



## Report of the Adjudicator

Complaint number	58518
Cited WASPA members	Hyve Mobile
Notifiable WASPA members	N/A
Source of the complaint	WASPA
Complaint short description	Several breaches of the code relating to misleading advertising and pricing issues.
Date complaint lodged	28 March 2023
Date of alleged breach	3 January 2023
Applicable version of the Code	17.3
Clauses of the Code cited	4.9 (c), 5.1, 5.4, 5.5, 8.7, 8.8, 12.1, 12.2, 23A.5(a)
Related complaints considered	
Fines imposed	4.9(c) R15 000 5.4- R15 000 5.5 – R15 000 8.8 – R10 000
Other sanctions	
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 identified a service which they believe did not comply with the requirements as set out in the WASPA Code of Conduct (Code). Below is an outline of the test result, together with the alleged breaches of the WASPA Code.

### ANNEXURE A

1. On the 3<sup>rd</sup> of January 2023, a tester was browsing an adult website with the following URL: <https://sexu.com/20287540> on the MTN network.
2. The tester clicked on an explicit (X18) adult content banner advertisement; the tester again clicked on a blank image with the following text **“First-timer fucked face-to-pussy”**.
3. The tester was redirected to a non-adult website, the tester clicked on an ad banner which contained the green WhatsApp icon, an exclamation mark and the following text: **“Upgrade to the latest WhatsApp content NOW!”**.
4. There was a green **‘CONTINUE’** call to action button. After some line breaks, in a white font against the green background, in a much smaller font size, the following was displayed: **“Daily service charge R15 T&Cs apply”**. {Screenshot provided below}
5. The tester clicked on the call-to-action button and was redirected to what looked like a WhatsApp chat service (WhatsApp icon/logo, green call-to-action button, wording, etc.). The following text was displayed:

**“WhatsApp Alert: Your WhatsApp has expired today! If you do not update it now, all your contacts, chats and photos will be lost! Your private photos and chats can get on the internet today!**

**You have 0.58 seconds to update your WhatsApp**

**Click the Update button below and verify your mobile number (100% free). We’ll send you an update link via SMS!**

**UPDATE NOW”**

6. The tester clicked on the **“UPDATE NOW”** button and was redirected to a service landing page for Whats Trending from Hyve Mobile. The tester clicked on the Subscribe button and was redirected to the MTN hosted confirmation page.
7. 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 Whats Trending service.

### ANNEXURE B

1. On the 16<sup>th</sup> of January 2023 a tester was browsing on an adult website with the following URL: <https://m.sextvx.com/> on their test device on the MTN network.
2. The tester clicked on multiple explicit adult videos with the expectation of watching the explicit adult content video. However, the tester was directed to a non-adult website with

the following URL : <https://financeritual.com/these-billion-dollar-tech-ideas-were-actually-inspired-by-famous-movies/>

3. The tester clicked on an ad banner which contained the green WhatsApp icon, an exclamation mark and the following text: **“Upgrade to the latest WhatsApp content NOW!”**.
4. There was a green **‘CONTINUE’** call to action button. After some line breaks, in a white font against the green background, in a much smaller font size, the following was displayed: **“Daily service charge R15 T&Cs apply”**.
5. The tester clicked on the Continue button and was redirected to a service landing page for Whats Trending from Hyve Mobile charged at R35/week.
6. The subscription service landing page is designed in such a way as to appear to be linked with an upgrade for the Whatsapp chat platform (Whatsapp icon/logo, green call-to-action button, wording, etc....) The following text was displayed:

