



Report of the Adjudicator

Complaint number	#58647
Cited WASPA members	Globocom Infotech Pvt. Ltd.
Notifiable WASPA members	Mobixone
Source of the complaint	WASPA Compliance Department
Complaint short description	Misleading advertising Services advertised not rendered Misleading subscription
Date complaint lodged	2023-04-21
Date of alleged breach	2023-02-14
Applicable version of the Code	17.3
Clauses of the Code cited	5.1, 5.4, 5.5, 8.8, 12.1, 23A.5(c)
Related complaints considered	n/a
Fines imposed	R 5 000.00 for the breach of clauses 5.1, 5.4 and 5.5 R 5 000.00 for the breach of clause 8.8 R 5 000.00 for the breach of clauses 23A.5 (c), suspended unless triggered by any other breach of this clause within 6 (six) months.
Other sanctions	n/a

Is this report notable?	Not notable
Summary of notability	n/a

1. INITIAL COMPLAINT

1.1. This complaint was lodged by the WASPA Compliance Department on 21 April 2023, and the member was notified of the complaint by the WASPA Secretariat on the same date.

1.2. The WASPA Compliance Department included comprehensive notes of its examination of the member's service, as well as screenshots of the examination in its formal complaint. The report is comprehensive but can be summarised as follows:

1.3. First Instance of Alleged Breach

1.3.1. On 14 February 2023, the WASPA Compliance Department's tester ("tester") was browsing a music website with the following URL: <https://iminathi.net/> on the MTN network. An advertisement with the following text was displayed at the top of the page, but was not clicked on:

"BC.GAME FIFA WORLD CUP

DEPOSIT BONUS 1000+%

SPORTS LIVESTREAM"

1.3.2. The tester continued to browse the website and clicked on an album link titled "Sjava – Isibuko Album" with the expectation of downloading/playing the music album. However, the tester was directed to the landing page for an Extreme Sports subscription service charged at R 7.00 per day. (A screenshot of this landing page has been provided).

1.3.3. The tester subsequently clicked on the "Continue" button and was redirected to the MTN confirmation page. (A screenshot of the confirmation page has been provided).

1.3.4. The tester stopped the test at this point as there were multiple breaches of the WASPA Code of Conduct ("the **Code**") during the subscription acquisition flow for the Extreme Sports service from the member.

1.4. Second Instance of Alleged Breach

1.4.1. On 14 February 2023, the tester was browsing a music website with the following URL: <https://fakaza2018.com/> on the MTN network.

1.4.2. The tester clicked on the "Allow" button to receive notifications for the latest news and updates. The tester clicked on the link "Mkoma Saan – Motho Waka Ke

Lekompo” and was redirected to a page with the following URL: <https://fakaza2018.com/mkoma-saan-motho-waka-ke-lekompo/>.

- 1.4.3. The tester clicked on the “*Download*” button with the expectation of downloading/playing the song. However, the tester was directed to the landing page for an Extreme Sports subscription service charged at R 7.00 per day. (A screenshot of this landing page has been provided).
 - 1.4.4. The tester subsequently clicked on the “*Continue*” button and was redirected to the MTN confirmation page. (A screenshot of the confirmation page has been provided).
 - 1.4.5. The tester stopped the test at this point as there were multiple breaches of the Code during the subscription acquisition flow for the Extreme Sports service from the member.
- 1.5. The summary provided by the WASPA Compliance Department is useful and is reproduced here:

“In summary, the test results show the tester browsing on a music website and interacting with links/buttons to albums/songs, with the expectation of downloading/playing the songs. The songs never played as the tester was redirected to a landing page for a sports subscription service called Extreme Sports. This is misleading advertising of the member service. The tester was misled into believing that they are about to download/play a song – when in fact the tester was being directed to an unrelated subscription service for Extreme Sports. The call-to-action button on the service landing page is misleading, the tester was misled that by clicking on “Continue” – the song will finally download/play. Although the pricing information is displayed, it is NOT immediately adjacent to the call-to-action.”

