



Report of the Adjudicator

Complaint number	#57366
Cited WASPA members	Sam Media Limited
Notifiable WASPA members	Oxygen8
Source of the complaint	WASPA Compliance Department
Complaint short description	Subscription services
Date complaint lodged	2022-07-14
Date of alleged breach	2022-06-17 to 2022-06-23
Applicable version of the Code	17.1
Clauses of the Code cited	5.4, 5.5, 8.7, 8.8, 12.1, 12.2, 15.4, 15.5, 18.2, 18.4 (a) (b) (c) (d) (e) (f) (g) (h), and 18.6
Related complaints considered	#57365
Fines imposed	<p>R5 000 fine for the breach of clauses 5.4 and 5.5.</p> <p>R10 000 suspended fine for 12 months for the breach of clauses 8.7 and 8.8.</p> <p>R10 000 suspended fine for 12 months for the breach of clauses 12.1 and 12.2.</p> <p>R10 000 suspended fine for 12 months for the breach of clauses 15.4 and 15.5.</p>

	R10 000 suspended fine for 12 months for the breach of clause 18.2, 18.4 and 18.6.
Other sanctions	N/A
Is this report notable?	Not notable.
Summary of notability	N/A

Initial complaint

1. Whilst monitoring, testing and conducting compliance checks on wireless application services, the WASPA Compliance Department (“the Complainant”) identified a service which they believed did not comply with the requirements of the WASPA Code of Conduct.
2. On 2022-06-22 at 20h19 a third-party Evina tester (“the tester”) conducted manual tests on the Cell C network.
3. Thereafter, a formal complaint was lodged with WASPA by the Complainant on 2022-07-14.
4. Sam Media Limited (“the Member”) was notified of the complaint by the WASPA Secretariat on 2022-07-19, and the aggregator was notified of said complaint on the same day.
5. The Member acknowledged receipt of the complaint on 2022-07-19.
6. On 2022-07-27 the Member addressed a letter to the WASPA Head of Complaints, requesting that complaints 57365 and 57366 against them be combined.
7. The request was declined by the WASPA Head of Complaints on 2022-07-27.
8. Consequently, this complaint will be adjudicated independently of complaint 57365, with consideration given to complaint 57365.
9. The formal complaint consists of an outline of the tester’s experience whilst interacting with the Member’s service, a video which displayed the full manual test, and the clauses of the WASPA Code of Conduct the Complainant believes were breached by the Member providing the service.

10. As per the complaint it is purported that the tester was browsing on <https://m.imgur.com> and clicked on an advertisement for “Free Gift Card Codes, FREE Gift Card Generator & Giveaway Start Now >> <https://anygiftcard.icu>”. Therefore, in summary the tester responded to an advertisement for free gift cards and giveaways and was presented with various free gift card options and selected the Google Play gift card. The tester was directed to a page which created the impression that the process to claim the free gift card was complete, and that the tester merely had to respond to an offer to receive same. The tester was however directed to the Member’s subscription service landing page with the following information displayed: “Congratulations! You have a chance to win the new iPhone 11 Pro. Join now for best mobile games and apps. Last Step: Click the button below to secure your entry ticket...” (“the landing page”).
11. As per complaint #57365, the landing page displayed was a large image of an iPhone in a bow, a big red “get it now” button, and below the red button in much smaller light grey font against the white background was the pricing information which stated: “Subscription only R7/day. First day FREE! T&Cs”.
12. The Complainant states that despite the landing page which stated that the first day was ‘Free’, whereafter R7.00 would be deducted per day, the Cell C network hosted confirmation page showed that the service was in fact R10.00 per day. Therefore, the cost of the service on the landing page, and network hosted confirmation page did not correlate. The Complainant also alleges that the pricing information on the Member’s landing page was neither clear, nor prominent and required closer examination to be noticed by consumers.
13. The complaint further canvasses that when the tester clicked on the call-to-action button and was briefly directed to a ‘verification’ page for a few seconds, the tester was automatically directed to the Cell C network hosted confirmation page. This was allegedly the first time the name of the subscription service, Gamezones, was provided. The complaint states that the test was ended by the tester at this point.
14. It is notable, in contrast to complaint 57365, the tester stopped the test before completing the subscription to the Member’s service and did not actually subscribe to the Gamezones subscription service.
15. The Complainant further states that the landing page was misleadingly designed and appeared to be linked to an iPhone 11 Pro promotional competition by obscuring information that it was in fact a subscription service for games.
16. The complaint illustrates that the promotional competition was not ancillary to the subscription service, as almost no information was provided at any point about the actual Gamezones subscription service. Therefore, the Complainant also alleges that numerous clauses of the WASPA Code of Conduct have been breached relating to promotional competitions.

