



## Report of the Adjudicator

Complaint number	<b>#58765</b>
Cited WASPA members	<b>Baseplay (1795)</b>
Notifiable WASPA members	<b>N/A</b>
Source of the complaint	<b>WASPA Compliance Department</b>
Complaint short description	<b>Misleading advertising Services advertised not rendered Misleading subscription</b>
Date complaint lodged	<b>2023-05-16</b>
Date of alleged breach	<b>2023-04-25</b>
Applicable version of the Code	<b>17.4</b>
Clauses of the Code cited	<b>5.1, 5.2, 5.4, 5.5, 5.6A, 5.11, 8.8,12.1,15.9A</b>
Related complaints considered	<b>N/A</b>
Fines imposed	<p><b>The member breached clauses 5.2, 5.4; 5.5; 5.6A; 12.1 and 15.9A of the Code.</b></p> <p><b>Accordingly, I fine the Member:</b></p> <p><b>a) R 5 000.00 for a breach of 5.2;</b>  <b>b) R 10 000.00 for a breach of 5.4;</b></p>

	<p>c) R 10 000.00 for a breach of 5.5;  d) R 10 000.00 for a breach of 5.6A;  e) R 5 000.00 for a breach of 12.1 and  e) R 5 000.00 for a breach of 15.9A</p>
Other sanctions	<b>The Member is ordered to rectify the breached clauses above before continuation of the service to customers.</b>
Is this report notable?	<b>Not Notable</b>
Summary of notability	<b>N/A</b>

## 1. Initial complaint

1.1 This complaint was lodged by the WASPA Compliance Department on 16 May 2023, and the member was notified of the complaint by the WASPA Secretariat on 17 May 2023.

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

1.2.1 On the 25th of April 2023 at 12:01, a WASPA Compliance Department tester ("the tester") used a Samsung Galaxy J4 Pro test device to conduct manual tests on the MTN network. Before the tester proceeded, the airtime balance was established, confirmed that there were no active subscriptions, and cleared the browsing history on the mobile device.

1.2.2 The tester then browsed on a website with the url: waptrick.one and successfully responded to an advertisement banner on the website for a new update/Updater for WhatsApp by clicking the "open" button.

1.2.3 This action triggered a page which prompted the tester to "START" the process. The tester clicked on the "START" button, this action however triggered a landing page for games (Games, Apps, Videos & Community).

1.2.4 The landing page automatically redirected to the MTN Network Hosted Confirmation Page without an explicit response from the tester, therefore the page

with the “START” button qualifies as the ‘call-to-action’ (“CTA”) and does not display any pricing information. The tester also did not have access to the customer support number.

1.2.5 The tester confirmed the subscription to Baseplay Games on the MTN confirmation page (with the page still indicating at the top that this confirmation would lead to the Whatsapp updater) and was redirected to the MTN “Thank you” page.

1.2.6 With the expectation of accessing the service, the tester clicked on the “Continue” button and was redirected to a landing page. The landing page displayed an advertisement banner for another service called “mastery”. The tester closed the “mastery” ad banner and the information displayed on the page required the tester to click on a link to be redirected to the service that they subscribed to. In addition, the big green “SUBSCRIBE” button on the same page is misleading as it relates to the “mastery” service and not the service subscribed to.

1.2.7 The tester was subscribed to a games portal containing several games and apps. The tester received a welcome message and the link to access the service redirected the tester to a landing page where “stream” was advertised. The tester clicked on the link from the landing page with the expectation of accessing the “WhatsApp” service, however the test was redirected to a portal. The tester downloaded the app “Whats App Updater App” from the portal (BaseplayAppUpdater.apk). The tester was presented with a different app called “Chat App Updater”, the tester installed an update to the app. The “Chat App Updater” opened and displayed a message “No app found to update”.

1.2.8 The tester then confirmed that the subscription fee of R39.99 had been deducted and that the tester was now subscribed to Baseplay Games. The tester then cancelled the subscription.