**“NEW WHATSAPP UPGRADE AVAILABLE NOW”**

7. The pricing information was neither clear nor prominent and required closer examination to be noticed.
8. The tester clicked on the **“Subscribe”** button and was directed to the MTN confirmation page.
9. 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 Whats Trending service from Hyve Mobile.
10. In summary, the tester responded to an ad banner which appeared to be from the WhatsApp messaging platform (WhatsApp icon/logo, green call-to-action button, wording, etc.), prompting the tester to upgrade to the latest WhatsApp content now. The ad banner leads to what looked like the WhatsApp message service (WhatsApp icon/logo, green call-to-action button, wording, etc.), stating that his/her WhatsApp account had expired and needed an upgrade, failure of which may result in contacts, chats, and photos being lost. The upgrade alert also stated that failure to upgrade will lead to photos and chats being on the internet. The countdown timer (1:00) for the upgrade gives a sense of urgency to the tester, making them think that if they don't upgrade, they will lose their contacts, chats and photos. The alert stated that it was free to update **“(100% free)”**. The **“WhatsApp Alert”** leads to a subscription service landing page that is designed in such a way as to all appear to be linked with a WhatsApp upgrade (WhatsApp icon/logo, green call-to-action button, wording, etc.). This is misleading advertising of the member service.

### **Pricing issues:**

The pricing information on the ad banner is displayed at R15/day while the service landing page displays the pricing information at R35/week. The reference on the landing page to it being a subscription service with a related cost is not clear, nor prominent, and requires closer examination. Although the pricing information is provided, it is displayed in such a way as to be

missed/overlooked/not seen due to the placement and design (font colour, size, background, etc.). The name of the subscription service on the confirmation step – Whats Trending – appears to be entirely unrelated to the WhatsApp application requiring an update to avoid losing contacts, chats and photos. The tester was therefore misled and deceived into believing that their WhatsApp required an upgrade – to avoid it from losing information - when in fact it was a dishonestly designed marketing ploy to lure the tester into subscribing to an unrelated subscription service for Whats Trending at R35.00 per week.

#### **Breaches of the Code of Conduct:**

Reviewing the advertising of and the subscription acquisition flow for the Whats Trending service, the following clauses of the Code have been breached:

- 4.9 (c) Members must not provide any services or promotional material that:  
induces an unacceptable sense of fear or anxiety...
- 5.1 Members must not offer or promise or charge for services that they are unable to provide.
- 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.
- 8.7 Pricing information must not be misleading. The price must be the full retail price of the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.
- 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
- 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.

## Member's response

The member raised the issue of the complaint going via the informal process initially. I won't go into this in detail as it is within WASPA's rights to proceed to formal process in this instance.

In their response to the formal process, the member stated as follows:

Re **Annexure A**,

1. It appears from the screenshot that the pornographic website, sexu.com, is showing what looks to be video thumbnails.
2. On the 3rd of January, it appears that when the Complainant clicked on the video thumbnail in screenshot **A3**, instead of opening to the pornographic video as reasonably expected, he was redirected to the website, getignite.io. The Get Ignite website appears to be a website which provides news and content related to the finance and technology fields.
3. We confirm, as presented in screenshot **A4**, that Hyve's GoogleAds advert appeared on the getignite.io website. This is a regular website where Google Ads are allowed to be served.
4. It appears that when the Complainant clicked on Hyve's GoogleAds advert, which advertised "Upgrade to the latest Whatsapp content NOW", the Complainant was directed to Screenshot **A6** and **A7**, being the subscription page for Hyve's WhatsTrending service. The Complainant then clicked 'Subscribe' and was directed to the confirmation page. However it appears that the Complainant was also redirected to whatsapp.instantfeeling.com in screenshot **A5**. The advert in **A5** is not an advert nor a website that was published by Hyve or by GoogleAds.
5. As can be seen from the above, and from **A4**, Hyve's GoogleAds advert is promoting Whatsapp content, (i.e., the WhatsTrending content service), and not a Whatsapp upgrade as presented in **A5** by whatsapp.instantfeeling.com.
6. When one visits the whatsapp.instantfeeling.com website, and one clicks on 'Update Now' (as it appears in screenshot **A5**), one is immediately redirected to https://triggertrack1.com/click.php?lp=1&to\_offer=1\_and not to the WhatsTrending service on mtndep.co.za. It is highly likely that when the Complainant clicked on a thumbnail on sexu.com, he was redirected to **A5** by sexu.com, and not by Hyve or the GoogleAds advert as alleged by the Complainant.
7. Google has confirmed that Hyve's GoogleAds adverts have been published on getignite.io (a client of Google on whose website GoogleAds serves adverts), and that no GoogleAds adverts have been served to date on the sexu.com website. This reaffirms the above, that the redirect to whatsapp.instantfeeling.com was not caused by Hyve or GoogleAds, but by sexu.com.

