



## Report of the Adjudicator

Complaint number	#57830
Cited WASPA members	ADX DIGITAL PTE LTD
Notifiable WASPA members	Yola Media (Pty) Ltd
Source of the complaint	WASPA Compliance Department
Complaint short description	Misleading advertising Subscription service No pricing information
Date complaint lodged	2022-10-28
Date of alleged breach	2022-08-25
Applicable version of the Code	17.2
Clauses of the Code cited	5.4, 5.5, 5.11, 8.2, 8.8, 12.1
Related complaints considered	N/A
Fines imposed	R5 000 fine for the breach of clauses 5.4 and 5.5; R5 000 fine for the breach of clause 5.11; R5 000 fine for the breach of clause 8.8; and R5 000 fine for the breach of clause 12.1.
Other sanctions	N/A

Is this report notable?	Not notable.
Summary of notability	N/A

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## 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 (“The Code”).
2. The formal complaint which consisted of Annexure A and B was sent to the Member on 2022-10-31, and the aggregator was also notified on the same day (“the complaint”).
3. Annexure A of the complaint stated that on 2022-08-25, a Tester employed by the Complainant (“the Tester”) browsed a website with URL <https://live247.space/tennis/>, and used a test device on the Vodacom network. The following was highlighted by the Complainant:
  - 3.1. The Tester clicked on a banner advertisement for “Tennis / Omar Jasika vs Federico Galo live stream (25 Aug. 2022, 04:50 UTC)”.
  - 3.2. The Tester’s action redirected the Tester to the Vodacom Network Hosted Confirmation Page for a subscription service called MobiSports at R5.00 per day (“the subscription service”).
  - 3.3. The Tester elected to stop the test at this point, as there were multiple breaches of the Code during the subscription acquisition flow for the subscription service.
  - 3.4. The banner advertisement which triggered the Vodacom confirmation page qualified as a ‘call to action’, did not display any pricing information, and had a single opt-in flow.
  - 3.5. The banner advertisement was misleading as it related to a tennis match between Omar Jasika and Federico Galo which the Tester was trying to live stream, and when the Tester clicked on it, the Tester was redirected to the Vodacom confirmation page for an unrelated subscription service.
  - 3.6. There was no customer support number available to the Tester.

4. Annexure B of the complaint stated that on 2022-08-25, the Tester browsed a website with URL <https://live247.space/tennis/553879-vitalia-diatchenko-vs-heather-watson-live-stream-25-aug-2022-1500-utc.html>, and used a test device on the Vodacom network. The following was highlighted by the Complainant:
    - 4.1. The Tester clicked on a 'Betway' banner advertisement with the following text: "100% FIRST DEPOSIT BONUS Up to R1,000 Welcome Bonus".
    - 4.2. The Tester's action redirected the Tester to the Vodacom Network Hosted Confirmation Page for the subscription service.
    - 4.3. The Tester elected to stop the test at this point, as there were multiple breaches of the Code during the subscription acquisition flow for the subscription service.
    - 4.4. The banner advertisement which triggered the Vodacom confirmation page qualified as a 'call to action', did not display any pricing information, and had a single opt-in flow.
    - 4.5. The banner advertisement was misleading as it related to a promotion of a betting service and welcome bonus which the Tester was trying to claim, and when the Tester clicked on it, the Tester was redirected to the Vodacom confirmation page for an unrelated subscription service.
    - 4.6. There was no customer support number available to the Tester.
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## **Member's response**

5. The Member responded to the complaint on 2022-11-09.
6. The Member confirmed that there was a Heads-up complaint raised by the Complainant on 2022-08-26 which referred to clauses 5.5, 8.8, and 23A.5 of the Code ("the Heads-Up").
7. The Member stated that it had stopped working with the advertisement network, which was responsible for the non-compliance, as it ran incentive advertisements as well as incorrect banners that were non-compliant to the Member's guidelines that were sent to it.
8. The Member alleged that it communicated this information back to WASPA, and the case was closed on 2022-09-01.
9. The Member stated that it had blocked the responsible advertisement network in the last week of August 2022, and that it had categorically told the advertisement networks not to run advertisements that are not compliant with the Code.