1.2.9 In summary, the WASPA Compliance Department believes that the tester:

1.2.9.1 was misled to believe that they were updating their WhatsApp;

1.2.9.2 was deceived into a subscription for a portal that does not have anything to do with the predominantly advertised WhatsApp;

1.2.9.3 tried to get access to the WhatsApp Updater service but was presented with an app called Chat App Updater instead.

1.2.9.4 was not provided with information on how to use the service; and

1.2.9.5 once subscribed, was not redirected to information relating to the service but was prompted to subscribe to other services instead.

1.2.10 WASPA’s Compliance Department thus believes that the member has breached several clauses of the WASPA Code of Conduct (“the code”) (stated at section 5

below) and believe that this portal could potentially cause serious consumer harm with huge financial implications, if not corrected immediately.

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## 2. Member's response

2.1 Following receipt of the formal complaint from the WASPA compliance department on 17 May 2023, the member responded to the complaint on 9 June 2023, after an extension was granted by the WASPA Secretariat. The response is summarised as follows:

2.1.1 The member refutes this claim that it breached clause 5.1 of the code due to the fact that the portal 'Baseplay Games' offers Games, Apps and much more.

2.1.2 The member is surprised by the claim that it does not offer a service or app that allows a user to install an app updater that can be used across varying chat platforms, e.g. Whatsapp. The app in question is called Chat App Updater. When the tester completed the subscription the member claims that they were directed to this product.

2.1.3 The member refers to point 13 of the complaint making reference to the name of the app versus the marketing using the term 'Whats App Updater App' but claims that this is not relevant as the app itself covers more than one chat platform, e.g. other leading chat platforms such as Facebook. They claim that the advertising for the App Updater is allowed to cover the product to which it can be used. In this case they claim that the marketing was targeting WhatsApp users, whereas other marketing may target other chat platforms. They equate this as being no different than MTN running an advert for a Chat GPT App and offering multiple ChatGPT services within an App. As a result of this, the member therefore refutes the alleged breaches of clauses 5.4, 5.5 and 8.8 as they claim that the service offered does provide the user with the solution advertised.

2.1.4 In response to the complaint that the member has breached clause 5.2 of the code (services must not be unreasonably prolonged or delayed) the member claims that the reason for the prolonging or delay in redirection is due to the users connection which was unstable as evidenced by the fluctuating bar on the phone while conducting the test.

2.1.5 The member doesn't understand the issue alleged with the Call-To-Action ("CTA") buttons as they state that MTN prescribes the use of Subscribe and Join as applicable CTA's to commence the journey to the Network Hosted Confirmation Page. From the report submitted by WASPA the member claims that it is clear that the word SUBSCRIBE is displayed as per the Mobile Network Operator ("MNO") rules along with all other prescribed elements. The member claims that the fact that they use other CTA's prior to the MNO Landing Page, means that they are actually requiring a customer to go through more procedures than what MTN set as a minimum. The member also mentions that with MTN, the Landing Page is managed within MTN's DEP Portal. If the WASP (the member) hosts the Landing

Page, the url must be whitelisted by MTN relating to any such Landing Pages, otherwise a user would be shown an MTN Landing Page for the same service. As all Landing Pages are managed within the MTN DEP Portal, whether the page is hosted by MTN or the WASP, it is a MNO Business rule requirement that certain information is displayed on the Landing Page. This includes the CTA, pricing, links to Terms, etc. Without these, the Landing Page could not be deployed. The member claims that as MTN hosts the Confirmation Page, the page displayed after a user clicks on the CTA 'Continue' is identical to the page displayed should a user click on the link provided within the Welcome Message sent by the Network. This is redirecting the user back to the service as a form of continuity, which then directs the user to the content. The member thus does not believe that it has breached clause 8.8, 12.1 and 15.9A of the code, as it believes that is just following the rules and technical implementation as set out by the Network.

2.1.6 The member states that it has not breached clause 5.11 of the code, because it displays, as per the MNO Business Rules on the Landing Page, a link to the Terms of Service, which detail the options available to a user. Furthermore the member states that the MNO Welcome Message clearly displays Customer Service modules as provided by the Network Operator and, additionally, any users of the service, Baseplay Games, can easily access the various mechanisms that the member itself offers to contact its own Customer Care team, including email telephone or even an automated system to be able to unsubscribe.

