



## Report of the Adjudicator

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| Complaint number               | #57491   |
| Cited WASPA members            | <b>Mondia Media South Africa (Pty) Ltd (1975)</b>  |
| Notifiable WASPA members       | n/a  |
| Source of the complaint        | <b>WASPA Compliance Department</b>   |
| Complaint short description    | <b>Adult advertising of subscription service unrelated to adult service with deceptive call to action<br/>Subscribed service was not provided despite being charged for</b>  |
| Date complaint lodged          | <b>2022-08-04</b>  |
| Date of alleged breach         | <b>2022-14-04</b>  |
| Applicable version of the Code | <b>17.1</b>  |
| Clauses of the Code cited      | <b>5.1, 5.4, 5.5, 5.6A, 8.8, 12.2, 23A.5 (d), 23A.6, 21.3, 21.4, 21.5</b>  |
| Related complaints considered  | n/a  |
| Fines imposed                  | <b>R 10 000.00 for the breach of clauses 5.1, 5.4 and 5.5<br/>R 10 000.00 for the breach of clause 8.8<br/>R 2 500.00 for the breach of clause 12.2<br/>R 10 000.00 for the breach of clauses 21.3, 21.4 and 21.5<br/>R 5 000.00 for the breach of clauses 23A.5 (d) and 23A.6</b> |
| Other sanctions                | n/a  |
| Is this report                 | <b>Not notable</b>   |

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

## 1. INITIAL COMPLAINT

- 1.1. This complaint was lodged by the WASPA Compliance Department on 4 August 2022, and the member was notified of the complaint by the WASPA Secretariat on 5 August 2022.
- 1.2. The WASPA Compliance Department included both comprehensive notes of its examination of the member's service, as well as a video recording of the examination in its formal complaint. The report is comprehensive but can be summarised as follows:
- 1.2.1. On 4 April 2022, the WASPA Compliance Department's tester ("tester") conducted manual tests on the MTN network. Before the tester proceeded, the browser cache and cookies on the mobile device were cleared, all active subscriptions were cancelled, and a starting airtime balance was established.
- 1.2.2. The tester visited a mobile website relating to the URL of mobizone.vip/ and was directed to a landing page for the Apps4All subscription service charged at R10.00 per day.
- 1.2.3. The landing page contained a moving image of a female in a bikini top moving seductively and stated: "Click on CONTINUE button to watch HOT GIRLS in the City!". The page appeared to be for an adult content service.
- 1.2.4. At the bottom of the page, in a smaller font, the following information was displayed:
- "Subscribe to Apps4all premium to get lifetime AD FREE access to ALL Apps4all games & Android APPs with R10/day subscription. Don't worry, you can cancel anytime from the service portal. To get support, please contact +27 10 010 5274. cs@puretechglobal.com."*
- 1.2.5. At the bottom of the screen the words 'Terms And Conditions' are visible. The 'Terms And Conditions' link directed to the terms and conditions for the use of all Apps4all portals and WAP short message services provided by Puretech Global SDN BHD.
- 1.2.6. The tester clicked on the "CONTINUE" call-to-action button with the expectation to view adult content and was directed to the Network Hosted Confirmation Page (NHCP) for the purchase of "Apps4all from Mondia Media" at R10.00 per day – a non-adult games and apps subscription service.
- 1.2.7. At the bottom of the screen the words "This service costs R10.00/day. To cancel dial \*123#. Call 135 for help. Ts&Cs" and below that a link to a Mondia Privacy Notice. The link did not resolve to a privacy policy page, but rather to a Mondia website page that indicated "Page not found".

