



Report of the Adjudicator

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| Complaint number | #53823 |
| Cited WASPA members | Geluk Tech (Membership no: 1925) |
| Notifiable WASPA members | n/a |
| Source of the complaint | WASPA Compliance Department |
| Complaint short description | Non-compliant subscription service; irregular billing |
| Date complaint lodged | 2021-07-21 |
| Date of alleged breach | 2021-07-21 |
| Applicable version of the Code | v16.16 |
| Clauses of the Code cited | 5.1, 5.2, 5.4, 5.5, 5.6A, 5.8 (i), (j), (k), (l), 8.7, 15.6, 15.8, 15.8A |
| Related complaints considered | n/a |
| Fines imposed | R2 500.00 for breach of clause 5.6A; R 2 500.00 for breach of clause 5.8; R10 000.00 for breach of clause 15.8. |
| Other sanctions | n/a |
| Is this report | n/a |

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| notable? | |
| Summary of notability | n/a |

Initial complaint

1. The Complainant conducted a number of manual tests on the Member's subscription service at various times over a seven day period and detected a number of instances of non-compliance with the requirements of the WASPA Code of Conduct.
2. The Complainant provided screenshots and a video setting out the testing process and results for each of the tests conducted in support of its complaint.
3. The specific instances of alleged non-compliance with the WASPA Code of Conduct reported by the Complainant were as follows:
 - 3.1 The terms and conditions for the Member's service published by the Member did not contain certain required wording and information as per clauses 5.8 (i),(j),(k),(l) of the WASPA Code of Conduct.
 - 3.2 After subscribing to the service, the Complainant was not able to access and/or download a number of the games offered as part of the service. The Complainant tried on multiple occasions and on different days to access and download various games without success.
 - 3.3 The promotional landing page and welcome message for the Member's service displayed the pricing for the service as *R6 per day*. However, the Network Hosted Confirmation Page displayed the pricing for the service as *R6.00 per week*. The Complainant alleges that the pricing information for the service is stated incorrectly or is misleading.
 - 3.4 The Complainant alleges that they were overcharged for the service regardless of whether the correct pricing for the service was R6.00 per day or R6.00 per week. The Complainant alleges that if the service was correctly priced at R6.00 per day, they were billed an additional amount of R5.00 without cause; and if the service was priced at R6.00 per week, then they were overcharged an amount of R41.00.
 - 3.5 The Complainant clicked on the link provided in the welcome message received after subscribing to the service and instead of being directed to the home page

for the service, the Complainant was directed back to the initial promotional landing page for the service. When the Complainant clicked on the call-to-action button again from the landing page, they were re-directed to the Network Hosted Confirmation Page, which confirmed that they were already subscribed to the service. The Complainant alleges that they were not able to access the content offered as part of the subscription service.

4. The Complainant alleges that the Member is in breach of clauses 5.1, 5.2, 5.4, 5.5, 5.6A, 5.8 (i), (j), (k), (l); 8.7, 15.6, 15.8 and 15.8A of the WASPA Code of Conduct.
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Member's response

5. The Member responded to the formal complaint as follows:
 - 5.1 Regarding the first ground for complaint, the Member stated that it had updated its terms and conditions to comply with the requirements of the WASPA Code of Conduct.
 - 5.2 Regarding the second ground for complaint, the Member stated that it had conducted its own internal tests and it was able to successfully download the games offered as part of the service. The Member also provided a video confirming the steps taken and the successful download of various games. The Member stated that the Complainant's inability to download the games was perhaps due to the game portal not being SSL signed. If the user's device had installed security software, it would not allow third party downloads from the browser directly. The Member stated that it had since upgraded its service by redirecting to a HTTPS page which was SSL signed.
 - 5.3 Regarding the third ground for complaint, the Member confirmed that the subscription service was priced at R6.00 per day. The pricing information displayed on the Network Hosted Confirmation Page was therefore incorrect.
 - 5.4 Regarding the fourth ground for complaint, the Member stated that, based on its own records, only two amounts of R6.00 each were successfully billed on 15/06/21 and 20/06/21 to the Complainant's MSIDN. The Member offered an explanation that the billing on the other days would not be successful if the user's mobile handset was not switched on.
 - 5.5 Regarding the final ground for complaint, the Member stated that the game portal saves the cookie in the browser during the user's first time registration and logging into the portal. This meant that a returning user would get automatically logged in. However, if the user's browser history and cache are cleared then they

would be redirected back to the landing page, where their subscription status is checked. If the user is already subscribed to the service, they would then get redirected and logged into the game portal. The Member advised that it had since added a new subscriber login link on the landing page that could be used by returning users without them having to go through the subscription verification redirects. The user would then need to enter their mobile number to login to the game portal page.