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### **3. Complainant's response**

3.1 In response to the member's submissions in response to its initial complaint, the WASPA Compliance Department responded as follows:

3.1.1 Regarding the disputed breach of clause 5.1 of the code, the WASPA Compliance Department doesn't dispute that the portal 'Baseplay Games' offers Games, Apps and much more, but distinguishes between what was offered/promised, what was charged for, and what was provided by the member as part of the acquisition flow.

3.1.2 The WASPA Compliance Department submits that the advertisement was for a 'New Update – Updater for WhatsApp' and even contained a Whatsapp messaging application icon. In the subscription acquisition flow, the tester was then charged for what was advertised, that being for an "Updater for WhatsApp", a service which the tester reasonably expected to automatically update the WhatsApp messaging application with a new version. What actually occurred, however, was the provision of an app, instead called "Chat App Updater", a completely different service (with a different icon) than what was advertised and charged for. Also, the "Chat App Updater" provided doesn't update the Whatsapp messaging application. The WASPA Compliance department thus alleges that the member was engaged in a dishonestly designed marketing ploy to lure the tester into subscribing to an unrelated subscription service for Chat App Updater, and thus did breach clauses 5.1, 5.4 and 5.5 of the code. The service also provided

content that was not promoted in the advertising (violation of clause 8.8 of the code) and the fact that Whatsapp could not, in fact be updated, means that clause 5.1 of the code was also breached.

- 3.1.3 The WASPA Compliance Department disputes the members assertion that the delay in redirection to the subscribed app was due to the users connection due to there being a 1-minute timer counting down and an option to click a link which will redirect the tester to the subscribed service. When clicking the continue button there were multiple redirects to more landing pages and pop-up ads asking for more subscriptions, before landing at the Baseplay Games Portal and having to scroll and search for the app that they had subscribed to, which was not even the promised app. The WASPA Compliance Department dispute that connectivity issues were the delay in redirection to the subscribed app and that, therefore, the member is in breach of clause 5.2 and 15.9A of the code.
- 3.1.4 The WASPA Compliance Department submits that MTN prescribes the use of “Subscribe” and “Join as applicable CTA’s to commence the journey to the Network Hosted Confirmation Page and that the member, instead used a big green button with the word “START”. This, it is submitted, was the call to action (and not more procedures than what MTN set as a minimum) and, as there was no pricing information or a customer support number at this point, section 12.1 of the code is alleged to have been breached. In any event, even if the later “Subscribe” button (at the automatic redirect page) can be viewed as being the CTA, it is alleged that there is too much space between it and the pricing information and that section 12.1 of the code has still been breached.
- 3.1.5 The WASPA Compliance Department also respectfully submit that during the subscription acquisition flow, the customer support was not available to the tester prior to activating the service, leaving the member in breach of section 5.11 of the code.
- 3.1.6 The WASPA Compliance Department also responds to the members assertions that they are following the MNO Business rules and technical implementation as set out by the network by saying that WASPA has previously engaged MNO’s to align the business rules per network with the code and that, the code is thus binding on all members.
- 3.1.7 The WASPA Compliance Department concludes their response by reiterating that the Chat App Updater which was advertised as a WhatsApp Updater is a serious consumer harm and should be stopped. It did not work and the WASPA Compliance Department thus questions whether the 159 apps available within the Baseplay portal actually work and that the member is in violation of section 5.6A of the code.
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#### 4. Member's further response

