



Report of the Adjudicator

Complaint number	#58640
Cited WASPA members	Twistbox Entertainment
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Various Subscription Service Irregularities
Date complaint lodged	2023-04-19
Date of alleged breach	2023-02-23 and 2023-03-03
Applicable version of the Code	17.3
Clauses of the Code cited	5.4, 5.5, 8.7, 8.8, 15.4, 15.5, 15.8, 15.8A, 18.2, 23A.5(c)
Related complaints considered	N/A
Fines imposed	N/A
Other sanctions	Formal Reprimand for 5.5, 8.7, 8.8, 15.4, 15.5, 15.8, 15.8A, 18.2 and 23A.5(c) Refund to users of subscription service Suspension of service until fully compliant
Is this report notable?	No notable

Summary of notability	N/A
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Initial complaint

The Complainant in this matter is of the opinion that a particular service of the Member breached various clauses of the WASPA Code of Conduct. In particular, the Complainant alleged that the Member's service applied misleading methods to lure users into subscribing to its services which on face value was a prima facie breach of the Code. An Emergency Procedure was evoked by WASPA but subsequently withdrawn and filed as a formal complaint upon mitigating steps immediately by the Member.

In the formal complaint the Complainant provided a detailed test of the Member's service in dispute with an in-depth analysis of what it thought to be breaches of the Code. For the sake of brevity, the whole complaint will not be replicated here, as both parties are in possession of the same.

The following abstract however, which was provided as a summary by the Complainant in its conclusion, is provided in full below:

"In summary, the tester responded to an advertisement to win an iPhone and was directed to a subscription service landing page. The landing page was designed in such a way to appear to be linked to an iPhone promotional competition (image, wording, font size, font type and colours used, etc.) – and was misleadingly and deceitfully designed to obscure the information that it was in fact a subscription service for videos charged at R60.00 per month. The wording used in the advert is misleading and suggests that winning is a certainty and the price is free, words like "CONGRATS, YOU ARE THE WINNER", or "...and it will determine the time when you will receive the phone", or "Want a free new iPhone?" are misleading words. The call-to-action is misleading when looking at the acquisition flow, the tester clicked on the "Continue" button to go to the last step of the free iPhone competition. The cost of the service on the landing page, and NHCP do not correspond. The tester confirmed the subscription and was directed to the service homepage. The tester received a welcome message and accessed the service. The tester was charged R60.00, despite the landing page stating R7.00 per day. The tester utilised the USSD self-help menu to optout and received a service cancellation message.

20. The subscription acquisition flow utilises a banner for winning an iPhone, which appears to be an existing prize that the tester merely had to claim. The landing page also appears to link to said iPhone prize which appears to be a promotional competition. If this is the case, then promotional competition clauses have not been complied with, for example the maximum entry fee of R1.50.

21. The tester was misled to believe that he/she could claim/get the phone as advertised and was then deceived into a subscription service for videos that does not have anything to do with the predominantly advertised iPhone promotion.

22. Reviewing the advertising of and the subscription acquisition flow for the Fullscreen service, we believe that this service could potentially cause serious consumer harm with huge financial implications, if not corrected immediately.”

Member’s response

The Member in its initial response provided a lengthy introduction with a detailed history of its compliance efforts globally. It further explained its response to the Emergency Procedure and acknowledged that certain aspects of its services could improve, especially insofar it relates to the user’s experience leading up to the Member’s landing page.

In line with the “Initial complaint” above, the Adjudicator will not replicate the Member’s response in its entirety but felt it necessary to provide **some responses in full below** that were directed at the paragraphs provided above under the “Initial complaint”.

“Regarding paragraph 19, I’d like to make note of the very subjective and potentially inflammatory nature of adjectives used in describing the designs; so as to emphasize the alleged intention to mislead etc. It is our understanding the Compliance team needs to remain objective and only speak to the requirements of the Code in an objective manner. It is for the adjudicator to ultimately decide the nature of any alleged breach/non-compliance.

