



Report of the Adjudicator

Complaint number	#58517
Cited WASPA members	Cookies Factory S.R.L.
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant advertising
Date complaint lodged	2023-03-28
Date of alleged breach	N/A
Applicable version of the Code	17.3
Clauses of the Code cited	5.4, 5.5, 5.11, 8.8, 12.1, 12.2, 21.3, 21.4, 21.5, 21.11 23A.5 (a)(b)(c)(d).
Related complaints considered	None
Fines imposed	R5 000 for the breach of clauses 5.4 and 5.5; R5 000 for the breach of clause 5.11; R5 000 for the breach of clause 8.8; R5 000 for the breach of clauses 12.1 and 12.2; R5 000 for the breach of clause 23A.5; R5 000 for the breach of clauses 21.3, 21.4,, 21.5 and 21.11.

Other sanctions	N/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 a service which they believed did not comply with the requirements as set out in the WASPA Code of Conduct (Code).
2. On the 23rd of January 2023 a tester was browsing an adult website with the following URL: <http://porn4days.biz/> using their test device on the MTN Network.
3. The tester clicked on multiple adult videos with the expectation of watching a video and the tester was prompted with a hCaptcha where the tester confirmed that they are not a robot.
4. The hCaptcha verification directed the tester directly to the MTN Network Hosted Confirmation Page (NHCP) for a subscription service called Battle Plus from Cookies Factory s.r.l. at R5.00 per day. The relevant screenshots were provided.
5. The tester clicked on the Confirm button and was presented with an error page because the monitoring tool used was not configured to activate subscription services.
6. 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 Battle Plus service from Cookies Factory.
7. In summary it was submitted that:
 - a. The adult website, with references to multiple adult content items, leads to a MTN confirmation page.
 - b. 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 (adult content).

- c. If a service is non-adult in nature, you need to use advertising/marketing/promotional material in line with the service you offer, and advertise it on a non-adult platform.
 - d. If you use a compliant adult banner on an adult platform, it should lead to a compliant adult subscription service landing page, which should clearly be indicated as such with the words 18+;
 - e. The hCaptcha which, when clicked on, triggered the MTN confirmation Page (NHCP) and therefore qualified as the 'call-to-action' and did not display any pricing information.
 - f. The reference on the MTN confirmation page to it being a subscription service with a related cost was not clear, nor prominent, and required closer examination. Although the pricing information was provided, it was displayed in such a way as to be missed, overlooked, or not seen due to the placement and design (font colour, size, background, etc.).
 - g. The hCaptcha was misleading (as at this point it appeared to relate to verifying if the tester was human), as clicking on it resulted in the MTN confirmation page (NHCP) being triggered for an unrelated subscription service.
 - h. There was no subscription service landing page as required for a service on the MTN network.
 - i. There was no customer support number.
8. Further non-compliant test results were added to supplement this complaint and the relevant screenshots were provided.
9. This subscription acquisition flow for the Battle Plus subscription service charged at R5.00 did not comply with the provisions of the Code. It was submitted that the following clauses of the Code had been breached: Clauses 5.4, 5.5, 5.11, 8.8, 12.1, 12.2, 21.3, 21.4, 21.5, 21.11 and 23A.5 (a)(b)(c)(d).
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Member's response

10. The Member responded to the Complainant's complaint in an email on 6 April 2023 and submitted that they have reviewed all the cases in detail and have taken immediate action with their advertising partners to block and stop all sources that led to these incidents.

Moreover, they have now imposed strict guidance to their media buying to ensure that they do not have these issues going forward.

