



Report of the Adjudicator

Complaint number	#57296
Cited WASPA members	Digital Datacom Solutions SL.
Notifiable WASPA members	Worldplay
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant promotion of subscription service
Date complaint lodged	2022-07-05
Date of alleged breach	2022-06-22
Applicable version of the Code	v17.1
Clauses of the Code cited	4.9(c), 5.4, 5.5, 8.8, 12.1, 12.2.
Related complaints considered	n/a
Fines imposed	R15 000 for breach of clause 4.9(c); R15 000 for breach of clause 5.4 and 5.5 combined; R10 000 for breach of clause 8.8; and R10 000 for breach of clauses 12.1 and 12.2 combined.
Other sanctions	n/a

Is this report notable?	n/a
Summary of notability	n/a

Initial complaint

1. While conducting routine monitoring and testing on various notifications and alerts, the Complainant's tester received an alert sent to their device that appeared to be from the WhatsApp messaging platform. The notification stated *"Update your WhatsAp (sic)"* and *"Your account may be blocked"*. The notification also included the green handset icon associated with the WhatsApp messaging platform.
2. When the tester clicked on the alert, they were directed to a landing page that contained the following wording, *"Get your updated Whatssap (sic) content"*. The green handset icon for WhatsApp was again displayed on the page.
3. The landing page also displayed a large, green call-to-action button with the word *"Continue"*. The following wording appeared below the call-to-action button in significantly smaller, light grey font against a white background: *"R15/day Subscription Service Support/T&Cs"*.
4. The tester clicked on the call-to-action button and a network-initiated USSD confirmation step was displayed. This prompted the tester to confirm whether or not they wanted to subscribe to a subscription service called *'MaxiFan from Worldplay'* at R 15.00 per day. The tester elected to stop the test at that point.
5. The Complainant provided various screenshots of the test flow and results.
6. The Complainant alleges that the advertising for this subscription service and the subscription acquisition flow for the service is in breach of clauses 4.9(c), 5.4, 5.5, 8.8, 12.1 and 12.2 of the WASPA Code of Conduct.
7. The Complainant specifically alleges that the subscription service being promoted appears to be entirely unrelated to the WhatsApp messaging platform and that the promotional messaging and calls to action used are misleading and deceptive.
8. The Complainant alleges further that this is a dishonest marketing ploy designed to lure potential users into subscribing to an unrelated subscription service charged at R 15.00 per day.

9. The Complainant also alleges that the reference on the landing page to the relevant subscription service and the related pricing is not displayed clearly or prominently. Although pricing information has been provided, it is designed and displayed in a way that it can be missed or overlooked or not been seen.
 10. The Member cited is an affiliate member of WASPA.
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Member's response

11. In its response to the complaint, the Member acknowledged that the notification/alert received by the tester was not compliant with the WASPA Code of Conduct. However, the Member stated that the notification had been sent by one of the Member's contracted affiliates in breach of an underlying agreement, which obligated the affiliate to comply with the WASPA Code of Conduct.
12. The Member advised that it had requested the the affiliate to terminate all links from the infringing notification to the promoted service and the affiliate had confirmed that the campaign had been suspended. The Member stated that it had also withheld payment to the affiliate.
13. The Member confirmed that it was responsible for the landing page used (referred to as a pre-lander), which it believed was compliant with the requirements of the WASPA Code of Conduct. The Member advised that this page was put in place to minimize the risk of non-compliant promotions, such as the one found for this complaint.
14. The Member alleged that videos and other content would be available to subscribers to the service to improve their WhatsApp experience. The Member also confirmed that there were no misleading taglines used on the landing page, such as "your phone is in danger".
15. The Member stated further that even though it regards the landing page as being compliant with the WASPA Code, it would make various changes to its landing pages, including adding the logo of the relevant subscription service and extra information about and images for the videos and other content that the service offers to subscribers over and above the content offered to improve the subscriber's WhatsApp experience.
16. The Member also stated that it would make the pricing information and the link to the terms and conditions for the service more prominent by increasing the contrast and placing the wording even more adjacent to the "call-to-action" button.

17. The Member stated that these changes would be made to all of its landing pages published from 11 July 2022
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Complainant's further response

18. The Complainant made no further submissions.
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Sections of the Code considered

19. Clauses 4.9, 5.4, 5.5, 8.8, 12.1 and 12.2 of the WASPA Code of Conduct were cited in the formal complaint and considered. No other relevant clauses were assigned by WASPA.
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Decision

