



Report of the Adjudicator

Complaint number	#57833
Cited WASPA members	ADX Digital PTE LTD
Notifiable WASPA members	Mobixone
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant advertising
Date complaint lodged	2022-10-28
Date of alleged breach	2022-09-02 – 2022-08-30
Applicable version of the Code	17.2
Clauses of the Code cited	5.11, 12.1, 12.2, 23A.5 (a) (b) (c) (d)
Related complaints considered	N/A
Fines imposed	R 25 000-00
Other sanctions	Compliance to clauses by rectifying landing pages prior to any further advertising
Is this report notable?	Not notable
Summary of notability	N/A

Initial complaint

Whilst monitoring, testing services and conducting compliance checks of test results, the WASPA Compliance Department, the Complainant in this matter, identified a service which it alleged did not comply with the requirements as set out in the WASPA Code of Conduct (Code).

The Complainant referenced two separate links, which contained the same banner advertisement.

In summary, the following were noted as inconsistent:

- The banner advertisement, which when clicked on directly triggered the MTN confirmation page, and therefore qualified as the 'call-to-action'.
- It did not display any pricing information – single opt-in flow.
- There was no subscription service landing page as required for a service on the MTN network.
- It contained no customer support number.
- The pricing information on the confirmation page was neither clear nor prominent and required closer examination - the font colour used against the blue background was allegedly designed in such a way for the pricing information to be overlooked/missed.

Member's response

The Member in this matter did not deny the allegation but instead iterated that a previous heads-up complaint by the WASPA Compliance Department on 26 August 2022 (HU2315), which had clauses 5.5, 8.8, 23A.5 a, b, c, and d of the Code questioned for their service, prompted them to stop working with the ad network who committed the non-compliance for their ads.

This information was communicated back to the WASPA Compliance Department who apparently closed the case on the 1st of Sep 2022.

The Member further stated that after MTN had changed their pricing and the landing page policy, they have complied with the new rules since the 2nd week of Sep 2022 and have instructed the ad networks to only use their banners and not any random banners.

Complainant's response

The Complainant in its further response stated the following which is here copied verbatim:

“We have reviewed the original complaint as well as the Respondent’s submissions in respect thereof. We will endeavor to address the points raised by the Respondent that are relevant to the non-compliant service complained of and the correlating breaches, however, any failure to address a specific point should not be construed as an admission of any sorts.

1. Firstly, this complaint relates to a subscription service called ‘Quickheal’ which was tested on the MTN network.

2. The Respondent refers to a Heads-Up complaint (HU2315) which was issued by the Compliance Department on the 23rd of August 2022. We submit that the said HU2315 was for a service called ‘Gamesify’ and is unrelated to this complaint and the service complained of, namely ‘Quickheal’.

3. Therefore, the issues raised as part of Formal Complaint #57833 are stand-alone issues identified on the MTN network for the ‘Quickheal’ subscription service. As such, we will not address any of the points raised regarding HU2315 as it has no bearing on this complaint. We attach one of the test results for HU2315 only to substantiate that it was for a service called ‘Gamesify’. Refer to Annexure C.

4. Secondly, the requirement for all services on the MTN network to include a landing page, was set out in the MTN Business Rules and formally adopted in the Code under the Operator Specific Requirements, Section 23A. Version 17.0 of the Code became effective on 25 November 2021 and clause 23A.5 reads as follows: “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...”

5. MTN circulated a letter to their partners on 1 September 2022, which reiterated the existing landing page requirement for services offered on the MTN network. Point 3 states: “We have engaged with WASPA on ongoing reviews of non-compliant journeys and will continue to do so. The list of services provided by yourself will be given to WASPA to test and ensure compliance. This will be very strictly enforced. Any non-compliant 2 WASPs will be formally notified by WASPA, and the WASP no longer allowed to host landing pages for any of its services.” Letter attached for ease of reference.

6. The Respondent submits that they have complied with the requirements since the 2nd week of September 2022. The landing page requirements, pricing requirements, and customer support detail requirement have all been longstanding requirement as set out in the Code.

7. We note the Respondent’s submission that they have implemented corrective measures to ensure that ad networks only use their banners and not random banners. The Respondent also submits that they will be using the MTN landing page as part of their corrective measures, and that they have amended the pricing information to be clear and prominent, as required by the Code.

8. We respectfully submit the Respondent's service was in breach of several clauses of the Code on the date of testing the service, and that our original complaint sufficiently sets this out. The Respondent should be held liable for their non-compliant service.

Member's further response

N/A

Sections of the Code considered

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).

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.

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"); and
 - (d) must not mislead by presenting examples of content not available as part of the service.
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Decision

In reaching a decision the Adjudicator relies on all the information provided by both the Complainant and Member in this matter.

Unwarranted deductions and unknown or unconfirmed subscriptions are something that many end-users feel aggrieved or wronged by. In some instances, this happens due to hastily decision making, but in most instances, it happens because users feel they were tricked, or not offered the opportunity of making an informed choice. So, when users discover there are deductions on their account by network providers for services, they are almost certain they had not subscribed to, the onus is on the user to prove that they did not willingly subscribe.

This can become tricky if the service provider has proof to the contrary and the user is left feeling duped out of money.

To create a balance, Members are regularly provided with updates from network providers on consumer protective measures and WASPA is quite explicit on this in its guidelines and its Code of Conduct. Therefore, when a user or consumer is billed and subscribed to a service, chances are good they did IF the Member followed the correct process.

In this instance, with the examples provided by the Complainant, the Adjudicator has no doubt, over and above the Member's own admission of originally failing, that the Member at the time the tests were conducted, was in breach of the referenced clauses of the Code and hence also failed in following the correct process.

The Member is found in breach of clauses 5.11, 12.1, 12.2 and 23A.5.

The complaint is upheld.

Sanctions

The Member is fined R 25 000-00 (Twenty-Five Thousand Rand) for its breach of sections 5.11, 12.1, 12.2 and 23A.5.

The Member is ordered to pay the fine to WASPA within 7 days after having received notice hereof and is further ordered to align all its advertising to conform to the clauses referenced herein and as dictated by MTN before any further advertising.

Matters referred back to WASPA

N/A