- 1.2.8. The tester proceeded to click the “Confirm” button on the NHCP to confirm the subscription.
- 1.2.9. The tester was directed to a page confirming that the subscription had successfully been activated. The tester clicked on the “Continue” button on this confirmation page and was directed to a page with a “Not Found” error message.
- 1.2.10. The tester also received a Welcome SMS confirming subscription the Apps4all at R10.00 per day with a link to the service. The tester clicked on the link to access the service. The tester’s browser accessed the member’s site, but the tester was presented with the message “Not Found (sic)”.
- 1.2.11. R10.00 of airtime was deducted from the tester’s account and the tester confirmed that Apps4all was activated as a subscription.
- 1.2.12. On 5 April 2022 the tester ascertained that another R10.00 airtime had been deducted from the tester’s account. The tester then attempted to access the same mobizone.vip/ URL and was redirected to a page stating that the user was already subscribed to the Apps4All service. The tester clicked on the “Try Again” button and was again directed to a “Not Found” error page.
- 1.2.13. The tester then attempted to follow the link provided in the Welcome Message again. The tester achieved a similar result and was presented with the message “Not Found (sic)”.
- 1.2.14. On 6 April 2022 the tester ascertained that another R10.00 airtime had been deducted from the tester’s account and then used the network provided USSD self-help portal to successfully unsubscribe from the service.
- 1.3. The above can be divided into two issues:
  - 1.3.1. If the subscription service is an adult service, numerous provisions of the Code have allegedly been breached, including but not limited to the omission of a clear 18+ warning on the promotional material as well as an age verification step (for which the tester alleged breaches of clauses 21.3, 21.4, 21.5 and 23A.6 of the Code).
  - 1.3.2. If the subscription service is a non-adult service for games and apps, then the promotional material is misleading and not in line with the service being provided (for which the tester alleged breaches of clauses 5.5, 8.8 and 23A.5(d) of the Code). There is also intervening text between the pricing information and the call-to-action on the landing page (for which the tester alleged a breach of clause 12.2 of the Code).
- 1.4. At the end of the day, the advertised service was not the service provided, and the subscribed service was actually never provided despite being charged for (for which the tester alleged breaches of clauses 5.1, 5.4 and 5.6A of the Code).
- 1.5. The summary provided by the WASPA Compliance Department is useful and is reproduced here:

- *The tester visited a page which appeared to be for an adult content service – the adult content themed moving image, wording, and design.*
- *The tester clicked on the call-to-action button with the expectation to view adult content – hot girls in the city - but was directed to a NHCP for the non-adult Apps4All games and apps subscription service charged at R10.00 per day.*
- *If the service is indeed an adult service, then numerous provisions of the Code have been breached, including but not limited to the omission of a clear 18+ on the promotional material as well as an age verification step.*
- *If, however, the service is a non-adult service for games and apps, then the promotional material is misleading and not in line with the service being provided.*
- *There is intervening text between the pricing information and the call-to-action on the landing page.*
- *Once subscribed, the options provided to access the service were not functional and the tester had no way of accessing the service to which he/she had subscribed to.*
- *Money was deducted for a service that was not provided.*

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## **2. MEMBER'S RESPONSE**

- 2.1. On the 5<sup>th</sup> of August 2022, the member's support team submitted a response to the complaint to the WASPA Secretariat and advised that the subscription to the services is done as follows:
- 2.1.1. Gameville - daily through a merchant landing page from 24 June and cancelled 17 Nov 2022
- 2.1.2. Apps4All - daily through a merchant landing page from 04 April 2022 and cancelled 06 April 2022
- 2.1.3. Gameonz - daily through a merchant landing page from 22 Nov 2021 and cancelled 22 Nov 2021
- 2.1.4. Mobiflix - daily through a merchant landing page from 17 August 2022 and cancelled 17 August 2022
- 2.2. The member also stated in this response that the SMSs are managed by MTN. No further information was provided.
- 2.3. Again, on 5 August 2022, a key account manager of the member submitted a further response to the WASPA Secretariat and advised that the complaint has been forwarded to the member's partner to take immediate action and the member would advise once the changes have been made.
- 2.4. The member did not submit any further responses at this stage and the WASPA Secretariat informed the member on 25 August 2022 of this fact and indicated that the submission will be passed to the complainant.

- 2.5. The member responded and again forwarded the two responses referred to above to the WASPA Secretariat.

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### **3. COMPLAINANT'S RESPONSE**

- 3.1. The WASPA Compliance Department was informed of the member's response and indicated in its response on 1 September 2022 that its original complaint was sufficient, and it did not wish to add any additional information.

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### **4. MEMBER'S FURTHER RESPONSES**

- 4.1. The member was informed of the complainant's further response on 2 September 2022 and again forwarded the two responses referred to above to the WASPA Secretariat.
- 4.2. On 13 September 2022, the WASPA Secretariat indicated to the member that no further response was received from the member and that the complaint has been submitted to an independent adjudicator for review.
- 4.3. The member responded to the WASPA Secretariat on the same date and indicated that it did respond to all emails relating to this complaint and again shared the same emails mentioned above.
- 4.4. On 15 September 2022, after the WASPA Secretariat contacted the member and provided it with advisories on the complaints procedure, the member indicated in an email to the WASPA Secretariat that "the legal team is working our response".
- 4.5. On 19 September 2022, the member submitted a further response to the WASPA Secretariat and advised as follows:
  - 4.5.1. The test was completed by the tester in April 2022, but it only received the complaint in August 2022.
  - 4.5.2. It received a HU complaint #HU2211 against the service referred to in this complaint during May 2022, after which the offer/campaign responsible was taken down by the member's merchant who owns and markets the service.
  - 4.5.3. This complaint is outdated as the offer that was tested in April is no longer live. Remedial action was already taken to block this specific offer during May 2022.
  - 4.5.4. In light of the multiple violations of WASPA's Code of Conduct by this merchant for this service in the past, and the severity of the violations picked up in this complaint, the member has taken the decision to suspend the service entirely from the MTN network immediately.
  - 4.5.5. The service is not an adult service and clauses 21.3, 21.4, 21.5, and 23A.6 were not violated.
- 4.6. The member attached correspondence with its merchant, Pure Tech Global, wherein the member indicated to the merchant that due to the severity of this complaint, and the fact