Complainant's response

6. The Complainant replied to each of the responses given by the Member as follows:
 - 6.1 It was noted that the Member agreed that certain highlighted provisions were not included in the full terms and conditions published for the service. Even though the necessary updates had since been made by the Member, at the time when the test was conducted the Member was in breach of the cited clauses of the Code of Conduct.
 - 6.2 The Complainant stated that the devices used for conducting testing on the Member's service were set up to allow access to sites and downloads from sites which would normally be flagged as "unsecure". The Complainant therefore denies that they were unable to access and download the games because certain security settings were activated on their devices, as alleged by the Member.
 - 6.3 The Complainant stated further that even if the Member was able to download the content during their own internal testing, it was clear from the Complainant's test video that they were unable to download any games over a period of 7 days and despite several different attempts being made. The Complainant noted that the Member had since made certain changes to facilitate access to the games offered as part of the service; however when the tests were conducted the Member was in breach of the cited clauses.
 - 6.4 The Complainant denied that their device used for conducting the tests were switched off during the relevant period. The Member's explanation in this regard was refuted by the fact that it is evident from the video provided that the Complainant's device was switched on for the various days that the tests were carried out. The Complainant also confirmed from the Network Hosted Confirmation Page that no other services were activated during the same period.
 - 6.5 Based on the airtime balances taken at the start, during, and at the end of the test period, it was evident what charges were deducted from their account for this

service. Regardless of which pricing was correct, the amounts deducted do not align with what should have been charged.

- 6.6 The Code of Conduct requires that: *“Members must ensure that customers have ready access to information on how to access and use services.”* If a consumer clicks on a link provided in the welcome message to access the Member’s service, the assumption would be that the consumer would be directed to the home page of the service. Being directed to the landing page, where the service is initially offered is confusing. The Complainant noted that the Member had included a new ‘subscriber login’ option on the landing page, but disagreed that this gave consumers clear instructions/information on how to access the service. The Complainant argued that an access link should take the consumer directly to the homepage of the service.

Member’s further response

7. The Member made certain further submissions as follows:
- 7.1 It had upgraded the service by redirecting to an HTTPS page which was SSL signed. However, its own internal testing was done before this upgrade and the content could be downloaded. The Member alleges that the inability to download the content was due to causes beyond its capacity. The Member emphasized that it uses third-party services, such as hosting services, cloud services and other types of service providers, for its operations and as with any technical services, technical complications may arise from time to time, leading to service intermittence or failures, which consequently leads to temporary restriction of the service. The Member highlighted that it does have a customer helpline and offers email support that can be accessed by a user for technical help for any interruption of service.
- 7.2 The Member confirmed that the service was priced at R6 per day as stated in its promotional material and welcome message. The Member denied that its pricing information is misleading, unfair and dishonest.
- 7.3 On the issue of overcharging, the Member maintained that it only received two successful billables on the dates indicated. The Member could not explain why an additional amount had been deducted. The Member had also confirmed with its payment service provider that only two amounts were successful billed over the period in question. The Member requested a copy of the invoice from the network provider to further investigate the claims of overcharging and misaligned charges.

- 7.4 The Member again explained how a subscriber could access the content portal after registration through the use of a cookie stored in their browser. Should the cookie be deleted from the browser when the user clears browser history and cookies cache, the subscribed user will be unable to access the content portal. In this case, the user would be redirected to the landing page when the user goes to the content portal. The user would then need to click on *“Help! I Cannot Access The Content Portal”* link provided on the landing page. The user can then enter their phone number and a new cookie would be generated and the user would be able to directly access the content portal again. The Member states that it had added instructions to this effect for the user on the landing page.
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Sections of the Code considered

8. Clauses 5.1, 5.2, 5.4, 5.5, 5.6A, 5.8 (i), (j), (k), (l), 8.7, 15.6, 15.8, 15.8A of the WASPA Code of Conduct were cited in the formal complaint and considered.
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Decision

9. I will deal with each of the Complainant’s grounds for complaint in the order in which they were presented in the formal complaint.
10. Firstly, the Member has acknowledged that its terms and conditions did not comply with the requirements of clause 5.8 of the WASPA Code of Conduct. The complaint is accordingly upheld in this regard.
11. Regarding the second complaint, the Complainant has presented clear evidence that it was unable to download any content after subscribing to the Member’s service despite making numerous different attempts to do so over a seven day period. The Member, in turn, also provided evidence that it was able to successfully download the offered content when it conducted its own internal testing.
12. The Member first offered an explanation that the Complainant’s device may have had certain security settings activated that would prevent direct access to a web page that was not SSL signed, which at the time the Member’s game portal was not. However, the Complainant denied this to be the case and explained that the settings on the devices used for testing are not activated so that the Complainant can access web pages used by members whether secured or not during testing. I have no reason to reject the Complainant’s version in this regard.

