



Report of the Adjudicator

Complaint number	57478
Cited WASPA members	Tariosys (Pty) Ltd
Notifiable WASPA members	N/A
Source of the complaint	WASPA Complaints
Complaint short description	Non-compliant banner advert and subscription service
Date complaint lodged	3 August 2022
Date of alleged breach	17 April 2022
Applicable version of the Code	17.1
Clauses of the Code cited	5.4, 5.5, 5.11, 5.8 (a) (b) (d) (f) (g) (i) (j)(i)(ii)(iii)(iv)(v) (k) (l) 8.8, 8.10 12.1, 12.2 15.4, 15.5 23A.5 (a) (b) (c) (d)
Related complaints considered	N/A
Fines imposed	The member is fined R40000 for the breach of (each R5000) 5.4, 5.5, 8.8, 8.10, 12.1, 12.2 15.4, 15.5. Due to the fact that the member had asked the publisher of the campaign in question to pause the campaign as part of another

	<p>Heads Up process on 7 June 2022 and as such the public were not likely to suffer any loss as a result of the non-compliant service this fine is suspended for 12 (twelve) months. In the event the member breaches any of these provisions in the next 12 (twelve) months the member will be required to pay R5000 per breach in addition to any other fine levied at that point in time.</p> <p>The member is fined R45 000 for a breach of (each R15000) 5.11, 5.8 (a) (b) (d) (f) (g) (i) (j)(i)(ii)(iii)(iv)(v) (k) (l); and 23A.5 (a) (b) (c) (d), all payable within 5 days of publication of this report. This is due to the fact that it is critical to safeguard consumers by making sure sufficient information about the member and their customer service is available. In addition, the process when using the opt-in mechanism of MTN makes subscription more opaque and as such it is critical that all steps are followed when using this somewhat truncated process.</p>
Other sanctions	N/A
Is this report notable?	Not notable
Summary of notability	N/A

Initial complaint

This complaint is the escalation of a “heads up” process sent to the member on 20 April 2022 following the testing of the service on 17 April 2022. Notwithstanding a reminder, the member failed to respond and the HOC of WASPA determined that there was sufficient prima facie proof of several breaches of the Code of Conduct that escalation to a formal complaint was warranted.

The formal complaint was sent to the member on 3 August 2022 as follows.

1. On the 17th of April 2022 a test was conducted on the MTN network.
2. The tester was browsing on a website with the following URL: <https://bit.ly/36DudRR>. The website was in Arabic and the tester clicked on a banner advertisement which directed the tester directly to the MTN Network Hosted Confirmation Page (NHCP) for a subscription service called Game Station at R20.00 per day.
3. The tester decided to further investigate the content on the page as well as the wording of banner advertisement – which leads directly to the MTN NHCP - by translating it from Arabic to English to determine the content thereof. The content on the page translates* to:

“MBC Dream Dream Contest

! You may be the winner

To subscribe: click on the subscription button below and write your phone number on the site that will open in front of you and we will send you a confirmation code. Type the code in the same site to confirm your subscription”.

**Using Google Translate*

4. The content on the banner advertisement translates* to:
5. **“Click here to register your number”**
**Using Google Translate*
6. The content on the page, read with the wording on the banner, creates the impression that it is a competition, and that the tester must subscribe or register to enter the competition for a chance to win. However, the tester when responding to this banner advertisement is directed to a NHCP for a subscription service for games.
7. The tester clicked on the terms and conditions link on the NHCP to review the content thereof - <http://gamestation.dharam.net/lp/mtnza/terms.php>.
8. In summary:
 - a. The banner advertisement, which when clicked on triggers the MTN confirmation page, and therefore qualifies as the ‘call-to-action’, does not display any pricing information.
 - b. The banner advertisement is not in the same language as the language in which the service is provided.
 - c. The banner advertisement appears to relate to a competition, and by clicking on it, will enter you into said competition, whereas in reality it directs the tester to a confirmation page for a subscription service that relates to games.
 - d. There is no subscription service landing page as required for a service on the MTN network.
 - e. The terms and conditions are incomplete and do not contain all of the required provisions.
 - f. There is no customer support number.
9. This subscription acquisition flow for the Game Station subscription service at R20.00 per day does not comply with the provisions of the Code. The following clauses of the Code have been breached:
 - 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:
 - (a) the registered company name of the WASPA member providing the service.
 - (b) a customer support number.