8. Therefore, the website, getignite.io, where Hyve's GoogleAds advert appeared on the 3rd of January 2023 has not caused the issue. The main concern is that the websites, sexu.com and/ or whatsapp.instantfeeling.com are misleading and misredirecting users, i.e., the Complainant, by serving misrepresentative content, thumbnails and website links, instead of the pornographic content as expected by users of the sexu.com website. It appears that sexu.com is responsible for directing the Complainant to the unrelated websites, such as getignite.io and whatsapp.instantfeeling.com, in this instance.
9. Due to Hyve's GoogleAds advert being served on getignite.io on the day in question that the tester was testing sexu.com and redirected there, it would appear that the Complainant clicked on the GoogleAds advert and was therefore directed to Hyve's WhatsTrending content service in **A6**. Hyve has therefore not committed any wrongdoing or breach of the Code.

Re **Annexure B**,

1. It appears that another pornographic website, m.sextvx.com, has employed a similar tactic by serving misleading content and adverts to users and redirecting such users to unrelated websites.
2. When the Complainant clicked on the video thumbnail in screenshot **B5**, in order to continue watching the pornographic video, it appears that he was redirected to the site financeritual.com. The Finance Ritual website provides news on finance trends and emerging markets. The operators of M.sextvx.com, and not Hyve, are responsible for misleading and redirecting users to these unrelated websites.
3. It is clear from **B6** that financeritual.com has plugged in CAPTCHA, a challenge–response test used to determine whether the computer user is human, to which the Complainant responded and passed the test in **B7**.
4. In **B8**, the same GoogleAds advert advertising “Upgrade to the latest Whatsapp content NOW” appears, which the Complainant then clicks on.
5. The GoogleAds advert correctly redirected the Complainant to the subscription page for the WhatsTrending content service, and the confirmation page on **B10**.
6. In this instance, the pop up website for whatsapp.instantfeeling.com did not appear when the Complainant clicked on Hyve's GoogleAds advert, reinforcing the fact that ‘Whatsapp Upgrade timer message’ redirected from sexu.com above, belongs to an outside third party, and not to Hyve.

7. Therefore, it is clear that there has been wrongdoing by the operators of the [sexu.com](http://sexu.com), [whatsapp.instantfeeling.com](http://whatsapp.instantfeeling.com), [m.sextvx.com](http://m.sextvx.com) websites and that Hyve has been wrongly implicated.
8. With regard to the pricing information in the GoogleAds adverts in **Annexure A (A4)** and **Annexure B (B8)**, which shows 'Daily service charge R15 T's & C's apply', and the WhatsTrending opt-in page shows 'R35 per week subscription service': this was a bona fide error. The pricing inaccuracy was not done knowingly or with the intention of misleading customers. The error was picked up by a team member on the AdOps Team on the 3rd of April and rectified on the same day. Please find the correct pricing information in the GoogleAds advert for WhatsTrending in **Annexure C** and the URL for the WhatsTrending service at MTN here as confirmation.
9. As can be seen from Annexure C, as well as the subscription page in Annexures A or B, the pricing information is legible, horizontal and presented in a way that does not require close examination.
10. As can be seen from **A6** and **B9**, the WhatsTrending service has a landing page prior to the confirmation page. When clicking on the GoogleAds advert, the Complainant was first directed to the landing page and upon clicking 'Subscribe' he was directed to the confirmation page. The landing page clearly shows the pricing information for the service in **A6** and **B9**.