17. In conclusion, the clauses of the WASPA Code of Conduct which have allegedly been breached by the Member and cited by the Complainant are as follows: 5.4, 5.5, 8.7, 8.8, 12.1, 12.2, 15.4, 15.5, 15.8, 18.2, 18.4 and 18.6.
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Member's response

18. The Member responded to the Complainant's complaint in a letter dated 2022-07-28 whereby the Member provided a timeline of events, context surrounding the complaint, and mitigating factors.
19. The Member states that they had been a member of WASPA in good standing since 2017 and are actively involved in similar regulatory associations globally.
20. The Member states that the website page with URL n.apsspool.net/za linked to the landing page in question was only being promoted from 2022-06-17 to 2022-06-23 at 08h22 CET. The Member provides a screenshot of their reporting system which canvasses the date range for the entire month of June 2022. One can assume that the Member is in fact referring to the website page with URL <https://m.imgur.com>, and has mistakenly used the same website page as in complaint 57365.
21. The Member thereafter asserts that despite the date range being set to the entire month of June, it is clear in the three columns marked "Day", "Views" and "Sales" that the service's activity was only recorded between 2022-06-17 and 2022-06-23. It can be seen that a total of 815 "Views" were recorded on the landing page during the seven-day period in which the advertisement was online. Furthermore, a total of 301 subscriptions, marked "Sales" were entered into by way of the landing page during this period. Therefore, the Member alleges that the advertisement had limited online exposure, as well as limited direct prejudice on the number of consumers.
22. The Member confirms that at the date of their formal response to the complaint, none of the 301 subscriptions were active, as the Member had pro-actively and manually terminated all active subscriptions upon learning of the landing page's non-compliance with the WASPA Code of Conduct. The Member also confirms that, together with their payment aggregator Worldplay, they are working on offering refunds to all subscribers successfully billed, of which there were only 37 (one of which was the tester).
23. The Member alleges that the landing page was never meant to be promoted to Cell C mobile users and as a result of this oversight, the landing page and subsequent subscription flow for a Cell C mobile user was never subjected to the Complainant's internal compliance and quality assurance testing prior to the landing page being made available online. The Member further reiterates that they have never actively focused their marketing campaigns to consumers with a Cell C SIM as they are the smallest operator in South Africa and have a

history of internal issues. The Member alleges they have never derived a notable financial benefit from Cell C Consumers and therefore the Member states that they had actively elected to not make their services available to Cell C consumers. This statement is supported by the Member's screenshot provided from their aggregator, which illustrates that they only make an estimated R900 per month from their Cell C database and that they have only have 50 subscribers per month for all their services over the last five years.

24. The Member then counteracts this averment by stating that when a digital content merchant, like the Member, connects with a local payment aggregator, like Worldplay, the member automatically gets connectivity to all the network operators that the aggregator is connected to. Therefore, the Member alleges that it was technically possible for a Cell C SIM card to have been subscribed to their service despite them having not actively directed their marketing at Cell C consumers. The Member states that this usually occurs when there are MSISDNs that were previously of another network operator and at some point, had ported to Cell C, and that was what happened when the Member's Marketing Manager for South Africa 'launched' a campaign to attract subscribers on 2022-06-17.
25. The Member states that they make use of the services of three respective, independent compliance monitoring companies to have constant visibility and to be alerted of any non-compliance issues which may arise. These compliance monitoring companies are Empello, MCP and Evina. The Member further states that when one of its compliance monitoring companies informed them of the non-compliance of the landing page, the Complainant took immediate action.
26. The Member alleges that prior to the launch, the pages being promoted by the Member had been tested by the Member's internal Compliance and Quality Assurance team and had been given the go-ahead. The Member also states that the oversight herein was because the Member did not intend to advertise to Cell C consumers and therefore the landing page and the subscription flow for a Cell C consumer was never tested and never explicitly cleared for launch.
27. The Member claims that the alleged breaches of the WASPA Code of Conduct were a result of the absence of proper testing of the landing page, subsequent subscription flow and the Terms and Conditions page, and therefore such breaches were not intentional but rather due to their negligence. In addition, the Member claims that the landing page in question was an outdated page that was not intended to go live.
28. A timeline of events is provided by the Member in order to contextualize the complaint and the alleged breaches of the WASPA Code of Conduct. The timeline can be summarised in brief as follows:

- 28.1. 2022-06-17: The Member's landing page went live and started to receive views online.
- 28.2. 2022-06-20: The WASPA tester manually initiated the test which ultimately resulted in formal complaint #57365.
- 28.3. 2022-06-22: Empello sent an email at 11h58 to several of the Member's employees alerting them of a high-risk compliance breach in South Africa.
 - 28.3.1. At 15h47 The Member's Head of African Operations, informed the marketing team that Empello had found a serious incident of non-compliance. Minutes later the Marketing Manager who initially had launched the campaign confirmed that the advertising placement had been pulled. The Head of African Operations then pointed out that it was "an old page" and she doubted they it was compliant. The Marketing Manager then admits that the landing page in question "was arranged last minute on Friday".
 - 28.3.2. At 20h22 Evina's tester discovered the exact same landing page again but via a different advertisement as the Marketing Manager had blocked one "sub source" but not all of them yet.
- 28.4. 2022-06-23: The Member's Head of Quality Assurance and Compliance posted his findings after concluding an internal investigation to the non-compliance incident of the previous day. The Marketing Manager thereafter confirmed that all campaigns had been paused.
- 28.5. 2022-07-19: The Member received and acknowledged receipt of the formal complaints and confirmed that the landing page and service in question were inactive and posed no immediate threat.
29. The Member alleges that, according to the above timeline, they ensured the non-complaint landing page received no more views and posed no further risk within 18 hours of first learning about its non-compliance.
30. The Member admits an omission on its behalf in this regard and states that they have since put internal processes in place to prohibit this from re-occurring in the future.
31. The Member states that they are not in continued contempt of the WASPA Code of Conduct, nor were their actions a *mala fide* attempt to generate revenue in a misleading manner over time. The Member concludes that the events that transpired, resulting in the subsequent breaches are a result of an unfortunate one-off human oversight, which was rectified immediately upon discovery and had very limited impact in the first instance. The Member also expresses remorse regarding their actions.

32. Finally, the Member states that had WASPA informed them of its non-compliance immediately upon conclusion of the test on 2022-06-20, the number of subscriptions resulting from the landing page would have been limited to 151 or even less. Instead, WASPA decided not to follow the “Informal Complaints Procedure” which the WASPA Code of Conduct defines in clause 24.16 as “a complaint for which it is feasible for the member to provide a prompt remedy” but rather shelved its findings and used its discretion to institute a formal complaint almost one month later, on 2022-07-19.
 33. In summary, the Member has not addressed each breach of the WASPA Code of Conduct individually but has rather provided a backdrop for the adjudicator to consider the mitigating factors that inform the sanctions herein.
 34. Lastly, the Member asks the adjudicator herein to take into consideration the factors set out in clause 24.34 of the WASPA Code of Conduct when making his/her final decision.
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Complainant’s response

35. The Complainant responded to the Member’s formal response on 2022-08-25.
36. The Complainant draws attention to the fact that the Member did not address the complaint that the Gamezones subscription service does not adhere to the provisions set out in the WASPA Code of Conduct, and the Member merely sets out mitigating factors in their defense.
37. In response to the Complainant not having informed the Member of the breach through WASPA’s informal processes, the Complainant quotes clause 24.15 of the WASPA Code of Conduct, which gives WASPA a discretion to choose which avenue they wish to proceed with when dealing with complaints of non-compliance. The Complainant further quotes clause 24.16 of the WASPA Code of Conduct which reads as follows: “In the case of a complaint for which it is feasible for the member to provide a prompt remedy and where no material breach of the Code seems to have occurred, the following informal complaint procedure will be followed.”
38. The Complainant further states that there was sufficient *prima facie* evidence of several serious, material breaches of the WASPA Code of Conduct as well as actual and potential consumer harm, which necessitated the use of the formal complaint procedure for assessment of this non-compliant service.