that the member has communicated the WASPA Code of Conduct rules to the merchant during previous complaints procedures, the member suspended the service with immediate effect.

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## 5. SECTIONS OF THE CODE CONSIDERED

5.1. As the conduct complained of took place on or around 4 April 2022, version 17.1 of the WASPA Code of Conduct applies to this complaint.

5.2. It is alleged that the member has infringed clauses 5.1, 5.4, 5.5, 5.6A, 8.8, 12.2, 23A.5 (d), 23A.6, 21.3, 21.4 and 21.5 of the Code of Conduct. The clauses read as follows:

- 5.1. *Members must not offer or promise or charge for services that they are unable to provide.*
- 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.*
- 5.6A. *Members must ensure that customers have ready access to information on how to access and use services.*
- 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.*
- 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.*
- 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) .....
  - (b) .....
  - (c) .....
  - (d) *must not mislead by presenting examples of content not available as part of the service;**
- 23A.6. *Any adult services operating on MTN's platforms must be labelled as age restricted so that MTN can perform age verification of the users of those services.*
- 21.3. *Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words "18+".*
- 21.4. *Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.*
- 21.5. *Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Reasonable steps may include the customer confirming his or her age prior to or as part of initiating the service.*

## 6. Decision

6.1. Having reviewed the complaint, supporting communications offered by the complainant and the member's responses, I have reached the conclusions set out below.

6.2. From a factual perspective, there are clear allegations of the contravention of the WASPA Code of Conduct by the WASPA Complaints Department which are not disputed by the member (except for the breaches relating to adult content). The member actually implicitly agreed that there was a substantial breach of the WASPA Code of Conduct by terminating its relationship with its merchant/partner.

6.3. I note that the member has indicated that the services subscribed for is not adult services and that the clauses relating to adult services should not be considered in this complaint. However, the advertising for the services still includes adult content, and the complainant is led to believe that it is subscribing for adult services. In that respect, I have to consider the relevant clauses when dealing with the advertisement and the promotional material, irrespective whether or not the customer ends up with adult content.

6.4. I also note that the member places a portion of the blame of this complaint on its merchant/partner. It is trite that the WASPA member is liable for the conduct of the merchant/partner (clause 3.4 of the WASPA Code of Conduct).

6.5. I will deal with the relevant clauses of the Code in order:

### Clause 5.1

6.6. The member offered a service, to which the complainant subscribed and was charged for three times, but never actually received. The member nor its merchant/partner provided any evidence that it was indeed able to provide this service.

6.7. Accordingly, I find a breach of this clause.

### Clause 5.4

6.8. The apparent subscription to an adult service was in fact a subscription to a non-adult games service. Not only is this not an honest dealing with a customer, but the member also acted unfairly in not actually providing the service subscribed and charged for.

6.9. Accordingly, I find a breach of this clause.

### Clause 5.5

6.10. Again, the advertisement included adult content and the complainant subscribed to the service with the expectation to view adult content. The member (and/or its merchant/partner) knowingly misled the complainant to subscribe to a non-adult service by including information in the advertisement that was inaccurate and false.

6.11. Neither the member or its merchant/partner provided any evidence that it was unaware that the advertisement was deceptive or false.

6.12. Accordingly, I find a breach of this clause.

Clause 5.6A

- 6.13. This clause requires the member to ensure that customers have access to information on how to access and use services, but the issues found by the complainant did not turn on or result from a lack of information.
- 6.14. Accordingly, I cannot find a breach of this clause.

Clause 8.8

- 6.15. The content that was promoted in the advertisement was for adult services. The content actually subscribed for was non-adult games. The content is thus not the same. The advertisement has misled the complaint into believing that it is subscribing for adult services/content, when it was in fact not.
- 6.16. Accordingly, I find a breach of this clause.

Clause 12.2

- 6.17. The text “Access To More Contents” was displayed between the call-to-action and the pricing information. There was intervening text between the call-to-action and the pricing information.
- 6.18. Accordingly, I find a breach of this clause.