In addition, the member requested the withdrawal of complaint 57835 and this complaint 58518. I will not rule on this as it is outside of the ambit of my authority to grant or deny such requests.

The member also requested that the following be taken into account by the adjudicator:

#### **Mitigating circumstances**

- a) There have been no successful complaints made against Hyve in the past 3 years.
- b) The previous complaint (#57835) is of a similar nature, which complaint was withdrawn by the Complainant and closed by WASPA.
- c) The Complainant and no customers have been harmed or have suffered any loss;  
and
- d) We have investigated and cooperated in attempting to resolve this complaint.

#### **Complainant's response**

The complainant responded as follows to the member's submission (extract below):

1. We take note of the Respondent's information provided regarding the consumer encountering explicit adult content during the flow, and we are aware that it might be possible for the Respondent not to have control to adult websites prior to the non-adult

website where their ad banner was placed. We would look at the ad banner, the website where the ad banner was placed, the service landing page, and the confirmation page amongst other things.

2. We note the Respondent's submission that they do not use affiliate marketing and that they only use Google marketing (GoogleAds). This is irrelevant to the issues raised in our complaint, as both ad banners were placed on the non-adult websites.
3. The core issue of this complaint is that a consumer responded to a Whats Trending ad banner on a non-adult website which appeared to be from the WhatsApp messaging platform (WhatsApp icon/logo, green call-to-action button, wording, etc.), prompting the consumer to upgrade to the latest WhatsApp content now (ANNEXURE A) and/or upgrade to the New Whatsapp (ANNEXURE B), failure of which may result in contacts, chats, and photos being lost.
4. We dispute the Respondent's submission that they do not insert further clicks on their subscription method, it can be clearly seen that the Whatsapp ad banner which they are in control of, when clicked triggered a page that is designed to look like the Whatsapp messaging platform prompting the consumer update.
5. The Respondent fails and/or omits to address the breaches cited relating to the design of the Whats Trending ad banner (WhatsApp icon/logo, green call-to-action button, wording, etc.), the Respondent also fails and/or omits to address the fear and anxiety imposed on the consumer by using the countdown timer, further to this the Respondent fails to take responsibility of the misleading aspect of this complaint.
6. There is a positive obligation on the Respondent to ensure that any client, supplier, affiliate or sub-contractor – promote and market the Respondent's service in accordance with the requirements of the Code.

## **Sections of the Code considered**

4.9(c) - Members must not provide any services or promotional material that induces an unacceptable sense of fear or anxiety.

5.1 - Members must not offer or promise or charge for services that they are unable to provide.

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.

8.7 - Pricing information must not be misleading. The price must be the full retail price of



the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.

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.

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.

## **Decision**

The main argument of the member as to why they should not be sanctioned in terms of this complaint is the fact that they were not responsible for the redirect from their valid advert to a site which they did not control. In respect of both Annexure A and Annexure B complaints, the member states that the adult websites in question served misleading content and adverts to users and redirected such users to unrelated websites.

The member states they only use GoogleAds and not any affiliate marketers so as to control where their services can be advertised and that GoogleAds does not advertise on adult websites and as such these banner ads did not belong to them.

Whilst I acknowledge that it might be possible for the complainant not to have control of the adult websites prior to the non-adult website where their valid ad banner was served, in determining compliance with the Code of Conduct I would look at the ad banner itself, the website where the ad banner was placed, the service landing page, and the confirmation page to determine compliance with the Code of Conduct, which is what was done.

### **In respect of the complaint set out in Annexure A:**

The complainant clicked on a banner ad on the adult website sexu.com and the complainant was redirected to the Hyve's GoogleAds advert on the getignite.io website. This is a regular website where Google Ads for the Hyve services are allowed to be served. However, the member states that when the complainant clicked on this valid ad, the complainant was

redirected by the original adult website to a third party website (not under the control of the member - whatsapp.instantfeeling.com) by sexu.com and as such when the complainant clicked on the call to action link they were advised that if they did not update they would lose their access to WhatsApp this was a redirect by sexu.com and not the member.

