



## Report of the Adjudicator

Complaint number	#57780
Cited WASPA members	Playwing
Notifiable WASPA members	Mobixone
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant adult content subscription service
Date complaint lodged	2022-10-18
Date of alleged breach	2022-09-22; 2022-10-04
Applicable version of the Code	v17.2
Clauses of the Code cited	5.4, 5.5, 5.11, 8.8, 12.1, and 23A.5(a)(b)(c)(d).
Related complaints considered	n/a
Fines imposed	Member is fined the following amounts:  R5 000 for breach of clause 5.4; R5 000 for breach of clause 5.5; R5 000 for breach of clause 5.11;

	R5 000 for breach of clause 8.8; R5 000 for breach of clause 12.1; R10 000 for breach of clause 23.A.5.
Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

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## Initial complaint

1. The Complainant provided three separate test results of instances when one of its testers came across promotional campaigns for the Member's 100 Sport subscription service (found at three different URLs) while monitoring and conducting manual tests on the MTN network, which the Complainant alleges are not compliant with various requirements of the WASPA Code of Conduct.
2. In support of the complaint, the Complainant provided screenshots and an outline of the tester's experience for each test.
3. On each occasion when the tester selected an item of video content from the options provided, or selected an item to stream live, and after following the steps they were prompted to take to view the content or live stream, they were redirected to a MTN Network Hosted Confirmation Page (NHCP) for a subscription service called 100 Sport from Origindata (member name: MOBIXONE), which was charged at either R15.00 per day or R7.00 per day.
4. The tester elected to stop each test at this point, as there were multiple breaches of the WASPA Code during the subscription acquisition flow.
5. In summary, the Complainant alleges that:
  - 5.1 The banner advertisements found on each website, which directly triggers the MTN confirmation page when clicked and therefore qualifies as the 'call-to-action', does not display any pricing information.

- 5.2 The banner advertisements found for each test are misleading in that they relate to content that is completely unrelated to the content provided by the Member's 100 Sport subscription service.
  - 5.3 There is no compliant subscription service landing page for the Member's service, as required for a service on the MTN network.
  - 5.4 No customer support number was provided.
6. Based on the foregoing, the Complainant alleges that the Member has breached the following clauses of the WASPA Code of Conduct: 5.4, 5.5, 5.11, 8.8, 12.1, and 23A.5(a)(b)(c)(d).
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### **Member's response**

7. The Member responded to the complaint by advising that a third party service provider was responsible for generating traffic for this service. The Member alleges that this was a well-known DSP platform that the Member had used on a number of previous occasions.
  8. The Member stated that it had already decided to pause this third party service because it only got a few subscriptions and they did not exceed the Member's quality standards.
  9. The Member provided screenshots of different banner adverts, which it alleges were to be used for this campaign, and highlighted that these banner adverts contained the relevant pricing information for the service.
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### **Complainant's further submissions**

10. The Complainant noted the Member's response to the complaint and in particular the Member's submission that it purchases premium traffic inventories from a third party, that it does intermittent quality checks, and that it paused advertising for MTN traffic on 7 October 2022 due to low conversion rates.
11. The Complainant also noted the different banner adverts that the Member alleges were used in connection with this service, but submitted that the Complainant had provided three separate test results where the tester (consumer) did not interact with the banners provided by the Member. In the true consumer journey of the tester, no banner with pricing information was included.

12. The Complainant also noted that the Respondent failed and/or omitted to address the other breaches cited in the complaint relating to the misleading marketing of the service; no customer support number; and no landing page as required for MTN flows.
  13. The Complainant also submitted that the Member had only implemented partial remedial steps by pausing the campaign, but this did not address the issue of the banners submitted to be used versus the banners that are factually being used by the third-party marketing supplier; and the other breaches cited; and that the Member should be held liable for the non-compliant service.
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### **Member's further submissions**

14. The Member provided a further response where it alleged that the third party service provider (publisher) took the Member's campaigns without its consent and promoted those campaigns using other banner adverts.
  15. The Member advised further that it had not only paused the campaigns but also blocked the publisher.
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### **Sections of the Code considered**

16. Clauses 5.4, 5.5, 5.11, 8.8, 12.1, and 23A.5(a)(b)(c)(d) of the WASPA Code of Conduct were cited in the formal complaint and considered.
  17. No other relevant clauses were assigned by WASPA.
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### **Decision**

18. After reviewing the complaint and the evidence presented by the Complainant, and the somewhat ambiguous responses received from the Member, I have made the following findings:
  - 18.1 The promotional campaigns and the promotional flows that were referred to in the complaint for the Member's subscription service are clearly misleading or likely to mislead prospective customers by inaccuracy, ambiguity and omission. On each occasion, the tester, as a prospective customer, was reasonably led to believe that they would be able to watch certain video content or live streams of a

particular nature, and they were then instead directed to the Member's subscription service that provided completely different content to subscribers.