10. The Member further confirmed that as part of its company policy it now uses Google traffic with compliant banners for Vodacom traffic.
  11. Furthermore, the Member assured WASPA that its advertising settings would not change in the future and that it was apologetic.
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## **Complainant's response**

12. The Complainant responded on 2022-11-18.
  13. The Complainant stated that the current complaint related to a subscription service called 'Mobisport' which was tested on the Vodacom network, and not to that of 'Gamesify' which was tested on the MTN network.
  14. The Complainant asserted that the Heads-Up was for the subscription service called 'Gamesify' and was unrelated to this complaint which was for 'Mobisport'.
  15. The Complainant further submitted that it acknowledged that the Member had implemented corrective measures to ensure that advertisement networks only use compliant banners.
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## **Sections of the Code considered**

16. The following clauses of the Code are 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.
  - 5.11. 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).
  - 8.2. For a subscription service, the "pricing information" consists of the word "subscription" and the cost to the customer and frequency of the billing for the service. The cost and frequency portion of the pricing information must follow the following format, with no abbreviations allowed: "RX/day", "RX per day", "RX/week", "RX per week", "RX/month" or "RX per month" (or RX.XX if the price includes cents). For services billed at an interval other than daily, weekly or monthly, the required format is "RX every [time period]", with no abbreviations permitted when specifying the time period. Examples of pricing information: "Subscription R5/week", "R1.50/day subscription", "RX every three days", "RX every two weeks". In a case where the total amount is billed in smaller increments over

the subscription period, the pricing must still reflect the full price and not the incremental amounts (“R30/month” and not “6 x R5 per month”).

- 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.
- 12.1. 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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## Decision

17. Annexure A of the complaint exhibited a banner advertisement that was misleading, as it referred to a live stream of a tennis match between Omar Jasika and Federico Galo, and not to the subscription service. When the Tester clicked on the live stream, the Tester was redirected to a Vodacom confirmation page for the Member’s unrelated subscription service called MobiSports at R5.00 per day and could not access the live stream of the tennis match which the Tester intended to.
18. Annexure B of the complaint illustrated a banner advertisement which was misleading to consumers, as the banner advertisement’s wording intimated a promotion relating to a betting service and welcome bonus, and not to the Member’s subscription service. When the Tester tried to claim said promotion by clicking on the banner advertisement, the Tester was redirected to a Vodacom confirmation page for the unrelated subscription service.
19. Therefore, the Member’s subscription service was not related to either banner advertisement in Annexure A or B of the complaint. The Tester was misled into believing that the Tester was claiming a promotion or live streaming a tennis match, and not subscribing to the Member’s unrelated subscription service.
20. The Member’s acquisition flow was subsequently inaccurate and misleading. In terms of the Code, advertisements placed by the Member must not mislead consumers into believing that it is for an entirely different service or for different content than advertised. Therefore, the Member is found in breach of clauses 5.5 and 8.8 of the Code.
21. Furthermore, the subscription service had a call-to-action, which needed to include pricing information that should have been clearly and prominently displayed adjacent to the call-to-action. Both banner advertisements did not display any pricing information and had a single opt-in flow. Therefore, the Member is found in breach of clause 12.1 of the Code.

22. The Member also contravened clause 5.11 of the Code by not providing its customers with a customer care number. Customer support must be easily available, and must not be limited to email, as the customer may not have access to this medium.
  23. Considering the above, the Member did not act honestly, fairly, or reasonably in its advertising endeavours and is found in breach of clause 5.4 of the Code.
  24. A subscription service must also have pricing information that consists of the word “subscription”, and clearly indicates the cost to the customer and frequency of the billing for the service in a format specified by the Code. The subscription service illustrated that the consumer was to “subscribe” to the service at R5.00 per day. The pricing information was not abbreviated and was reiterated below the pricing text to state “you are about to subscribe to MobiSports FREE for 1 day thereafter R5.00 per day”. The pricing information, cost to consumer and billing frequency is clear to the consumer. The fact that the subscription service used the word “subscribe”, rather than “subscription” is immaterial, as the consumer is not misled into believing that this is a once-off payment and not in fact a subscription service. The intent of the Member is illustrated clearly, and the variation of the word “subscribe”, is purely semantic. Therefore, the Member is not in breach of clause 8.2 of the Code.
  25. Lastly, the Heads-Up was for the subscription service called ‘Gamesify’, and was unrelated to this complaint which was for ‘Mobisport’. Therefore, the Complainant’s submissions are unrelated to the complaint and cannot be taken into consideration. However, the Member’s remorse and subsequent rectification of its non-compliant subscription service is noted.
  26. In conclusion, the Member is found to be in breach of clauses 5.4, 5.5, 5.11, 8.8, and 12.1 of the Code, but not in breach of clause 8.2 of the Code. Therefore, the complaint is partially upheld.
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## **Sanctions**

27. I have taken clause 24.34 of the Code into consideration, and based on the foregoing, the following sanctions are imposed:
- 27.1. A R5 000 fine for the breach of clauses 5.4 and 5.5;
  - 27.2. A R5 000 fine for the breach of clause 5.11;
  - 27.3. A R5 000 fine for the breach of clause 8.8; and
  - 27.4. A R5 000 fine for the breach of clause 12.1.
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**Matters referred back to WASPA**

28. N/A.

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