- 1.6. It is alleged that:
- 1.6.1. The advertised service was not the service provided, which is a breach of clauses 5.1, 5.4, 5.5 and 8.8 of the Code;
 - 1.6.2. The pricing information is not adjacent to the call-to-action, which is a breach of clause 12.1 of the Code; and
 - 1.6.3. The call-to-action, being the “*Continue*”, is misleading, which is a breach of clause 23A.5 of the Code.

2. MEMBER’S RESPONSE

- 2.1. The member initially failed to respond to the complaint and the complaint was assigned for adjudication on the 11th of May 2023. However, the member contacted the WASPA Secretariat and advised that the complaint went to its spam folder. The member requested that it be re-sent for it to take action immediately.
- 2.2. On the same day, the member submitted a further response and advised that the complaint has been actioned as follows:

- 2.2.1. Its service campaign and non-compliance materials will be strictly followed, and marketing suppliers have been instructed to do so.
- 2.2.2. The misleading advertiser has been blocked.
- 2.2.3. The product landing page information is proper.

3. COMPLAINANT'S RESPONSE

- 3.1. The WASPA Compliance Department was informed of the member's response and indicated in its response that it has reviewed the original complaint as well as the member's response.
- 3.2. The WASPA Compliance Department further submitted the following:
 - 3.2.1. It notes that the member indicated its service campaign and non-compliance materials will be followed and that the misleading advertiser has been blocked.
 - 3.2.2. The member failed and/or omitted to address the other breaches cited relating to the display of the pricing information relative to the call-to-action; and the misleading call-to-action.
 - 3.2.3. The member's service was in breach of the Code on the dates of testing the service and the original complaint is sufficient.
 - 3.2.4. The member has only implemented partial remedial steps (by blocking misleading advertisers), but this does not address all the issues raised in the complaint. There are also other breaches which have not been addressed or corrected – and that the member should be held liable for.

4. MEMBER'S FURTHER RESPONSE

The member was informed of the complainant's further response on 12 May 2023 and submitted its further response to the WASPA Secretariat as follows:

- 4.1. The misleading advertiser has been blocked.
- 4.2. It informed its marketing partners to strictly follow the marketing guidelines.
- 4.3. All the WASPA complaints were actioned and closed before the turnaround time.

5. SECTIONS OF THE CODE CONSIDERED

- 5.1. As the conduct complained of took place on or around 14 February 2023, version 17.3 of the WASPA Code of Conduct applies to this complaint.
- 5.2. It is alleged that the member has infringed clauses 5.1, 5.4, 5.5, 8.8, 12.1 and 23A.5(c) of the Code of Conduct. The clauses read as follows:

- 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.*
- 8.8. *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.*
- 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)
 - (b)
 - (c) *must not have a misleading call-to-action (such as "download" instead of "subscribe" or "join");*
 - (d)

6. Decision

- 6.1. Having reviewed the complaint, supporting communications offered by the complainant and the member's responses, I have reached the conclusions set out below.
- 6.2. From a factual perspective, there are clear allegations of the contravention of the WASPA Code of Conduct by the WASPA Complaints Department which are not disputed by the member. The member actually implicitly agreed that there was a substantial breach of the WASPA Code of Conduct by blocking its advertiser.
- 6.3. The fact that the member remedied some of the alleged breaches by blocking the advertiser does not take away from the fact that the Code was breached at the time that the complainant attempted to use the member's service.
- 6.4. I will deal with the relevant clauses of the Code in order:

Clause 5.1
- 6.5. The member offered a service for the download or playing of music albums or songs. The complainant tried to download or listen to the albums/songs and was unable to do so. The member did not provide any evidence that it is indeed able to provide this service.

6.6. Accordingly, I find a breach of this clause.

Clause 5.4

6.7. The links provided by the member to download or play music albums/songs was in fact links to a sports subscription service. Not only is this not an honest dealing with a customer, but the member also acted unfairly in not actually providing the service the complainant tried to use.

6.8. Accordingly, I find a breach of this clause.

Clause 5.5

6.9. The complainant clicked on a link with the expectation to download an album/a song and was directed to a sports subscription service. The member knowingly misled the complainant to subscribe to a sports subscription service by including information in the original advertisement that was inaccurate and false, i.e. the download or play of an album/song.