- (d) any handset compatibility requirements for the service.
 - (f) an indication of how billing errors are handled.
 - (g) a statement that the service must only be used with the permission of the bill-payer (for paid services).
 - (i) the following statement: “[member name] is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. [member name] may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint. WASPA web site: www.waspa.org.za”.
 - (j) a statement that the service must not be used:
 - (i) to intentionally engage in illegal conduct,
 - (ii) to knowingly create, store or disseminate any illegal content,
 - (iii) to knowingly infringe copyright,
 - (iv) to knowingly infringe any intellectual property rights, or
 - (v) to send spam or promote the sending of spam.
 - (k) a statement that the member has the right to suspend or terminate the services of any customer who does not comply with these terms and conditions or any other related contractual obligations, and
 - (l) a statement that the member has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.
- 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).
- 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.
- 8.10. The language used in all communications with the customer must be the same as the language used for the initial advertising, unless the customer elects to change the language to another language supported by the member.
- 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.
- 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”.)

23A.5. Subscription services must have a landing page prior to the confirmation step. An advert for a subscription service may not send a customer directly to a confirmation page but must link the customer to a landing page for the service. A landing page:

- (a) must clearly show the pricing information for the service.
- (b) must contain a link to, or the URL of, the Ts&Cs for the service.
- (c) must not have a misleading call-to-action (such as “download” instead of “subscribe” or “join”).
- (d) must not mislead by presenting examples of content not available as part of the service.

Member’s response

The member responded to state that the complaint formed part of another Heads-Up complaint with regards to the same service that had been dealt with already and as such no formal complaint should have been issued. The member provided logs in this regard.

Complainant’s response

The complainant advised the member that the complaints related to the same service but to different breaches. As submitted by the member, the Compliance Department did lodge a Heads-Up complaint against the member on the 31st of May 2022 and the 7th of June 2022 respectively, which both related to the Game Station subscription service. The main issue in this Heads Up was the use of explicit adult banner advertisements linking to a non-adult subscription service. In these two respective cases, the member did respond to the Heads-Up complaints and advised that they had taken corrective and remedial action, and the Heads-Up complaints were duly closed.

The Heads-Up complaints referred to in this matter were lodged on 20 April and formed part of a different Heads-Up process and as such do not form part of this current complaint. That the resolved complaints were related to an adult SMS unsolicited communications and not email and as such had not been dealt with already.

Member’s further response

Member continues to assert that the formal complaint is part of the resolved Heads-Up process as it related to the same publisher (Go-Rilla) that had been asked to pause the campaigns in June 2022.

Sections of the Code considered

- 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:
- (a) the registered company name of the WASPA member providing the service.
 - (b) a customer support number.
 - (d) any handset compatibility requirements for the service.
 - (f) an indication of how billing errors are handled.
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- 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).
- 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.
- 8.10. The language used in all communications with the customer must be the same as the language used for the initial advertising, unless the customer elects to change the language to another language supported by the member.
- 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.
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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”.)

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- (c) must not have a misleading call-to-action (such as “download” instead of “subscribe” or “join”).
- (d) must not mislead by presenting examples of content not available as part of the service.

Decision

In determining whether the formal complaint is valid procedurally I looked at the logs provided by the member as well as the explanation offered by the complainant. Although relating to the same service, the complaints and Heads-Up processes were different and distinct. Accordingly I do not agree with the member that the complaint in this formal complaint were resolved as part of the Heads-Up process of 31 May and 7 June 2022. Not only was the Heads-Up process initiated on a different date, namely 20 April 2022, the complaint related to different sections of the Code of Conduct. The fact that the publisher of both campaigns was the same, and the fact that after the Heads-Up processes 31 May and 7 June 2022 the publisher was asked to pause the campaign does not detract from the fact that there were breaches of the Code of Conduct and that the service was non-compliant in several regards. It is important to note that the complained of behaviour occurred before the publisher was asked to stop the campaigns.

The member failed to respond adequately to the elements of the formal complaint and on the information submitted I find the member to have breached the code of conduct in all clauses listed by the complainant.

Sanctions

The member is fined R40000 for the breach of (each R5000) 5.4, 5.5, 8.8, 8.10, 12.1, 12.2 15.4, 15.5. Due to the fact that the member had asked the publisher of the campaign in question to pause the campaign as part of another Heads Up process on 7 June 2022 and as such the public were not likely to suffer any loss as a result of the non-compliant service this fine is suspended for 12 (twelve) months. In the event the member breaches any of these provisions in

the next 12 (twelve) months the member will be required to pay R5000 per breach in addition to any other fine levied at that point in time.

The member is fined R45 000 for a breach of (each R15000) 5.11, 5.8 (a) (b) (d) (f) (g) (i) (j)(i)(ii)(iii)(iv)(v) (k) (l); and 23A.5 (a) (b) (c) (d), all payable within 5 days of publication of this report. This is due to the fact that it is critical to safeguard consumers by making sure sufficient information about the member and their customer service is available. In addition, the process when using the opt-in mechanism of MTN makes subscription more opaque and as such it is critical that all steps are followed when using this somewhat truncated process.

Matters referred back to WASPA

N/A