Clauses 21.3, 21.4 and 21.5

- 6.19. The advertisement for the services is clearly adult content, and the complainant is led to believe that it is subscribing for adult services. Accordingly, the adult service must be clearly indicated as such in any promotional material and advertisement and must contain the words “18+”. This is not the case.
- 6.20. The content of the service subscribed to is contrary to the reasonable expectation of those responding to the promotion – non-adult games instead of “hot girls in the city”.
- 6.21. There is no indication here that the member has taken reasonable steps to ensure that only persons of 18 years of age or older have access to the adult content services advertised. There is no age verification step prior to the confirmation of the service advertised, i.e. adult content.
- 6.22. Accordingly, I find a breach of clauses 21.3, 21.4 and 21.5.

Clause 23A.5(d)

- 6.23. The service did have a landing page before the confirmation step. However, the landing page did include examples of adult content available as part of the subscription. The content subscribed for (as confirmed by the member) was non-adult content and did not include “hot girls in the city”.
- 6.24. The landing page misled the complainant by presenting examples of content not available as part of the service.

6.25. Accordingly, I find a breach of this clause.

Clause 23A.6

6.26. Again, the adult services advertised by the member and operating on MTN's platforms has not been labelled as age restricted to allow MTN to perform age verification of the users of those services.

6.27. Accordingly, I find a breach of this clause.

6.28. In summary, I find that the member has breached clauses 5.1, 5.4, 5.5, 5.6A, 8.8, 12.2, 23A.5 (d), 23A.6, 21.3, 21.4 and 21.5 of the Code of Conduct.

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## **7. Sanctions**

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct of the member in the form of any prior contraventions of the WASPA Code of Conduct and any mitigating or aggravating circumstances.

7.2. This is the first complaint that has been lodged against the member that proceeded to an adjudicator considering it. It does however seem from the member's response that there have been other WASPA complaints that have been dealt with by the member before it was escalated to an adjudicator. The member states: "...in light of the multiple violations of WASPA's Code of Conduct by this merchant for this service in the past..." and indicates in its email to its merchant/partner: "...we received another four notifications from MTN Secure-D of misleading flows on your service escalated to WASPA within the last week from an adult source and advertising services...". This makes it clear that there have been previous and similar infringements by this member and / or the merchant/partner.

7.3. A large portion of the blame in this complaint lies with the member's merchant/partner, however, if the member was aware of the various infringements, it should have taken steps sooner. The fact that the member has now terminated its relationship with the merchant/partner, is evident that the member is trying to comply with clause 3.6 of the Code. This is a mitigating factor in itself but it must be viewed against the backdrop that the member only notified the merchant/partner of this complaint on 15 September 2022, 30 working days after the complaint was submitted to it by the WASPA Secretariat.

7.4. This is also the only step that the member demonstrated that it took to control the actions of the merchant/partner. Accordingly, I cannot find that the member demonstrated that it had taken the reasonable steps necessary for the member to benefit from the mitigating factor set out in clause 3.7 of the Code.

7.5. I further note that the services have apparently been blocked in May of this year already. That however does not take away from the fact that the Code was breached at the time the tester conducted the tests and multiple customers would have been affected before the service was terminated.

- 7.6. There is no indication of the prejudice suffered by consumers generally due to the member's breaches of the Code of Conduct. The tester was charged for three days of the member's subscription service without the service being made available, and this could very well have been the experience of many consumers. I don't believe it would be feasible to provide for a refund, as I strongly suspect that neither the member or its merchant/partner would be able to ascertain which consumers were affected. However, I have to consider the potentially significant prejudice to consumers that the member's practice in this regard could cause or caused before the service was suspended.
- 7.7. There is no explanation for the infringement of the clauses of the Code, either by the member or its merchant/partner. If it had been an honest mistake, one would have expected evidence or submissions to that effect, instead reliance is placed on the fact that the services do not exist anymore. It does not appear that the member intentionally misrepresented the services, however, I cannot say the same about the merchant/partner.
- 7.8. Considering the nature and severity of the breaches, I accordingly impose the following fines on the member for the infringement of the Code:
- (a) R 10 000.00 for the breach of clauses 5.1, 5.4 and 5.5
  - (b) R 10 000.00 for the breach of clause 8.8
  - (c) R 2 500.00 for the breach of clause 12.2
  - (d) R 10 000.00 for the breach of clauses 21.3, 21.4 and 21.5
  - (e) R 5 000.00 for the breach of clauses 23A.5 (d) and 23A.6

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**8. Matters referred back to WASPA**

- 8.1. None.
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