- 4.1 Regarding the claim that the Chat App Updater does not fulfil its advertised service, the member disputes this claim, stating that the app is designed to notify users of updates, but it does not automatically update without the user's consent and they further mention that no app in the market automatically updates without user interaction. They assert that WASPA's complaint indicates the tester clicked on the app link, downloaded it, and found no update was required for their Whatsapp version, which they claim WASPA has admitted. The member claims that this does not prove a failure to provide the service since there might be updates in the future.
- 4.2 Regarding the Chat App Updater not being the same as the advertised Whats App Updater, the member reiterates that the Whats app Updater forms part of the Chat App Updater, which is the parent App to the latter product. No different to Waze (The popular user real time satellite navigation app) being part of Google, and forming part of Google Maps.'
- 4.3 Regarding claims that the member has breached clause 5.2 of the code, the member states that there is no clear definition of what is defined as "unreasonably prolonged or delayed" and that the argument is subjective. They state that the user has the option to access the app within 7 seconds and bypass the further redirection or wait for the content to load after 53 seconds.
- 4.4 Regarding the advertising happening before redirection to the service page, the member claims that the MNO's in fact encourages advertising to users after subscription completion, as it provides them with additional inventory. It also helps to protect against the alleged breach of clause 15.9A of the code, which prohibits automatic redirection to other payment pages hosted by MNO's. The member also mentions that MNO's prefer a time frame between multiple subscriptions to avoid potential fraud.
- 4.5 Regarding the supposed connectivity issues that are disputed by WASPA, the member suggests the video submitted by WASPA does show weak connection and they criticise WASPA's understanding of the impact of connectivity issues.
- 4.6 The member then questions why WASPA is trying to breach them over the definition of a Call-To-Action and suggests that WASPA should explain the actual breach. The member then asserts that they comply with MTN's business rules and the code, which require a landing page before the confirmation step. They argue that having 3 previous interactions before the landing page does not constitute a breach.
- 4.7 The member suggests that if WASPA truly believed that there was a breach of clause 12.1 of the code, they should have also raised a breach of clause 23.A.5 of the code which, amongst other things states, at (c), that members must only use "subscribe" or "join" as the CTA.

- 4.8 The member further expresses its concerns about the understanding of “flows” in the market and the application of the code by the WASPA testing team, referencing a Code Workshop on 23 May 2023 which highlighted the issue.
- 4.9 The member then states that, in terms of clause 5.11, “customer support” only needs to be easily available with a customer care number not necessarily being required as part of the flow. But they state that, in any event, the number is available in the member’s terms as well as in the portal.
- 4.10 The member concludes its further response by insinuating that the entire argument put forward by WASPA is unfounded and extremely malicious with the WASPA Compliance Department’s complaint amounting to unfair discrimination and a personal vendetta against the member who is “a global industry specialist”. The member states that they are in the process of investigating a formal complaint against the WASPA Compliance Department, to WASPA, as well as further punitive and interdictory legal actions for, amongst other things, defamation and misuse of regulatory authority.
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## **5. Sections of the Code considered**

*5.1 As the conduct complained of took place on or around 25 April 2023, version 17.4 of the WASPA Code of Conduct applies to this complaint.*

*5.2 It is alleged that the member has infringed clauses **5.1, 5.2, 5.4, 5.5, 5.6A, 5.11, 8.8, 12.1 and 15.9A** 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.*

*5.2. Services must not be unreasonably prolonged or delayed.*

*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.*

*5.6A. Members must ensure that customers have ready access to information on how to access and use services.*

*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).*

*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.*

**15.9A.** *Once a customer confirms a subscription to a specific service on the network hosted confirmation page, the customer must only be redirected to information related to that specific service, and may not be redirected to any additional network hosted confirmation pages in such a way that it encourages the customer to mistakenly subscribe to additional services.*

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## **6. Decision**

6.1 Having reviewed the complaint and responses from the complainant and member, I have reached the conclusions set out below wherein I deal with the relevant clauses of the code in order.

### Clause 5.1

6.2 Whilst the complainant alleges that the member is unable to provide the services subscribed for, the members position is that the app subscribed to is, in fact, able to provide the service of updating the users WhatsApp but that it does not do so automatically without the users consent and, the fact that the tester's WhatsApp already had the latest version that there was no update required. In the absence of further evidence to the contrary, I find that this does not prove that the member is unable to provide the service.

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

### Clause 5.2

6.4 With regards to whether the services are unreasonably prolonged or delayed, I am not of the opinion that this hinges on poor connectivity issues, but rather on whether there are too many intervening pop up adverts and landing pages before the tester reaches the app subscribed for. Although there is no precedent or definition for what "unreasonably prolonged or delayed" refers to, this can be gleaned from clause 15.9A and the fact that there are multiple pop up adverts and confirmation pages before the tester is redirected to the service or information related to the specific service subscribed for (which never happened), would infer that the services are unreasonably prolonged or delayed.