Complainant's response

11. The Respondent submitted that they had reviewed all the cases in detail and had taken immediate action with their advertising partners to block and stop all sources that led to their service.
 12. The Respondent furthermore submitted that they had imposed strict guidance in their media buying.
 13. The Respondent failed and/or omitted to address the other breaches cited relating to the misleading marketing of the service; no customer support number; no clear and prominent pricing information; and no landing page as required for MTN flows.
 14. The Complainant submitted that the Respondent's service was in breach of several clauses of the Code on the dates of testing the service, and that the original complaint sufficiently set this out.
 15. Furthermore, the Complainant submitted that the Respondent had only implemented partial remedial steps (by blocking and stopping sources), but this did not address all the issues raised in the complaint. There were also other breaches which had not been addressed or corrected – and that the Respondent should be held liable for their non-compliant service.
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Member's further response

16. The Respondent submitted that, in response to a circular they received from MTN, they had already closed and stopped any active partnerships with affiliate publishers and they were now purely focusing on Google acquisitions.
17. The incidents reported unfortunately were from a period where they had a few active campaigns with publishers that led to these incidents without their knowledge. They had effectively stopped any and all partnerships with these errant publishers.
18. To capulate their feedback and actions on the incidents raised the Respondent submitted the following:

- 18.1. Misleading Marketing: They had already acted against such publishers and had completely blocked them from any future campaigns.
 - 18.2. No customer support number: The customer support number was available in the T&C link that was provided.
 - 18.3. No clear and prominent pricing information: Their landing pages are fully compliant and clearly display the service pricing information. The details of the user journey and service url were provided.
 - 18.4. No landing page as required for MTN flows: Their landing pages were fully compliant, but these were bypassed by the aforementioned publishers and hence were not visible. Samples of their landing pages that are active on their Google acquisition network were provided.
19. The Respondent submitted that they are deeply committed to ensuring compliance and adherence to the WASPA Code of Conduct and that going forward their media buying will be strictly related to Google to ensure that such incidents do not arise again.
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Sections of the Code 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.*
- 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 3 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.*

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;

If the service is adult in nature, the member has breached the following clauses:

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.*

21.11. Marketing material for any adult services may not make use of material which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.

Decision

20. It is clear from the Member's response that they do not deny the breach of the WASPA Code of Conduct as listed in the formal complaint but they submitted that they had reviewed all the cases in detail and had taken immediate action with their advertising partners to block and stop all sources that led to these incidents. Moreover, they confirmed that they have now imposed strict guidance to their media buying to ensure that they do not have these issues going forward.
 21. In terms of clause 3.7 of the Code the Member remains responsible for any breach of the WASPA Code by the service provider.
 22. Based on the uncontroverted evidence the Member is hereby found to have breached the following clauses of the WASPA Code of Conduct:
 - 22.1. Clause 5.4 by not having fair dealings with their customers;
 - 22.2. Clause 5.5 by knowingly disseminating information that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission;
 - 22.3. Clause 5.11 by not providing its customers with an easily accessible customer care number;
 - 22.4. Clause 8.8 by misleading consumers into believing that the advertised service is for an entirely different service or for different content;
 - 22.5. Clauses 12.1 and 12.2 for not providing clear and prominent pricing information;
 - 22.6. Clause 23A.5 by not having a landing page and sending the customer directly to a confirmation page without the required information for a compliant landing page;
 - 22.7. Clauses 21.3, 21.4, 21.5 and 21.11 by promoting and advertising adult material without complying with the specific requirements of these clauses as listed above.
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Sanctions

23. In my view the Respondent has shown remorse and confirmed that they are deeply committed to ensuring compliance and adherence to the WASPA Code of Conduct and that going forward their media buying will be strictly related to Google to ensure that such incidents do not arise again.
 24. Taking all factors into account the Member is fined as follows:
 - 24.1. R5 000 for the breach of clauses 5.4 and 5.5;
 - 24.2. R5 000 for the breach of clause 5.11;
 - 24.3. R5 000 for the breach of clause 8.8;
 - 24.4. R5 000 for the breach of clauses 12.1 and 12.2;
 - 24.5. R5 000 for the breach of clause 23A.5;
 - 24.6. R5 000 for the breach of clauses 21.3, 21.4, 21.5 and 21.11.
 25. Consequently the Member is to pay an amount of R30 000 within the timeframe set out in clause 24.41 of the WASPA Code of Conduct.
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Matters referred back to WASPA

N/A
