



Report of the Adjudicator

Complaint number	#59472
Cited WASPA members	LogicSMS (Membership number: 0130)
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Misleading advertising Services advertised not rendered Misleading subscription Incorrect marketing Unauthorized service charges
Date complaint lodged	2023-09-19
Date of alleged breach	2023-08-7
Applicable version of the Code	17.5
Clauses of the Code cited	5.1, 5.2, 5.4, 5.5, 5.6A, 5.11, 8.7, 15.4, 15.9A, 15.15(c), 15.17(ii), 15.18(e)
Related complaints considered	N/A

Fines imposed	<p>The member breached clauses 5.1, 5.2, 5.6A; 5.11, 5.15(c), 5.18(e).</p> <p>There are a few mitigating factors and, accordingly, the member is fined:</p> <p>a) R 15 000.00 for a breach of 5.1 and 5.2; b) R 10 000.00 for a breach of 5.6A, 5.11, 5.15(c) and 5.18(e);</p>
Other sanctions	<p>The member is also ordered to terminate all of the subscriptions and refund all of the affected customers that subscribed to this faulty subscription service.</p> <p>Furthermore, the member is ordered to rectify the breached clauses above before continuation of the service to customers. This will be inclusive of not allowing any customer to subscribe to the same service twice.</p>
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 19 September 2023, and the member was notified of the complaint by the WASPA Secretariat on 21 September 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 7 August 2023 at 14:53, a WASPA Compliance Department tester ("the tester") used a Xiaomi Mi11 Lite test device with MSISDN + [REDACTED] 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: <https://dood.pm/d/r7gea6ky44ed> and clicked on an advertisement banner which said *"GIVEAWAY Win Airtime Now – Winners Daily. Win Airtime Now Join Lynx to win airtime now!R7/d t&c"* and confirmed subscription after being directed to the member service landing page and being informed that he has successfully subscribed to **"WinAirtime from FreeAirtime"**.
- 1.2.3 When attempting to access the service, however, the tester was presented with an error page which stated the following *"Y'ello. Our apologies but your attempt to subscribe to WinAirtime has been unsuccessful. Please try again. (SD3)"* The tester then attempted to access the service via the welcome message received by sms and this didn't work either. The tester then checked and the subscription fee of R7 had been deducted and confirmed that the tester was subscribed to "WinAirtime".
- 1.2.4 The following day (8 August 2023), the tester checked and had received 5 different long code sms' on the afternoon of 7 August 2023 all saying **"Win big everyday! Lynx Lifestyle welcomes you <https://lynxlife.club/> Daily airtime awards. Share for more fun *130*686*9745# R3.50AdailyAT&Cs."** Clicking on the link provided the tester was redirected to the Lynx Lifestyle website. After logging in the tester attempted to browse the website. The tester then confirmed that a further R7 had been deducted from the subscription and entered and logged in to the Lynx Lifestyle website from one of the other 5 sms's, but the website wasn't fully functional.
- 1.2.5 Based on what was advertised on the Lynx Lifestyle homepage, the tester then composed a message by sending the keyword "LYNX" to the short code 33270. The tester received the following confirmation message: **"Y'ello. Please confirm your purchase of WinAirtime from FreeAirtime for R2.00/day."** The tester confirmed the subscription, and the subscription acquisition process was completed. This subscription, it turns out, actually subscribed the tester to "WinAirtime from FreeAirtime" again, and it still didn't work. Another SMS was received saying the same thing as previously: **"Win big everyday! Lynx Lifestyle welcomes you <https://lynxlife.club/> Daily airtime awards. Share for more fun *130*686*9745# R3.50AdailyAT&Cs."** The page was not fully functional and the tester checked and found that a further R2 had had been deducted from his/her airtime along with R0.86, supposedly from a welcome message. The tester confirmed that he/she was subscribed to "WinAirtime" twice.
- 1.2.6 3 days later the tester confirmed that/he she was still subscribed to WinAirtime twice and that the total subscription fee of R34.86 had been deducted from the Airtime balance (the maths being R7 for 4 days, R2 for 3 days and the 0.86 fee for the welcome message).

1.2.7 The tester then successfully unsubscribed from both WinAirtime subscriptions.

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

1.2.8.1 was deliberately misled to subscribe to a guaranteed airtime giveaway rather than the main subscription actually being for Lynx at R7 a day that has nothing to do with the predominantly advertised free airtime giveaway, with almost no information provided at any point about the actual Lynx subscription service;

1.2.8.2 also subscribed to the advertised service that doesn't work.

1.2.8.3 was allowed to subscribe to the same service (that doesn't work) twice, without measures being put in place to prevent this, at different prices, caused by inconsistent pricing information.

1.2.8.4 was not provided with a customer support number; and

1.2.8.5 was also charged for receiving the welcome message after subscribing via USSD.

1.2.9 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), believing that the service is deceitful, generally all over the place and not easily accessible for consumers, resulting in financial harm to consumers.