6.5 Accordingly, I find a breach of this clause.

### Clause 5.4

6.6 With regards to whether the member had honest and fair dealings with the tester (a customer as the transaction was entered into), I am of the opinion that, although the member can, potentially, provide the service subscribed to, the tester was deceived into a subscription for a portal that does not have anything to do with the predominantly advertised "Updater for WhatsApp". Further, the tester was misled that they were downloading an app specifically related to updating Whatsapp and not a broader "Chat

Updater”. Finally, the fact that there are multiple pop up adverts and confirmation pages before the tester is redirected to the service that appear in such a way that they may encourage the customer to mistakenly subscribe to additional services, does not constitute honest and fair dealing with the customer.

6.7 Accordingly, I find a breach of this clause.

Clause 5.5

6.8 In advertising for a different named app that was ultimately provided, ultimately subscribing the customer to a portal that does not have anything to do with the predominantly advertised “Updater for Whatsapp”, providing no information on how to use or access the app and having a confusing CTA (“Start”) with insufficient information at that stage, I find that the member engaged in information provision that could be considered ambiguous and omitted other information.

6.9 Accordingly, I find a breach of this clause.

Clause 5.6A

6.10 The confusion around how to access the app and how it would work (automatic update or not) all stemmed from the fact that, once subscribed, there was no information provided on how to use or access the service.

6.11 Accordingly, I find a breach of this clause.

Clause 5.11

6.12 Clause 5.11 provides that *“Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to.”* The member advises that customer support and the customer care number is available in the member’s terms as well as in the portal and I am convinced that this is sufficiently readily available customer support for the customer to have access to.

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

Clause 8.8

6.13 On the basis of the evidence presented, I am satisfied that the application promoted on the landing page is offered as part of the subscription service promoted. Whilst the name may be different, I am satisfied that the service may be able to update a customer's Whatsapp.

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

Clause 12.1

6.15 Clause 12.1 stipulates that, amongst other things “... *where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action.*” Whilst the member suggests that the landing page with the “subscribe” button is the CTA and this has pricing information, I am convinced that this page automatically redirected the tester to the MTN Network Hosted Confirmation Page without an explicit response from the tester. Therefore the previous page with the “START” button qualifies as the CTA and does not display any pricing information.

6.16 Accordingly, I find a breach of this clause.

#### Clause 15.9A

6.17 As has been previously mentioned, following confirmation of the subscription, there are multiple pop up adverts and confirmation pages before the tester is redirected to the service. The customer is, thus, clearly not only redirected to information related to the specific service after subscription confirmation.

6.18 Accordingly, I find a breach of this clause.

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## **7. Sanctions**

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct and intent of the member in the form of any prior contraventions of the WASPA Code of Conduct and any mitigating or aggravating circumstances.

7.2. While this is not the first complaint that has been lodged against the member that proceeded to an adjudicator considering it, one complaint is still being considered and the other was partly overturned on appeal. Accordingly, I don't find that the previous complaints are aggravating when it comes to sanctions.

7.3 Furthermore, whilst the member has not admitted any contraventions or taken steps to rectify any alleged breaches of the code, I am convinced that the member believes that it hasn't contravened the code in any way and, as such, has shown no ill intent in this regard. Accordingly, I don't find that this inaction is aggravating in any way when it comes to sanctions.

7.4 I find that the Member breached clauses 5.2, 5.4; 5.5; 5.6A; 12.1 and 15.9A of the Code.

7.5 Accordingly, I fine the Member:

- a) R 5 000.00 for a breach of 5.2;
- b) R 10 000.00 for a breach of 5.4;
- c) R 10 000.00 for a breach of 5.5;
- d) R 10 000.00 for a breach of 5.6A;
- e) R 5 000.00 for a breach of 12.1 and

e) R 5 000.00 for a breach of 15.9A

7.6 Furthermore, the Member is ordered to rectify the breached clauses above before continuation of the service to customers.

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## **8. Matters referred back to WASPA**

*N/a*

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