Regarding paragraph 20, I think we need to be objective and not give merit to “appears to be” as that’s quite a subjective matter and not one we can be in control of. More importantly, I’d like to call attention to the definition of “promotional competition”, as we are not running any lottery, or skill-based competition. Customer(s) at no point are charged an entry to any competition.

Regarding paragraph 22, While we did take immediate action, it’s important to negate the seriousness to consumer harm. We had 0 sales from any affiliates or ad campaigns in the month of February or March to our Fullscreen service. The only sales seem to have been from users without any tracking parameters, which leads us to believe all the opt-ins we did have were from such tests carried out by complainant(s). In total, we had 64 “opt-in” acquisitions in February, 196 “opt-in” acquisitions in March. With our March gross revenue at R 3,253... this can hardly be defined as harmful to the public. Note this is mostly renewals from older acquisitions and unrelated to any recent sales as we have none.”

A response by the Member to the **alleged breaches of the Code will also be replicated here below:**

“Specific references to alleged code breaches:

5.4, I respectfully question when, where, and how we did not have honest and fair dealings with the customer

5.5, I respectfully dispute and deny that we knowingly misled users.

8.7, this was an error, but the correct price was displayed on the NHCP and user must still confirm and opt-in from that point with the monthly pricing displayed.

Regarding 8.8, it's not clear what advertising or promotion of content is misleading? Our landing page clearly states users stand a chance to win an iPhone if they are a subscriber to the Fullscreen service, with clear description of the service on the NHCP.

15.4, I dispute this breach. At no point do we require a customer to join a service to claim any prizes.

15.5, We do exactly this. Incentivize the customer so they stand a chance to win if they join the subscription service. Clearly stated in the T&Cs as well.

15.8, Pricing information is clearly presented on NHCP. It is displayed correctly and must be confirmed by the customer prior to being charged. The pricing error was on the landing page, and as mentioned, didn't generate any sales except for the WASPA tester sales.

15.8a, Customer was not billed in advance for any amounts. Customer, per the screenshots provided in the complaint, was billed R 60, exactly the amount listed on the NHCP prior to user consenting and confirming billing.

18.2, There is no competition, nor promotional competition, and no entry fee for any promotional competition. There is, however, an incentive to the customers who are subscribers to the Fullscreen service, per the promotion T&Cs. There is a promotion, there is no competition, nor promotional competition. Customer(s) at no point are charged an entry to any competition.

23a.5, We received the updated code of conduct (17.4) on April 21, 2023, so this was not a breach of the code of conduct during the time of the complainants' tests.”

Complainant's response

In its response, the Complainant inter alia stressed that the Member failed and/or omitted to address the misleading marketing of enticing the consumer to respond to an advertisement of winning a phone.

It continued by emphasising that there is a positive obligation on the Member to ensure that any client, supplier, affiliate, or sub-contractor, should promote and market the Member's services in accordance with requirements of the Code.

It further explained its reasoning for utilising the formal complaint procedure and referenced various parts of the Code's section 24. In particular, under its paragraph 8, the Complainant stated the following:

*"Clause 24.16 states: "In the case of a complaint for which it is feasible for the member to provide a prompt remedy and where **no material breach** of the Code seems to have occurred, the following informal complaint procedure will be followed."*

The rest of the response will be replicated here in full:

"15. We dispute the Respondent's submission that their offer utilizes a triple opt-in flow, it can be clearly seen that the consumer only saw the pricing information on two separate occasions before the service activation.

16. The service landing page, which displays three options relating to the iPhone (Want a free new iPhone -> Choose your color -> One more step left, click continue) is misleading and should not be considered as a triple opt-in flow. This process is designed to mislead the consumer into customising the iPhone which was advertised as a prize that they had won.

17. At the time of the alleged breach of the Code, version 17.3 of the Code was in effect. We submit that the "Continue" call-to-action button where the pricing information was displayed for the first time is misleading, the tester was misled to continue choosing options for the iPhone (Want a free new iPhone -> Choose your color -> One more step left, click continue).