- 18.2 Unfortunately, I cannot accept the Member's explanation that these campaigns were conducted without the Member's consent. It is apparent that the third party service provider would need to have been provided with certain details about the service and with the relevant URL links directing to the NCHP in order to conduct these campaigns. The Member had also stated in its first response to the complaint that it had engaged the services of this service provider and had only recently paused their services because it was not satisfied with their results and the quality of the campaigns.
- 18.3 In any event, even if the Member's version was to be accepted as true, i.e. that these campaigns were conducted without the Member's consent, the fact that the Member had engaged the services of this service provider means that the Member is therefore responsible for any breach of the WASPA Code by the service provider, as per clause 3.7 of the Code.
- 18.4 The Member has therefore committed a breach (or is responsible for the breach) of clause 5.5 of the WASPA Code and the complaint is upheld in this regard.
- 18.5 The Complainant provided three separate test results conducted on different dates. In my view, this demonstrates a pattern of non-compliant promotional campaigns being used for this particular service. Based on the evidence provided, I am satisfied that the Member, or the service provider acting on its behalf, has not been honest and fair in its dealings with its customers. The Member has therefore also committed a breach (or is responsible for a breach) of clause 5.4 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 18.6 It is evident from the screenshots provided by the Complainant that no customer support mechanism, whether telephonic or via email (or via any other accessible medium) for this subscription service was provided. The Member has committed a breach (or is responsible for a breach) of clause 5.11 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 18.7 It is also evident that the content that was promoted in the banner adverts used to promote the service was not the same content that is provided to subscribers as part of the promoted subscription service. The banner adverts and resultant promotional flow mislead consumers into believing that they are for an entirely different service or for different content. The Member has therefore committed a breach (or is responsible for a breach) of clause 8.8 of the Code and the complaint is upheld in this regard.

- 18.8 The Member's 100 Sport subscription service is not a free service and is not billed at standard rates. I agree with the Complainant's submission that the banner adverts, found on each website referred to in the complaint, directly triggers the MTN confirmation page when clicked and therefore qualifies as the 'call-to-action'. It is evident that no pricing information was displayed in these banner adverts. The Member has therefore committed a breach (or is responsible for a breach) of clause 12.1 of the WASPA Code and the complaint is upheld in this regard.
- 18.9 The banner adverts used for these promotional campaigns to promote the Member's 100 Sport subscription service do not direct consumers to a compliant landing page before the subscription confirmation step. In particular, there is no pricing information for the service, there is no link to the terms and conditions for the service; they contain misleading call-to-action buttons; and they mislead by presenting examples of content not available as part of the service. The Member has committed a breach (or is responsible for the breach) of clause 23A.5(a)(b)(c) and (d) of the WASPA Code and the complaint is upheld in this regard.
19. To summarize the findings, the Member is found to have breached clauses 5.4, 5.5, 5.11, 8.8, 12.1, and 23A.5.
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## Sanctions

20. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
- 20.1 any previous successful complaints made against the Member in the past three years;
  - 20.2 any previous successful complaints of a similar nature;
  - 20.3 the nature and severity of the breach; and
  - 20.4 any efforts made by the Member to resolve the matter.
21. I have also taken account previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions when determining appropriate sanctions.
22. No previous complaints have been made against the Member.

23. However, the relevant breaches of the Code by the Member relate to the misleading or deceptive promotion of a subscription service, which is of a serious nature and poses a substantial risk of harm to consumers.
  24. The Member attempted to place responsibility with a third party service provider and suggested that each of the non-compliant campaigns were conducted by this provider without its consent. This appears highly unlikely for the reasons I have previously provided, but even if this was the case, the Member remains responsible for any breach of the WASPA Code by its service provider, who was not a member of WASPA, in terms of clause 3.7 of the Code.
  25. Although the Members indicated in its response that it conducted quality checks on the campaigns run by the third party service provider, no evidence was provided by the Member that it had made the service provider aware of the requirements of the Code or of any steps taken by the Member to ensure that the service provider was marketing its services in a manner consistent with the requirements of the Code.
  26. The Member has therefore failed to demonstrate, as a mitigating factor, that it has taken reasonable steps to ensure that the service provider markets its services in a manner consistent with the requirements of the Code.
  27. However, I have taken into account that the Member has paused these campaigns and has blocked this particular service provider.
  28. Based on the nature and severity of the various breaches of the WASPA Code of Conduct in this complaint for which it is responsible, the Member is fined the following amounts:
    - 28.1 R5 000 for breach of clause 5.4;
    - 28.2 R5 000 for breach of clause 5.5;
    - 28.3 R5 000 for breach of clause 5.11;
    - 28.4 R5 000 for breach of clause 8.8;
    - 28.5 R5 000 for breach of clause 12.1;
    - 28.6 R10 000 for breach of clause 23.A.5.
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