2. Member's response

2.1 Following receipt of the formal complaint from the WASPA compliance department on 21 September 2023, the member responded to the complaint on 28 September 2023. The response is summarised as follows:

2.1.1 The member submits that the campaign in question relates to a campaign run on behalf of Lynx Holdings (Pty) (Ltd), a client of LogicSMS who is not a WASPA member.

2.1.2 The member contends that despite the advert appearing on an Adult platform, the ad is not adult in nature and they have a strictly "No Adult" policy that the affiliate went against. They have now stopped the advert and contacted the affiliate to immediately remove all advertising to their network.

2.1.3 With regards to the multiple welcome messages received by the tester, that don't have contact details or a direct link to the services, they submit that MTN sends a default welcome message with the member having very limited ability to change

the functionality of the message. As such, the member then sends an additional welcome message with the content link. They claim that MTN's welcome message doesn't cater for WASPA's requirements of a. Contact details b. Contains a link to subscribe to the service again c. Must only contain a link to gain more information or access to the service. They claim that this should be brought up with MTN.

2.1.4 With regards to the allegation from WASPA that the member was confusingly selling the same service to customers at different price points, the member responds that the additional message provided contains a new advert so that the receiver can share with their friends. That, they claim, is why it is at a different price line (R3,50 rather than the initial R7,00), as it wasn't from directly clicking on the banner, therefore cheaper. They claim that the original subscriber does not have to respond to the call to action and the current subscription is not dependent on the secondary advert. A further price is the R2,00 (standard rates) which the member points out is accessed by SMSing the word Lynx to 33270, therefore being even cheaper as it is subscribed for without the help of any advertising. Thus, the member claims that these are 3 completely different lines, not the same line advertised at different prices.

2.1.4 In response to the complaint that the member charged for the welcome message, being against the code, the member responds that this was not the case (not possible to charge for MTN welcome messages) but rather, the charge of R0.86 was a standard sms rate charged for the tester sending the sms "LYNX" to the short code 33270. This is thus, they contend, not a violation of the code.

2.1.5 In response to the allegation that the member was deceitful about promising Airtime if the tester subscribed, the member contends that the words "win airtime now" doesn't amount to a promise that airtime will be won or that they had already won the airtime, but rather that they stand a chance. The subscriber gets in line to win airtime and gets access to a platform. The Terms and Conditions indicate how the service will work and how airtime is awarded.

2.1.6 Regarding the allegation that more than 1 welcome message was received, the member contends that this is because the tester subscribed to more than 1 service. The fact that more than 1 additional welcome message is sent out is unfortunate and a functionality issue. They will investigate and it won't happen again.

2.1.7 Regarding the contention that no contact details were present on the confirmation page and that the welcome message should be a single message with no line breaks or carriage returns, the member claims that the multiple welcome messages are as a result of the lack of functionality of the MTN message. Also the no contact details and page layout on the confirmation page are because of MTN's lack of functionality. In any event there is a link on the confirmation page to the T's and C's in which there is contact information. According to them this suffices. The issue of the lack of contact details on the confirmation page needs to be brought up with MTN, they contend.

2.1.8 In summary and conclusion, the member summarises all of the above and, in good faith, believes that they deal honestly and faithfully with their customers. They also provide mitigating factors saying that they have never had any formal complaints relating to subscription, this campaign was on a small budget and affected few people, and all of the issues were MTN or the affiliates fault. They also say that they will terminate all 41 subscriptions and refund the subscribers if that is what the adjudicator requires. The campaign has, in the meantime, been suspended.

Complainant's response

3.1 In response to the member's submissions in response to its initial complaint, the WASPA Compliance Department responded on 12 October 2023 (after an extension was granted) as follows:

3.1.1 They note that the member does not deny that some elements of the subscription acquisition flow of the service are non-compliant and provides little information regarding the actual breaches cited. On the contrary, the majority of the information appears to be submitted only to be considered as mitigating factors for the non-compliant affiliate marketing, as well as placing blame on MTN or the affiliate.

3.1.2 Regarding the affiliate's (client's) role, the complainant points out that the code (at clause 3) apportions liability for breaches by members affiliates, to the member.

3.1.3 Regarding the member's assertion that the campaign wasn't adult in nature despite being located on an adult page, the complainant doesn't dispute this and points out that this was never included as an alleged offence.

3.1.4 Regarding the member's claim that the wording of the Airtime advert didn't promise guaranteed free airtime, the complainant disagrees and believes there to be clear, deceitful, and misleading words used on the member's advertisement banner and the service landing page to "hook" consumers into believing that they will get free airtime. Words such as "GIVEAWAY", "WIN AIRTIME NOW", "FREEAIRTIME", "AIRTIME AWARDS", "JOIN NOW TO WIN DAILY PRIZES", "WINNERS DAILY" suggests that airtime and prizes are a certainty, they believe, and should be liable for breaching clauses 5.1, 5.4, and 5.5 of the code, as a result.