6.10. The member did not provide any evidence that it was unaware that the advertisement was deceptive or false.

6.11. Accordingly, I find a breach of this clause.

Clause 8.8

6.12. The content that was promoted in the advertisement was for the download or play of a music album or song. The content the complainant was directed to was for the subscription for a sports service. The content is thus not the same. The advertisement had misled the complaint into believing that it is downloading or playing an album/song, when it was in fact being directed to subscribe to a sports service – entirely different content and service.

6.13. Accordingly, I find a breach of this clause.

Clause 12.1

6.14. There is a call-to-action and there is pricing information clearly and prominently displayed above and below the call-to-action. However, the Code specifically requires that the pricing information must be adjacent to the call-to-action.

6.15. The allegation is that the pricing information in both instances were not immediately adjacent to the call-to-action. I don't agree with this – the pricing information is either directly above or directly below the call-to-action and I believe this is sufficient to comply with clause 12.1.

6.16. Accordingly, I do not find a breach of this clause.

Clause 23A.5(c)

6.17. The service did have a landing page before the confirmation step. However, the call-to-action “Continue” is misleading as the complainant expected the album/song it intended

to download/play will continue to download or play, but instead the complainant was directed to subscribe to a completely different service.

- 6.18. The call-to-action should have stated something along the lines of “subscribe” as the person clicking the link is not continuing to download or play a song, but actually subscribing to a different service.
- 6.19. Accordingly, I find a breach of this clause.
- 6.20. In summary, I find that the member has breached clauses 5.1, 5.4, 5.5, 8.8 and 23A.5(c) of the Code of Conduct.

7. Sanctions

- 7.1. Before I consider the sanctions, it is necessary to consider the prior conduct of the member in the form of any prior contraventions of the WASPA Code of Conduct and any mitigating or aggravating circumstances.
- 7.2. This is not the first complaint that has been lodged against the member that proceeded to an adjudicator and for which the member has been found guilty of a breach, however, the previous complaint was not based on a breach of the same clauses of the Code.
- 7.3. It does however seem from the member’s response that there has been another WASPA complaint that has been dealt with by the member. The member states: *“Hope you can see most of the previous complaint has been actioned on time and before the TAT from our side”*. This alludes thereto that there has been a previous and similar infringement by this member, however, it is not enough to be considered an aggravating factor in this instance.
- 7.4. In terms of clause 3.7 of the Code, a member is liable for any breaches of the Code resulting from services offered or marketed by a client, supplier, affiliate or sub-contractor if that party is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of the Code, this must be considered as a mitigating factor when determining the extent of the member’s liability for any breaches.
- 7.5. The member stated that its service campaign and non-compliance materials will be strictly followed, and marketing suppliers have been instructed to do so, and that the misleading advertiser has been blocked. The member took these steps immediately upon becoming aware of the complaint. However, the member should make a bigger effort to ensure its advertisers remain compliant.
- 7.6. The member demonstrated that it had taken the reasonable steps necessary for the member to benefit from the mitigating factor set out in clause 3.7 of the Code.
- 7.7. There is no indication of the prejudice suffered by consumers generally due to the member’s breaches of the Code of Conduct. However, I have to consider the potentially significant prejudice to consumers that the member’s practice in this regard caused before the advertiser was suspended.

- 7.8. There is no explanation for the infringement of the clauses of the Code, instead reliance is placed on the fact that the misleading advertiser has been blocked. It does not appear that the member intentionally misrepresented the services, however, I cannot say the same about the advertiser.
- 7.9. Considering the nature and severity of the breaches and the mitigating factors, I impose the following fines on the member for the infringement of the Code:
- (a) R 5 000.00 for the breach of clauses 5.1, 5.4 and 5.5
 - (b) R 5 000.00 for the breach of clause 8.8
 - (c) R 5 000.00 for the breach of clauses 23A.5 (c), suspended unless triggered by any other breach of this clause within 6 (six) months.

8. Matters referred back to WASPA

None.