39. In response to the Member's allegation that the Member was only made aware of their non-compliance by the Complainant one month after identifying the non-compliance, the Complainant quotes clause 24.6 of the WASPA Code of Conduct: "A complaint must be made within six months of the date of alleged breach of the Code. WASPA may, at its discretion, accept a complaint after this six-month window, if the complainant provides a compelling reason for the delay in lodging the complaint...".
40. The Complainant states that once a test is completed (manually or via a third-party discovery tool) they need to follow various internal processes, including reviewing the results of each test to compare it with the provisions of the WASPA Code of Conduct. The Complainant elaborates by stating that when non-compliant aspects of a service are identified, a detailed report needs to be compiled and they also endeavour to test on other networks, whereafter the reports are vetted and submitted for review to determine the appropriate procedure to address the breaches. Therefore, the Complainant respectfully submits that the correct procedure was utilised to address the material breaches of the WASPA Code of Conduct, and that the complaint was lodged well within the time period provided for therein.
41. Regarding the Member's argument of "limited exposure", the Complainant puts forward that by the Member's own admission, there was indeed actual and potential consumer harm as monies were being deducted, or attempted to be deducted, for a non-compliant service.
42. The Complainant challenges the Member's submission that their non-compliant marketing campaign and service only impacted users on the Cell C network and provides test results for the Vodacom and MTN network with a similar *modus operandi* to substantiate this. The Complainant further states that the number of consumers effected is irrelevant, as the WASPA Code of Conduct was breached in numerous ways at the time of testing the Member's service on various networks. The Complainant therefore disputes the statement made by the Member that they were not actively targeting Cell C consumers and had not tested the landing page prior to its launch and illustrates that the same non-compliant landing pages were used on the MTN and Vodacom networks as well.
43. The Complainant therefore alleges that the Member's non-compliance was intentional, and not an act of omission and negligence.
44. The Complainant further canvasses the Member's admissions in their first formal response to the complaint, in relation to the Member's non-compliance with the WASPA Code of Conduct.
45. The Complainant also alleges that the Member's service was actively set up on Cell C and quotes the communication between the Member and its employees relating to the non-compliance of the landing page in support thereof. The Complainant therefore believes that the service was being actively promoted by the Complainant's affiliate marketing suppliers.

46. The Complainant highlights in their response that Empello's independent test flagged the Member's service as high-risk and non-compliant with the focus on the following breaches:
- 46.1. Content locking: Content locking is used. Visitors are incentivised to sign-up for services to unlock desired content; and
 - 46.2. Price incorrect: Consumers are charged differently to the displayed price or are charged above the market cap. Prices on pre-lander and payment pages are different.
47. The Complaint submits that their original formal complaint clearly sets out the respective and combined elements of the Member's non-compliant service and not just the alleged 'faulty' landing page. The Complainant also submits that the Member failed to address all the breaches complained of in the formal complaint and merely provides mitigating factors.
48. Lastly, the Complainant submits that the limited time of the Member's non-compliant service being promoted and offered to consumers, and alleged limited consumer harm or exposure, does not detract from the fact that the service was not promoted or offered in alignment with the provisions of the WASPA Code of Conduct.
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Member's further response

49. The Member provides their final response on 2022-08-25.
50. The Member admits that their non-compliant landing page was live for the seven-day period in question.
51. The Member reiterates that this landing page had been put online "last minute" and was not subjected to their usual internal checks-and-balances which usually should ensure that all live landing pages are compliant.
52. The Member highlights that they took the landing page offline immediately after being made aware of the non-compliance thereof. The Member also puts forward that they shared their internal communications regarding the landing page in order to be transparent and show that that they took the issue very seriously.
53. In conclusion, the Member states that they are not trying to wash their hands of any guilt, but rather admit negligence and ask the adjudicator to consider all mitigating factors when deliberating a sanction.