18. The Respondent submits that there was a technical error that occurred in the configuration of the service price point and duration used on their service landing page and the Network Hosted Confirmation Page.

19. The consumer was presented with a pricing information of R7/day on the service landing page, but R60 worth of airtime was deducted. We respectfully submit that the billing for the service exceeded the total amount specified in the pricing information on the service landing page.

20. It begs the question: Was this landing page and subscription acquisition flow properly tested? Not forgetting the Respondent submission that the customer relationship starts at their landing page.

21. This serious financial loss to the consumer cannot be justified as cost-saving by the Respondent. The Respondent failed to refund the consumer for the technical error.

22. The Respondent submits that the Code prohibits price and frequency increases if a user is already a member to a service, we respectfully submit that this does not form part of our complaint as it relates to clause 15.6.

23. It is irrelevant what the tester clicked prior to arriving at the facebook page, the facebook page is also irrelevant as it does not form part of this complaint. What is of outmost importance for the tester is the acquisition flow starting at the page prior to the Respondent's service landing page (Ad Banner -> Landing Page -> NHCP).

24. We respectfully submit that the page with the headline "Stand a chance to WIN the NEW iPhone 14 Pro Max with your subscription to FULLSCREEN" is the service landing page with the following URL: mtnza.fullscreen.mobi/partners/landing9.html

25. The Respondent failed to provide advertisement, creatives, or banners that they use to attract potential consumers to their service. The Respondent also failed to provide evidence of their acquisition flow for the service.

25. It is worth noting the promotional competition terms and conditions of the service (http://mtnza.fullscreen.mobi/promo_terms.html), the word "promotional competition" appears 10 (ten) times.

26. Promotional Competition is defined in clause 18.1: A "promotional competition" means any competition, game, scheme, arrangement, system, plan or device for distributing prizes as defined in section 36 of the Consumer Protection Act, 2008.

27. We take note of the Respondent's information provided regarding the campaign having 64 "opt-in" acquisitions in February and 196 "opt-in" acquisitions in March. By the Respondent's own submission, gross revenue was generated from this service.

28. This confirms that there was indeed actual and potential consumer harm as monies were being deducted for a non-compliance service.

29. The fact remains that irrespective of whether 2 or 1000 consumers were impacted, the Respondent's service was non-compliant and breached several of the provisions of the Code at the time of testing the service.

30. We respectfully submit that our original complaint sufficiently sets this out. We further submit that the actual breaches complained of be considered and the Respondent sanctioned for not complying with the requirements set out in the Code."

Member's further response

In its further response the Member agreed that there is a positive obligation on the Member to ensure that any client, supplier, affiliate, or sub-contractor, should promote and market the Member's services in accordance with requirements of the Code. The Member however iterated that even though it can ensure such obligation to the best of its abilities, "unfortunately this doesn't always translate into 100% compliance."

The Member further disputed the approach of an Emergency and subsequent Formal Procedure followed by the Complainant and felt that a Heads-Up procedure would have sufficed. In its response to the Complainant's paragraph 8, it stated:

"We took immediate action to remedy and, in our opinion, and while there are alleged breaches of the code, as we presented in our response, there were no subscriptions activated by our affiliates to the service. The only activation was from WASPA testing."

The Adjudicator deem it necessary to replicate the remainder of the Member's response here in full:

"Para 10: Respectfully, the prima facie evidence was based on user being on a Facebook profile page dedicated to promoting "free iPhone". This was not an advert placed on a website, rather, was a post from a Facebook page the user/tester was on, so there was action taken to arrive at this page which wasn't included in the initial complaint user journey. The alleged serious material breaches are based on pages the tester visited prior to arriving at our fully compliant service landing page, which clearly stated "Stand a chance to WIN the NEW iPhone 14 Pro Max with your subscription to FULLSCREEN".