The core issue of this complaint is that a consumer responded to a Whats Trending ad banner on a non-adult website which appeared to be from the WhatsApp messaging platform (WhatsApp icon/logo, green call-to-action button, wording, etc.), prompting the consumer to upgrade to the latest WhatsApp content now (ANNEXURE A) and/or upgrade to the New Whatsapp (ANNEXURE B), failure of which may result in contacts, chats, and photos being lost. The member states that they were not responsible for the redirect from their banner ad to the site where this messaging was conveyed and as such cannot be held responsible.

I understand advertising to work follows: The member buys advertising traffic from advertisers, the advertisers setup URLs on the ad banners so that clicks can redirect consumers to the member service. It is the responsibility of the member to make sure that sources coming to their services abide by the Code. After taking advice and reviewing the Fraud Detection and Mitigation document from WASPA, I don't think it's technically possible for a click on a website (done by a consumer) to redirect the consumer to another visible website where another click was performed (not by the consumer) which redirects the consumer to the service.

The complainant does not address the breaches cited relating to the design of the Whats Trending ad banner (WhatsApp icon/logo, green call-to-action button, wording, etc.).

### **In respect of Annexure B:**

The complainant clicked on an adult website thumbnail expecting to go to a pornographic website but instead was directed to a finance site where a banner ad of the complainant had been placed. When clicking on this advert the complainant noticed that there were several issues with the way the pricing was displayed, the accuracy of the pricing. After some line breaks, in a white font against the green background, in a much smaller font size, the following was displayed: “**Daily service charge R15 T&Cs apply**”. The complainant clicked on the Continue button and was redirected to a service landing page for Whats Trending from Hyve Mobile charged at R35/week.

The member states that the pricing information discrepancy of R15 per day versus R35 per week was a bona fide error. The error was picked up by a team member on the AdOps Team on the 3rd of April and rectified on the same day. However, this means that the error was in play for at least 3 months as this was picked up on 3 January 2023.

As regards the legibility of the pricing information, I tend to agree with the member that the pricing information is legible, horizontal and presented in a way that does not require close examination.

The member fails and/or omits to address the breaches cited relating to the design of the Whats Trending ad banner (WhatsApp icon/logo, green call-to-action button, wording, etc.),

Once again how I understand advertising to work is as follows: The member buys advertising traffic from advertisers, the advertisers setup URLs on the ad banners so that clicks can redirect consumers to the member service. It is the responsibility of the member to make sure that sources coming to their services abide by the Code. After taking advice and reviewing the Fraud Detection and Mitigation document from WASPA, I don't think it's technically possible for a click on a website (done by a consumer) to redirect the consumer to another visible website where another click was performed (not by the consumer) which redirects the consumer to the service.

Accordingly, while I agree the member is not responsible for the redirect from the adult websites, everything from their banner ad on a valid website should be their responsibility. In addition, whilst I find no issue with the pricing as it is displayed, the duration that incorrect pricing was allowed to be live is unacceptable. Finally, the member did not address the similarities in design of their service and the WhatsApp service which I find to be confusingly similar and deceptive.

I therefore find as follows:

4.9(c) - Members must not provide any services or promotional material that induces an unacceptable sense of fear or anxiety.

- Breach

5.1 - Members must not offer or promise or charge for services that they are unable to provide.

- No breach

5.4 - Members must have honest and fair dealings with their customers.

- Breach

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.

- Breach

8.7 - Pricing information must not be misleading. The price must be the full retail price of the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.

-Breach

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.

- Breach

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.

- No breach

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.

- No breach

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.

-No breach

## **Sanctions**

The member is fined as follows (payable within 7 days of publication of this report):

4.9(c) R15 000

5.4- R15 000

5.5 – R15 000

8.8 – R10 000

## **Matters referred back to WASPA**

N/A