20. The Member has acknowledged in its response to the complaint that the alert sent as part of this promotional campaign contravened the WASPA Code of Conduct. However, the Member has alleged that the alert was sent by one of its contracted affiliates in contravention of an underlying agreement with the Member.
21. The Complainant did not make any further submissions or provide any evidence to contradict or challenge the Member's version in this regard and it therefore must be accepted. However even if the Member's version is accepted, the Member remains liable in terms of clause 3.7 of the WASPA Code for any breach of the Code by its affiliate.
22. With regard to the alleged breach of clause 4.9(c) of the WASPA Code of Conduct, the wording used in the alert sent would, on its face, be reasonably likely to induce an unacceptable sense of anxiety on the part of a recipient who held an existing WhatsApp account and who would be concerned by the threat that their account could be blocked if they did not take steps to update it.
23. I am therefore satisfied that there has been a breach of clause 4.9(c) of the WASPA Code and the complaint is accordingly upheld in this regard.
24. With regard to the alleged breach of clause 8.8 of the WASPA Code of Conduct, the alert sent purports to offer the recipient the opportunity to update an existing WhatsApp account to avoid their account being blocked. It is self-evident from the screenshots provided by the Complainant that the 'service' referred to in the alert bears no relation to video and other content that the Member has stated would be available to subscribers to

the MaxiFan subscription service. This constitutes a breach of clause 8.8 of the WASPA Code and the complaint is accordingly upheld in this regard.

25. It should also be noted that the landing page used by the Member for this campaign refers to *“updated Whatssap (sic) content”* being made available to subscribers after subscribing to the MaxiFan service. The Member stated in its response that videos and other content are made available to subscribers to *“improve their WhatsApp experience”*. However, a distinction should be drawn, on the one hand, between independent content that can be shared by and between users of the WhatsApp platform, and on the other, content that is offered by or through the WhatsApp platform itself.
26. It appears from the information provided that subscribers would only be able to download content not offered by or directly related to the WhatsApp platform itself. The landing page therefore also appears to be misleading insofar as the content being promoted is unrelated to the content that is made available to subscribers once they have subscribed to the service. This constitutes a further breach of clause 8.8 of the Code.
27. With regard to the alleged breach of clauses 12.1 and 12.2 of the WASPA Code of Conduct, I agree that the pricing information for the MaxiFan service is not clearly and prominently displayed adjacent to the call-to-action on the landing page.
28. The font used for the pricing information is substantially smaller than the font used for the other wording displayed on the page and the light grey font colour used against the white background makes this information easy to overlook or it would require close examination by a consumer. I therefore find that the Member is in breach of clauses 12.1 and 12.2 of the Code and the complaint is accordingly upheld in this regard.
29. In determining whether there has been a breach of clauses 5.4 and 5.5 of the WASPA Code of Conduct, I have reviewed this promotional campaign as a whole, taking into account the wording and general import of the alert and the landing page used and the consistencies between these two elements of the campaign.
30. It is evident from the screenshots provided that both the Member and its affiliate have used trade names and marks associated with the well-known WhatsApp messaging platform to create an impression that this particular subscription service is connected to the WhatsApp platform, when this is clearly not the case.
31. It is also evident, from the Member’s own version and from the screenshots provided by the Complainant, that a recipient of the alert would not be able to update their WhatsApp account by responding to the alert. The promoted service also does not offer content or services directly related to the real WhatsApp platform.

32. I am satisfied that both the alert and the landing page contain promotional information that is either false or misleading, or which is likely to mislead unsuspecting consumers, by inaccuracy, ambiguity, exaggeration or omission, to subscribe to the promoted service.
 33. The Member and/or its affiliates conduct in this regard falls far short of the standard of honesty and fairness required in terms of clause 5.4 of the Code.
 34. Based on the foregoing, there has also been a breach of clauses 5.4 and 5.5. of the WASPA Code by the Member directly and/or by its contracted affiliate, for which the Member must be held liable in terms of clause 3.7 of the Code.
 35. To summarise my findings, the Member is found to be in breach of clauses 4.9(c), 5.4, 5.5, 8.8, 12.1 and 12.2 of the WASPA Code of Conduct.
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Sanctions

36. In determining appropriate sanctions against the Member for the numerous breaches of the WASPA Code of Conduct as aforesaid, the following has been taken into consideration:
 - 36.1 any previous successful complaints made against the Member in the past three years;
 - 36.2 any previous successful complaints of a similar nature;
 - 36.3 the nature and severity of the breach; and
 - 36.4 any efforts made by the Member to resolve the matter.
37. Account must also be taken of previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions.
38. The Member has not had any previous complaints made or upheld against it within the past three years. This has been taken into account as a mitigating factor.
39. The various remedial steps taken by the Member after being notified of this complaint have also been noted and this has also been taken into account as a mitigating factor.
40. However, the numerous breaches of the Code of Conduct that have been upheld are of a very serious nature and there is a risk of substantial harm to consumers who are subjected to promotional tactics such as those employed to promote this service. 'Bait-

and-switch' marketing tactics and the use of threatening alerts that induce anxiety and therefore prompt a response from an unsuspecting consumer are particularly odious practices. These are all taken into account as aggravating factors.

41. Based on the foregoing, the following sanctions are imposed:

41.1 The Member is fined an amount of R15 000 for the breach of clause 4.9(c) of the Code.

41.2 The Member is fined an amount of R15 000 for the breach of clauses 5.4 and 5.5 of the Code combined.

41.3 The Member is fined an amount of R10 000 for the breach of clause 8.8 of the Code.

41.4 The Member is fined an amount of R10 000.00 for the breach of clauses 12.1 and 12.2 of the Code combined.