Para 11: Although the code allows for discretion, with all due respect, such discretion should be used in a reasonable manner in aim for WASPA to fulfil its mandate and not appear to be punitively elected; we feel that harm to public is reasonably avoided and can be limited when remedial options such as HU's are elected to limit impact of any alleged non-compliant behavior. Twistbox has an extensive history of collaboration to ensure compliance, so a formal, or even emergency procedure appears at face value to be punitive in approach.

Para 14: Respectfully, the "promotion" wasn't a promotion of our service specifically, it's a Facebook page dedicated to iPhone giveaway posts. The type of offer and incentive we had running (users being able to stand a chance to win an iPhone with a subscription to Fullscreen service), was picked up as a relevant ad based on interest in Facebook. While the "promotion" isn't compliant based on the code as it stated the user had won an iPhone, the page also mentioned the user would have to enter a code and receive some confirmation on the next page. Neither of which happened. Instead, the user was presented with our fully compliant service landing page.

Para 15: Apologies, this was a mistake. Our offer utilizes a double opt-in flow. Which is still fully compliant.

16: I think there is a misunderstanding of which we call an opt-in call to action, versus what is being responded to here. The options related to the iPhone (choose a color, one more step left, etc.) is meant to engage the user PRIOR to user being presented with the service description, pricing information, duration, T&Cs... which then directs user to the NHCP, for the 2nd opt-in and confirmation. I dispute that we are misleading the user that they have won when on we very CLEARLY on multiple pages during the process PRIOR to the final confirmation page state "Stand a chance to WIN the NEW iPhone 14 Pro Max with your subscription to FULLSCREEN". At no point did Twistbox claim, inform, confirm, or state the user has in fact won an iPhone on any of its hosted service landing page.

Para 17: 23a.5, We received the updated code of conduct (17.4) on April 21, 2023, so this was not a breach of the code of conduct during the time of the complainants' tests.

Para 19: While the consumer was presented with the price point of R7/day on the landing page, the user was also presented with the R60/month on the NHCP prior to confirming the subscription. To be clear, the user was not presented with only the R7 and deducted R60. The user mistakenly (due to the technical error of the service ID configuration) showed R7 on the landing page, but user still had to go through the full opt-in process which includes the NHCP, that had the correct R60.

Para 20: It was tested. It's unclear when and how the technical issue happened. As mentioned in the response, while this was an active pricing error, there weren't any sales, so no actual harm was done to users, or the public.

Para 21: What refund to the consumer is this regarding? I'm not clear of any refund requests were made. If a refund request was made, it would have been processed.

Para 23: I respectfully dispute that the clicks prior to arriving to the Facebook page are irrelevant. As we've been provided with a complaint on another matter which had noted 6 clicks prior to users arriving to our service landing page. All being included as relevant and in context of the complaint. Who decides how far back the test goes, or when the test starts? Also, the acquisition flow does not start at the page prior to our service landing page, because that page is a Facebook post on that page with a link. It's not an ad banner we had uploaded, or that was being run on an ad platform as a display ad banner. It is a Facebook post which tester clicked on. The acquisition flow starts on our Landing Page > NHCP... which was compliant, excluding the technical price error (but correct price on NHCP prior to final confirmation and opt-in by tester).

Para 25: This was a 3rd party promoting our services, which again, had generated 0 sales. So, they weren't promoted. They had at some point uploaded our offer with a relevance based on iPhone interest on Facebook, and the tester arrived at the dedicated Facebook page, without

providing the journey of clicks prior to in the complaint. We did not provide evidence of our acquisition flow because it's all included in the complaint. The tester went through our acquisition flow to be subscribed. If anything, specific or additional is needed on this matter, please don't hesitate to ask.

NOTE: There are 2 "Paragraph 25". I'll use the incorrect labeled numbers to stay consistent.