Sections of the Code considered

The following sections of the WASPA Code of Conduct are considered, and read as follows:

Provision of information to customers

- 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.*

Accuracy of pricing information

- 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.*

Accuracy of services and content advertised

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

Display of pricing information

- 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.*

General requirements

- 15.4. *A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: “to claim your prize, join this service”).*
- 15.5. *A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: “if you join this subscription service, you will be entered into a monthly draw for a prize”).*

Cost of entry

18.2. *The cost for a single entry into a promotional competition must not exceed R1.50.*

Provision of information

18.4. *An offer to participate in a promotional competition must clearly state:*

- (a) the competition to which the offer relates;*
- (b) the steps required by a person to participate in the competition;*
- (c) the full cost to enter the competition;*
- (d) the basis on which the results of the competition will be determined;*
- (e) the closing date for the competition;*
- (f) how the results of the competition will be made known;*
- (g) how a person can obtain a copy of the competition rules; and*
- (h) how the successful participant can obtain the prize.*

Closing date

18.6. *Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, if there are any valid entries.*

Decision

- 54. It is noteworthy that the Member in their formal responses to the complaint did not address each breach of the WASPA Code of Conduct as alleged by the Complainant, but merely provided mitigating factors to be considered when adjudicating the matter. Furthermore, the Member provides numerous admissions therein, and does not deny being in breach of the WASPA Code of Conduct.
- 55. In addition to the clauses of the WASPA Code of Conduct below, I shall first deal with the issue of whether the Complainant followed the correct complaints procedure herein, and whether they lodged the complaint timeously.
- 56. Regarding clauses 24.15 and 24.6 of the WASPA Code of Conduct, the Member's breaches of the WASPA Code of Conduct were numerous and material in nature and posed a direct risk to consumers. The Complainant also lodged the formal complaint within 6 months of the Member's initial non-compliance, as per the time frames set out in the WASPA Code of Conduct. Therefore, the Complainant was well within their rights to lodge a formal complaint using the discretion afforded to them.
- 57. Having reviewed the complaint, the supporting communications and evidence offered by the Complainant and the Member's admissions and responses thereto, I have reached the following conclusions as set out below:

Clauses 5.4, 5.5, 8.7 and 8.8

58. The subscription acquisition flow utilised misleading advertisements for “Free gift cards” which appeared to be an existing prize that the consumer merely had to claim. The free gift cards presented to the tester exhibited a free giveaway, which then led to what appeared to be a promotional competition for an iPhone 11 Pro, which was in fact a subscription landing place for a games service.
59. In addition, the landing page hosted a colourful image of an iPhone which was the most prominent and exaggerated aspect of the landing page alongside the red button “Get it now”. As can be seen in the Complainant’s video evidence, only after the tester clicked on the red “Get it now” button on the landing page, was he redirected to a ‘verifying page’ for a few seconds, and then redirected to the Cell C network hosted confirmation page, where the subscription service name was provided to the tester for the first time. The consumer would easily have been misled herein, as the advertisement was portraying a service that was different from what the consumer would have received after subscribing, and the promotional competition was not ancillary to the subscription service as little to no information was provided about the subscription to Gameszone herein. The Member therefore launched a subscription service with a landing page that was misleading and had a non-compliant subscription flow.
60. Further to the above, the Member’s landing page stated in a small font that the first day of the subscription was ‘Free’, whereafter R7.00 would be deducted per day from the consumer. However, the cost of service was in fact R10.00 and differed from the information on the landing page. The pricing information was also not clear and prominent to the consumer. Therefore, the pricing information was incorrect, misleading, and unclear.
61. The third-party compliance monitoring companies, the WASPA Compliance Department and the Member’s own employees also identified the same compliance issues. Furthermore, these compliance issues were admitted to by the Member in their correspondence that was submitted in their first formal response.
62. Thus, the Member did not have honest and fair dealings with their customers and breached clause 5.4 of the WASPA Code of Conduct.
63. The Member disseminated information that was likely to mislead by inaccuracy, ambiguity, exaggeration, or omission and therefore the Member breached clause 5.5 of the WASPA Code of Conduct.
64. The Member also breached clause 8.7 of the WASPA Code of Conduct as the service’s pricing information was inaccurate, misleading and there were other hidden costs associated with service subscription.

65. In addition, the Member's advertising was used to mislead consumers into believing they were signing up for a subscription service which was not linked to the service they would in fact get. Therefore, the Member breached clause 8.8 of the WASPA Code of Conduct.

