A “call-to-action” is any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service. In the case where a mobile network operator provides a two-stage confirmation process for the service, the first page of this confirmation process may be considered to be the call-to-action.

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.

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.

- I find a breach of the above sections due to the fact that the pricing information was not reflected as required and at the place required. The Code of Conduct is very clear on the pricing requirements and placement, specifically the requirement to have clear and prominent pricing immediately adjacent to the “Call-to-action”, which is the action that triggers the confirmation step. This was not present.

12.4. For any web page advertising a service for which there is not a subsequent confirmation step containing a link to the terms and conditions, the minimum terms and conditions for the use of the service must be clearly displayed.

12.5. The minimum terms and conditions displayed on any web page must include at least the following information:

- (a) a customer support number,...

- I find a breach of the above sections as there was no customer support number accordingly the minimum terms and conditions requirement was not met.

15.18. The “welcome message” must be a single message and may not contain any line breaks or carriage returns. The welcome message must contain only the following additional information:

(b) confirmation that the customer has subscribed to a service,

(d) the pricing information,

(read with 8.2) and

(e) a customer support number,...

- I find breach of the above sections as there was no confirmation of subscription, no pricing information, and no customer support number.

The member contested that “these 'default' URLs are not maintained in accordance with new code provisions as a result, a process of which we will now however address upon revelation that WASPA can seemingly sanction against URLs that are not promoted or genuinely discovered within the public domain”. Notwithstanding, there is an obligation to ensure that any URL that a consumer might encounter on an advert or in the process of signing up for a service is compliant. Accordingly, and as this URL was at some point an active link and is clearly and obviously related to the member and the service (<http://za.chillaxgames.com>) this could genuinely be discovered in the public domain should a consumer wish to search for the service.

Although the member contest that the URL was never presented to a consumer, a consumer could reasonably be expected to go to the URL in the course of interacting with the service in question and as such it would need to comply with the Code. This has been taken into account in the sanctions as this was not actively marketed at consumers.

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## Sanctions

The Member breached sections:

12.1 read with 8.2 and 8.9; 12.2 read with 8.2 and 8.9; - Fine R5000

12.4 and 12.5(a); - Fine R5000

5.4 and 5.5; 5.8 (b); 5.11; - Fine R5000

15.18(b),(d) – read with 8.2 and (e) – Fine R5000

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**Matters referred to WASPA**

Not applicable.

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