Para 25(2): We will update our T&C to use better definition and clarify. But our T&Cs clearly state: "By subscribing to this service for the stipulated period of time you will enter into the promotional competition at no extra cost. By subscribing to the service, you will have the best content for your mobile and you will automatically enter the promotional competition for a chance to win an iPhone 14 valued at R 12999.00." While we use the word "competition" there wasn't any actual competition or event or anything additional user had to do. We'll update our T&Cs.

Para 27: These numbers were from our gateway dashboard (Mobixone), where user opt-ins, including zero rated opt-ins, are counted. In our system and stats, we had 0 sales. This means no sales were generated by any tracking link we had provided to any 3rd party, or any ad campaign managed by us. These sales were on the days the tests relevant to the complaint were carried out.

Para 30: We respectfully disagree. We respectfully dispute that all listed codes were breached, and our formal response sufficiently sets this out."

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.

8.7. 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.

15.4. A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: "to claim your prize, join this service".)

15.5. A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: “if you join this subscription service, you will be entered into a monthly draw for a prize”.)

15.8. Billing for subscription services must not exceed the total amount specified in the pricing information.

15.8A. A customer may not be billed in advance for a subscription service if this exceeds the amount specified in the pricing information. For the avoidance of doubt, this restriction does not prevent a member from billing historical charges for a subscription service that have not yet been paid by the customer.

18.2. The cost for a single entry into a promotional competition must not exceed R1.50.

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:

(c) must not have a misleading call-to-action (such as “download” instead of “subscribe” or “join”).

Decision

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

Right from the outset, the Adjudicator felt it necessary for the reader to understand the importance and weight that need to be afforded the drafter’s intention in formulating the WASPA Code of Conduct.

Interpretation of any form of legislation or any code for that matter is fruitless in the absence of this key requirement. In fact, most bodies of legal work start out by underlying the legislator’ and / or drafter’s intention.

The WASPA Code of Conduct is no different and sets this out partially in clause 1.2 under the heading “About WASPA”, but more direct in clause 1.3 under the heading “Objectives of the Code”.

These clauses are provided below with the Adjudicator’s **own emphasis** added:

1.2. WASPA aims to ensure that consumers receive world-class services and **that members operate according to ethical and reasonable business practices**. The WASPA Code of Conduct was developed as part of an industry self-regulatory framework.

1.3. The **primary objective of the WASPA Code of Conduct** is to ensure that members of the public can **use mobile services with confidence**, assured that they will be **provided with accurate information about all services and the pricing associated with those services**.

Every clause in the WASPA Code should therefore be interpreted by having these objectives in mind.

On face value, after having reviewed the arguments of both parties - and it must be stressed, both parties provided the Adjudicator with diligent arguments and well thought through responses – the Adjudicator is not of the opinion that the service in dispute, satisfies the intention of the drafters. In other words, if the Adjudicator as a user had utilised the said service in its entirety as an example of a mobile subscription service in South Africa, would the Adjudicator have been confident in its use, assured that he will be provided with accurate information about the service and the pricing associated with the service in dispute?

Most definitely not.

With that being said, the various sections of the Code and any of its alleged breaches must be weighed against this backdrop to assess the veracity of the Member's actions or inactions, intent, malice or negligence that resulted the Adjudicator in reaching such a conclusion.

It is also important to assess whether the approach and specific language utilised by the Complainant are not prejudicing in nature and maybe failing the interests of Members.

It is felt that this last statement could be a good starting point.

In one of its responses the Member claimed the following (**own emphasis added**):

*"Although the code allows for discretion, with all due respect, such discretion should be used in a reasonable manner in aim for WASPA to fulfil its mandate and not appear to be punitively elected; we feel that **harm to public is reasonably avoided** and can be limited when remedial options such as HU's are elected to limit impact of any alleged non-compliant behavior. Twistbox has an extensive history of collaboration to ensure compliance, so a formal, or even emergency procedure appears at face value to be punitive in approach."*

Section 24.71. states that where it appears to WASPA that a breach of the Code has taken place that is **serious, requires urgent remedy, and which may cause harm to a significant number of consumers**, the following emergency procedure will be used.

