



Report of the Adjudicator

Complaint number	#57836
Cited WASPA members	ADX DIGITAL PTE LTD
Notifiable WASPA members	Mobixone
Source of the complaint	WASPA Compliance Department
Complaint short description	Subscription service Misleading advertising No pricing information
Date complaint lodged	2022-10-28
Date of alleged breach	2022-09-22
Applicable version of the Code	17.2
Clauses of the Code cited	5.4, 5.5, 5.11, 8.8, 12.1, 23A.5 (a) (b) (c) (d)
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; R5 000 fine for the breach of clause 12.1; and R5 000 fine for the breach of clause 23A.5.

Other sanctions	The Member is ordered to provide the customers who were directly impacted by the non-compliance of its service from 2022-09-01 to the date of publication of this report, with a full refund relating to the subscription fees, within 5 days of the publication of this report. Triggering clause is 24.43(a).
Is this report notable?	Not notable.
Summary of notability	N/A

Initial complaint

1. Whilst monitoring, testing services and conducting compliance checks of test results, the WASPA Compliance Department identified the Member's service, which did not comply with the requirements as set out in the WASPA Code of Conduct ("The Code").
2. Formal complaint #57836 was logged by the WASPA Compliance Department on 2022-10-28 ("the Complainant").
3. The formal complaint notice was sent to the Member on 2022-10-31 and the Aggregators were also notified of same.
4. On 2022-09-22, the Complainant's Tester browsed a website with the following URL: <https://ckk.ai/HwCXC>, using their test device on the MTN Network.
5. The banner advertisement directed the Complainant's Tester straight to the MTN Network Hosted Confirmation Page for the Member's subscription service called Gamesify from ADX at R15.00 per day ("the subscription service").
6. The Complainant's Tester produced two separate test results which illustrated that the Members subscription service was non-compliant, namely Annexure A and Annexure B respectively.
7. In summary, the complaint against the Member comprises of the following:
 - 5.1 The Member's banner advertisement triggered the MTN Confirmation Page and therefore qualified as a 'call-to-action'. The call-to-action did not display any pricing information.
 - 5.2 The banner advertisement was misleading as it appeared to relate to downloading or playing something, and not to the Member's unrelated subscription service.

- 5.3 There was no subscription service landing page, as required on the MTN network.
 - 5.4 There was no customer support number displayed.
 - 5.5 There were multiple breaches of the Code during the subscription acquisition flow for the subscription service.
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Member's response

8. The Member responded to the formal complaint on 2022-11-09.
 9. The Member submitted that the Complainant's concerns raised by its testing results were valid, yet these concerns were also outdated.
 10. The Member stated that MTN had changed its pricing and its landing page policy, and that the Member had complied with MTN's new rules since the second week of September 2022.
 11. The Member also stated that it had instructed the advertisement networks to exclusively use its banners.
 12. The Member confirmed that its company's policy had been changed to only use google traffic, and the MTN landing page for MTN traffic.
 13. The Member then assured that the abovementioned settings would not change for any of its advertising practices in the future and that it was apologetic and wanted to correct its mistake.
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Complainant's response

14. The Complainant provided its formal response on 2022-11-15.
15. The Complainant acknowledged that the Member did not contest the breaches cited and that the Member would implement corrective measures.
16. The Complainant quoted clause 24.6 of the Code and stated that the Member's service was tested on 2022-09-22, and the complaint was duly lodged within the period provided for in the Code.
17. The Complainant stated that the requirement for all services on the MTN network having a landing page was set out in the MTN Business Rules and was formally adopted in the Code under clause 23A.

18. The Complainant confirmed that version 17.0 of the Code came into effect on 2021-11-25, which included clause 23.A.5, and that MTN circulated a letter to its partners on 2022-09-01. The Complainant further stated that this letter reiterated the existing landing page requirement for services offered on the MTN network to the Member.
 19. The Complainant further alleged that the landing page requirements, pricing requirements, no misleading marketing requirement and the customer support detail requirement had all been longstanding requirements of the Code.
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Member's further response

20. The Member provided its final submission on 2022-11-18.
 21. The Member reiterated that it was compliant with the Code and MTN guidelines at the end of September 2022.
 22. The Member also alleged that it had been given time from MTN itself to submit the logs of its landing page on 2022-10-01 and requested that its non-compliance be excused as it would not occur again.
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Sections of the Code considered

23. The following sections of the Code are considered, and read as follows:

- "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.
- 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 customers 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.

- 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).
- 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.”
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Decision

24. The Member’s banner advertisement for the subscription service displayed the following text: “A gift for you. Register on Aliexpress to get the coupon”. Underneath said text were two buttons the customer could click on, being a download button and a play button. The Member’s banner advertisement triggered the MTN Confirmation Page when the Complainant’s Tester clicked on it, and therefore it qualified as a ‘call-to-action’. The Code stipulates that content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service. The Member’s subscription service was not related to the banner advertisement which led the customer to believe that the customer was downloading or playing an unspecified service that would lead to a free gift or coupon and not the Member’s specific games service. The acquisition flow was subsequently ambiguous and misleading. Therefore, the Member is found in breach of clauses 5.5 and 8.8 of the Code.
25. 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. Therefore, the Member is found in breach of clause 12.1 of the Code.
26. The call-to action had no pricing information displayed and did not lead to a landing page, but rather directly to the MTN confirmation page. Subscription services must have a landing page prior to the confirmation step. In addition, a call-to-action must not be misleading by using wording such as “download” or “play” instead of “subscribe” or “join”. The Member’s subscription service had a misleading call-to-action, and the landing page was completely omitted, therefore the customer had no access to the material information relating to the subscription service such as the Terms and Conditions or the pricing information. As a result of the Member’s omission, the Member is found in breach of clause 23.A.5 of the Code.

27. 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.
28. 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.
29. It is acknowledged that the Member started to comply with the Code and MTN's new requirements in the last two weeks of September 2022, however, the clauses that the Member contravened had been long standing and were also available in previous versions of the Code which the Member was privy to. A subscription service is any service for which a customer is billed on a repeated, regular basis without confirming each individual transaction. The Member cannot rely on a change in policy to excuse its contravention of material requirements that could cause serious prejudice to its customers on a repetitive basis.
30. Lastly, the Member's remorse and subsequent rectification of its non-compliant subscription service is noted.
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Sanctions

31. I have taken clause 24.34 of the Code into consideration, and based on the foregoing, the following sanctions are imposed:
- 31.1. A R5 000 fine for the breach of clauses 5.4 and 5.5;
 - 31.2. A R5 000 fine for the breach of clause 5.11;
 - 31.3. A R5 000 fine for the breach of clause 8.8;
 - 31.4. A R5 000 fine for the breach of clause 12.1; and
 - 31.5. A R5 000 fine for the breach of clause 23A.5.
32. Furthermore, the Member is ordered to provide the customers who were directly impacted by the non-compliance of its service from 2022-09-01 01 to the date of publication of this report with a full immediate refund, relating to the subscription fees, within 5 days of the publication of this report. The triggering clause of the Code for this finding is 24.43(a).
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Matters referred back to WASPA

33. N/A
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