13. The Member then indicated that the problem could have been caused due to technical issues experienced in respect of third party services used by it to run this service. The Member also highlighted that it does offer technical support for the service via a support helpline and email address and that the Complainant did not contact it, telephonically or via email, for support after it was not able to download the relevant content. Therefore, the problem could not be investigated nor could it be determined whether the technical difficulties experienced by the Complainant were unique to it or were due to a more general problem with the service.
14. In the absence of any further evidence in this regard, I am unable to make a clear finding as to whether or not the Member was offering, promising or charging for a service that it was unable to provide. The complaint in respect of the alleged breach of clauses 5.1 by the Member can therefore not be upheld.
15. I do agree that the service was unreasonably delayed after the Complainant had completed their subscription. However again the possibility remains that if the problem had been reported to the Member, it may have been able to resolve it without there being further delay. I am therefore also not able to make a clear finding in respect of the alleged breach of clause 5.2 of the Code of Conduct by the Member and the complaint in this regard can also not be upheld.
16. Regarding the pricing information for the service, it is common cause that there was a discrepancy between the information provided by the Member in the landing page and welcome message for the service, and the pricing information displayed on the Network Hosted Confirmation Page after the Complainant had subscribed to the service.
17. The Member has confirmed that the correct pricing for the service is R6.00 per day, which is the pricing displayed by the Member on the landing page and welcome message. The pricing information for the service was therefore incorrectly displayed on the Network Hosted Confirmation Page.
18. The confirmation page is hosted by the relevant network provider and not by the Member and even though this discrepancy is misleading, there is no evidence to suggest that the Member *knowingly* disseminated the incorrect pricing information. I therefore find that the Member has not breached clauses 5.5 or 8.7 of the Code of Conduct. The Member should, however, investigate the cause of the discrepancy with the relevant network provider to ensure that it is rectified if it has not done so already.
19. There is also no evidence to suggest that the amount and/or frequency of the billing changed after the Complainant had subscribed to the service. The complaint in respect to an alleged breach of clause 15.6 of the Code of Conduct is also dismissed.
20. Regarding the billing discrepancies reported by the Complainant, it is evident from the Member's own version that the Complainant has been overcharged for the service. The

Member alleged that the daily billing would not be successful if the Complainant's device was switched off. But this was clearly not a plausible explanation based on the fact that the Complainant's device was clearly switched on when testing was conducted over a number of days and no billing took place on certain of those days.

21. The Member was not able to offer any further explanation for the incorrect billing and since it is ultimately responsible for ensuring that its subscribers are billed correctly when using its services, I find that the Member is in breach of clause 15.8 of the Code of Conduct and the complaint is accordingly upheld in this regard.
22. Regarding the final ground for complaint, I share the view expressed by the Complainant that the link provided in the welcome message sent by the Member to its subscribers should direct to the home page for the service and not to the promotional landing page. The changes that the Member has made in this regard further complicates matters and does not ensure that consumers have *ready access* to information on how to access and use the service. I therefore find that the Member is in breach of clause 5.6A of the Code of Conduct and the complaint is accordingly upheld in this regard.
23. Based on the evidence provided, there is nothing to suggest that the Member charged the Complainant in advance for a service. The complaint in respect of an alleged breach of clause 15.8A of the Code of Conduct is accordingly dismissed.
24. Finally, based on all the evidence provided in this matter, there is also nothing to suggest that the Member has acted dishonestly or unfairly in its dealings with the Complainant. The complaint in respect of an alleged breach of 5.4 of the Code of Conduct by the Member is dismissed.
25. To summarize, the Member is found to have breached clauses 5.6A, 5.8 and 15.8 of the Code of Conduct and the complaints in respect of these clauses is upheld. The remaining complaints made by the Complainant are dismissed.

Sanctions

26. In determining appropriate sanctions against the Member for its breach of the WASPA Code of Conduct, the following has been taken into consideration:
 - 26.1 any previous successful complaints made against the Member in the past three years;
 - 26.2 any previous successful complaints of a similar nature;
 - 26.3 the nature and severity of the breach; and

- 26.4 any efforts made by the Member to resolve the matter.
27. In determining appropriate sanctions, I must also take account of previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions.
28. No other complaints have been made against the Member.
29. The nature of the various breaches, taken collectively, must be viewed in a serious light. The billing irregularities are also viewed as a serious breach of the WASPA Code of Conduct. However, it is duly noted that this is the first complaint that has been made against the Member.
30. Based on the foregoing considerations, the appropriate sanctions for the Member's various breaches are as follows:
- 30.1 The Member is fined the amount of R2 500.00 for its breach of clause 5.6A;
- 30.2 The Member is fined the amount of R 2 500.00 for its breach of clause 5.8; and
- 30.3 The Member is fined the amount of R10 000.00 for its breach of clause 15.8.
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