In light of the above, the Adjudicator would like to draw the reader's attention to the specific dynamics involved in South Africa when consumer protection is addressed on a legislative level.

Section 3(1) of the South African Consumer Protection Act states the following (**own emphasis added**):

“the purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by—

*(a) establishing a legal framework for the achievement and maintenance of a consumer market that is **fair**, accessible, efficient, sustainable and **responsible for the benefit of consumers generally**;*

*(b) **reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers—***

*(i) **who are low-income persons or persons comprising low-income communities**;*

(ii) who live in remote, isolated or low-density population areas or communities;

(iii) who are minors, seniors or other similarly vulnerable consumers; or

*(iv) **whose ability to read and comprehend any advertisement, agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented.***

The above section contains critical components of consumer protectionism with a strong emphasis on **low-income** individuals (especially given the high unemployment rate in the country), and **various limitations associated with the reading and comprehension of advertisements inter alia.**

What it therefore illustrates, is that consumer protection in the South African context is there to protect the most vulnerable.

When interpretation is therefore given to sentences in the WASPA Code that contains words such as **serious, requires urgent remedy, and which may cause harm to a significant number of consumers**, this must be done at the hand of the wider context as explained above.

Therefore, the Adjudicator is of the opinion that the Complainant acted correctly in its procedural approach. Even after the withdrawal / completion of the Emergency Procedure, the WASPA Code is quite clear that a breach of the Code will be subjected to a Formal Procedure. For reference please see section 24.79, where the Code states the following:

“In all other cases, once the emergency procedure has been completed, the breach of the Code will be reviewed using the formal complaint procedure detailed above. Both the complainant and the respondent(s) must be given an opportunity to respond to the emergency panel’s report. If, during the formal complaint procedure, the urgent remedy exercised above is deemed to be inappropriate, it may be reversed.”

The Adjudicator further brings the reader’s attention to Clause 24.16, also referenced by the Complainant, where it states (**own emphasis added**): *“In the case of a complaint for which it is*

*feasible for the member to provide a prompt remedy **and where no material breach** of the Code **seems to have occurred**, the following informal complaint procedure will be followed."*

In this instance, material breaches did seem to have occurred.

The Adjudicator therefore does not concur with the Member when it states: "...discretion should be used in a reasonable manner in aim for WASPA to fulfil its mandate and **not appear to be punitively elected**". This is not the impression the Adjudicator is under.

Moving on to the alleged subjectivity of the words used by the Complainant in this matter.

The Adjudicator adjudicates on the merits of each case by analysing the statements and responses of both parties. These statements, irrespective of the wording, are mere allegations and have no bearing on the outcome of the adjudication, save for the evidence provided and its potential link to any potential breaches of sections referenced in the WASPA Code.

If the Complainant in this matter is of the opinion that something "**appears**" to be wrong, or that a specific composition or flow "**is deceitful**", then he / she is fully justified in forming his / her own opinion. Similar language is used by the drafter ("**seems to have occurred**") under section 24.16 as was referenced earlier above.

The Complaint however, in its entirety, remains at the end of the day merely an allegation, until the Adjudicator rules otherwise. The Adjudicator is impartial and remains objective in analysing all the information received, irrespective of any perceived subjective wording used by either party.

In determining whether there have been any breaches of the WASPA Code associated with this particular service of the Member, the Adjudicator deems it necessary to analyse this, as were stated and illustrated earlier, at the hand of the South African consumer context as underpinned in the WASPA Code and Consumer Act.

The Member also acknowledged in its further response that there is a positive obligation on the Member to ensure that any client, supplier, affiliate or sub-contractor, promote and market the Member's services in accordance with requirements of the Code. The Adjudicator will therefore analyse the user experience, in its entirety when determining whether a breach occurred or not.

The Adjudicator is of the opinion that the information provided and associated with the service, right from the outset, starting at the "congrats, you are the winner" page, the landing pages, until a user reaches the NHCP page, is likely to mislead by inaccuracy, ambiguity, exaggeration or omission. This does not ONLY speak to the Facebook page.