Clauses 12.1 and 12.2

66. In addition to the omission of the correct pricing on the Member's landing page, the landing page had a call-to action which did not clearly and prominently display the service's pricing information. The pricing information required close examination to be identified amongst all the colourful text and images on the advertisement which were drawing attention away from the small font pricing information on the landing page. Therefore, the Member breached both clauses 12.1 and 12.2 of the WASPA Code of Conduct

Clauses 15.4 and 15.5

67. The tester responded to an advertisement for free gift cards which implied that the iPhone on the landing page was being given away for free and not a subscription service. The Member's landing page had the text "Congratulations!" above the iPhone image with a big red bow, which implied that the consumer has won something and that they merely needed to click on the button in red "Get it now" to redeem their prize. The pricing information for the Member's service was also displayed below this red button, in a substantially smaller light font against a white background which would mislead the consumer into believing that the iPhone giveaway was a free promotion in contravention of clause 15.4 of the WASPA Code of Conduct. It was not clear from the misleading subscription flow, or the landing page that was closely linked to such free giveaway, that the giveaway was in fact promotional, and that the benefit would only apply to the consumer once he/she had subscribed to the service. Therefore, the Member has breached clauses 15.4 and 15.5 of the WASPA Code of Conduct.

Clauses 18.2, 18.4 and 18.6

68. As discussed above, it is apparent from the Member's misleading subscription flow that they appeared to be giving away free gift cards which was linked to a free iPhone, however after careful consideration one can identify that their landing page in fact offered a promotional competition. Accordingly, the Member was to comply with the clauses in the WASPA Code of Conduct that apply to promotional competitions.
69. The cost for a single entry into a promotional competition must not exceed R1.50 in terms of clause 18.2 of the WASPA Code of Conduct, whereas the Member charged R10.00 to be subscribed to their service and entered into the promotional competition. Therefore, the Member breached clause 18.2 of the WASPA Code of Conduct.

70. The promotional competition did not clearly provide any information relating to the Terms and Conditions of the competition which is required by clause 18.4 of the WASPA Code of Conduct. For example, the Member omitted to provide the closing date of the competition, on which basis the results of the competition would be determined and made known and how the successful participant would obtain the prize. Therefore, the Member breached clause 18.4 of the WASPA Code of Conduct.
 71. In addition, competition services must have a specific closing date, except where there are instant prize-winners. The Member omitted to provide a closing date for the promotional competition that was not subject to instant prize-winning. Therefore, the Member has also breached clause 18.6 of the WASPA Code of Conduct.
 72. In conclusion, the Member has breached all the clauses of the WASPA Code of Conduct complained of by the Complainant and the complaint is consequently upheld.
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Sanctions

73. It is notable that according to WASPA's records, this is the first successful complaint that has been lodged against the Member of this kind. Furthermore, the Member took immediate action to remove the non-compliant advertisement after being made aware thereof. The Member was also transparent in sharing their employee's communications relating to the non-compliant service. These mitigating factors have been taken into consideration and weighed up against the fact that their non-compliance created actual and potential harm to consumers on numerous networks.
74. The numerous breaches of the WASPA Code of Conduct that have been upheld are of a serious nature and there is a risk of substantial harm to consumers who are subjected to promotional tactics such as those employed by the Member to promote this service. The fact that the Member was grossly negligent and maintains that this was only on the Cell C network, when it has been proven to be otherwise, were also considered as aggravating factors.
75. Following the sanctions imposed in complaint 57365, it is important to note that the material issues in both complaints are based on the exact same landing page, merchant, carrier-hosted payment page, service and gateway connection. If the tester in this complaint had proceeded to complete the subscription and click on the Terms and Conditions on the Member's landing page, the material issues in both complaints would have been identical. These factors were also taken into consideration when imposing the following sanctions:

- 75.1. R5 000 fine for the breach of clauses 5.4 and 5.5;
- 75.2. R10 000 suspended fine for the breach of clauses 8.7 and 8.8;
- 75.3. R10 000 suspended fine for the breach of clauses 12.1 and 12.2;
- 75.4. R10 000 suspended fine for the breach of clauses 15.4 and 15.5; and
- 75.5. R10 000 suspended fine for the breach of clauses 18.2, 18.4, and 18.6.
76. All the fines, besides the R5000 fine at clause 78.1 above, are suspended for a period of 12 (twelve) months provided that the Member is not held liable for an infringement of the relevant clauses within this period.
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Matters referred back to WASPA

77. N/A.
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