The Adjudicator concurs with the Complainant when he / she states that; *“the wording used in the advert is misleading and suggests that winning is a certainty and the price is free, words like “CONGRATS, YOU ARE THE WINNER”, or “...and it will determine the time when you will receive the phone”, or “Want a free new iPhone?” are misleading words. The call-to-action is misleading when looking at the acquisition flow, the tester clicked on the “Continue” button to go to the last step of the free iPhone competition. The cost of the service on the landing page, and NHCP do not correspond.”*

All these assumptions by the Complainant are similar in experience as to what the Adjudicator perceives potential users might experience, especially given the wide interpretation afforded user protection at the hand of section 3(1)(b)(iv) of the Consumer Protection Act, as earlier mentioned above.

The Adjudicator therefore finds the Member in breach of section 5.5 of the WASPA Code.

Section 8.7 clearly states that pricing information must not be misleading. Whether the admitted incorrect pricing by the Member in this instance was technical in nature, intentional or not, correct on the NHCP price or not, all are irrelevant.

What is relevant is that the pricing information at some point was incorrect and therefore misleading in nature leading to incorrect billing expectations.

The Adjudicator finds the Member in breach of section 8.7, 15.8 and 15.8A of the WASPA Code.

The advertising banner, read with the call-to-action blocks, associated choice of words and pictures on the landing pages, do create the impression that one has already won a prize and is merely prompted to customise the phone before completing the last step. This sequence of words in the opinion of the Adjudicator seems intentional in design.

The user is not presented on the NHCP page with the same content and / or expectations as were initially advertised. A subscription at this point, although previously mentioned on the landing pages, but not prominent due to blocks, choice of font, size and pictures, might prompt a user to believe that in order to claim the phone, he / she has to subscribe.

The Adjudicator is of the opinion that the Member's service sequence is in breach of section 8.8 and partially in breach of section 15.4.

Insofar it relates to whether the service is a promotional competition or incentive.

This has to be viewed at the hand of the prominent display due to blocks, choice of font, size and pictures, utilised across the sequence of the service starting at the ad banner.

The Adjudicator has taken note of the Member's contention that it should not be viewed as a promotional competition and is sympathetic to its contention that it is an incentive. The

Adjudicator, if having viewed the landing pages in isolation without them having consisted of the existing blocks with associated words and font sizes, might have agreed. However, the Member's own terms and conditions clearly states the opposite which prompts the Adjudicator to find the Member in breach of section 18.2.

Contrary to what the Member might believe about version 17.3 of the WASPA Code, section 23A.5. thereof clearly states that **(own emphasis added)**: *"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:*

(c) must not have a misleading call-to-action (such as "download" instead of "subscribe" or "join"."

The Member on its landing pages failed to uphold this section and is found in breach thereof.

Whether the Member is honest and fair in its dealings with customers is not something the Adjudicator, in his opinion, has enough information on to make a decision, as such decision has a bearing on the Member's overall approach across all its services.

Sanctions

Although there have been various breaches of the WASPA Code, the Adjudicator must commend the Member on its swift replies, remedial actions, and thorough responses during the initial Emergency Procedure and finally, during this Formal Procedure.

The Adjudicator is further of the view that the Member's committed approach in reaching full compliance with the WASPA Code is a welcoming sign and the Member is encouraged to further engage with WASPA in ensuring its full compliance.

For its various breaches of the WASPA Code, the Member is formally reprimanded.

The Member is however instructed to suspend the service in dispute (Stand chance to Win iPhone) until such time it is made compliant and such compliance of the service is confirmed by WASPA whereafter it can be reactivated.

The Member is further instructed to refund all users who subscribed to the service in dispute (Stand chance to Win iPhone) from date of first launch until date of Adjudication, within 7 (seven) days after having received notice hereof, irrespective of how they accessed the service.

Matters referred back to WASPA

None