3.1.5 Regarding the assertion from the member that they randomly award subscribers with "R1000's" of free airtime, the complainant disputes this as there are only 41 subscribers, no proof of the awards and the fact that the member admitted to the campaign not being successful. They therefore submit that this appears to be an intentional tactic utilised by the member to mislead consumers in "getting free airtime" by subscribing them to Lynx Lifestyle at R7 per day or R3.50 per day or

R2.00 per day. Also, no other information related to the predominantly advertised free airtime giveaway was given to the tester.

3.1.6 Regarding the non-compliant welcome message, the complainant notes that the member blames MTN for this (admitting it doesn't comply) but then also sent their own welcome message that didn't have contact information, so the complainant requests the adjudicator to consider adding clause 15.8(b) and (f) to the complaint to due to the non compliance of the additional welcome message.

3.1.7 The complainant also has issue with the additional welcome messages timelines. The test was conducted at 14:53, the MTN welcome message with a faulty service access link was delivered at 14:55. The first "additional welcome message" delivered by the member with a working service access link was at 17:49, that's almost 3 hours after subscribing to the service. We respectfully submit that the tester activated the subscription service at R7 per day, and the tester could not access the service for almost 3 hours, thus making the member in violation of clauses 5.2 and 5.6A of the code.

3.1.8 It is clear from the member response, the complainant argues, that they were aware of the non-compliant MTN welcome message from February 2023. The member failed to address this issue with MTN for most of the year. The member also failed to put the necessary changes to their "additional welcome message" to comply with the code.

3.1.9 The complainant also points out that some of the elements of the members service (Lynx Lifestyle) doesn't work, making them in violation of 5.1, 5.2, 5.4, 5.5, and 5.6A of the code.

3.1.10 The complainant also submits that the member knew that some elements of the subscription acquisition flow were non-compliant, and yet they continued providing the service to potential consumers. The complainant submits that this service was not set up correctly or properly tested prior to the launch and, as such, the member should be liable for promoting and offering a service which is not aligned with the provisions of the code.

3. Member's further response

4.1 The member stands by its original response and has some further responses.

4.2 In response to the complainants further response that the member is also in violation of clauses 15.8b and f of the code, the member points out that these clauses don't exist.

4.3 In response to other claims of violations made by the complainant, the member refers to clause 5.3 of the code which states that "a member is not liable for any failure to provide a service due to circumstances beyond that member's control." Regarding MTN's

welcome message, the subscription flow, the customer specific link etc. they claim that they have very limited control over that in that it is MTN that the non compliance falls squarely on MTN's shoulders. They claim that they are right to assume that MTN would be compliant, that if they are to be considered in violation then the entire MTN process would need to come under investigation including every WASP that uses MTN subscription services.

- 4.4 The member stands by the use of the word “win” as a “chance to win” and not that a prize has already been won. The words “claim a/your prize” or “you have won” are never used. They provide various examples of this to show that it is industry standard.
- 4.5 In reference to their alleged violation of clause 5.11 of the code, which states: “*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)*”, the member argues that the Welcome Message sent from MTN also includes a way to manage the subscription (including terminations). Additionally, with regards to the current market, the majority of people have data rather than airtime for calls. With this knowledge at hand, a website including Terms and Conditions containing a support email address should be the minimum requirement in the WASPA code.
- 4.6 The member also argues that it is a standard business practice to offer a product at different price points to different clients based on different market conditions.
- 4.7 The member refers to clause 15.5 of the code which states that “*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”)*”. They believe that this clause makes the advert compliant and not deceitful as the “WinAirtime” was merely an incentive after subscribing to Lynx.
- 4.8 The member then reiterates, after referring to clauses 12.4, 8.9 and 12.2A of the code that there provisions of the Terms of Conditions page at the confirmation page is sufficient to be compliant and the subscription flow errors are down to MTN, not them.

5. Sections of the Code considered

5.1 *As the conduct complained of took place on or around 7 August 2023, version 17.5 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, 8.7, 15.4, 15.9A, 15.15(c), 15.17(ii) and 15.18(e)** 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).*

8.7. *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.*

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".)*

15.9A. *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.*

15.15(c). *The confirmation step must present the following information, in this order:*

(c) a customer support number

15.17(ii). *Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. The message must be provided in one of two ways:*

(ii) The member can send the "welcome message". The customer must not be charged for the welcome message.

15.18(e). *The "welcome message" must be a single message and may not contain any line breaks or carriage returns. The welcome message must contain only the following additional information:*

(e) a customer support number,

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 There is no proof provided of the award of any free airtime by the member to any subscribers and, by the member's own admission, the "Win Free Airtime" campaign was

non functional and unsuccessful. Further to this, the main Lynx page that the tester subscribed to was also not fully functional and the member provided no evidence to dispute this fact.

6.3 Accordingly, I find a breach of this clause.

Clause 5.2

6.4 With regards to whether the services are unreasonably prolonged or delayed, although there is no precedent or definition for what “unreasonably prolonged or delayed” refers to, the fact that “WinAirtime” subscription didn’t work and the earliest working (additional) welcome message to access the Lynx platform service was only received close to 3 hours after the service was subscribed to, clearly indicates that, although I believe unintentional, the services were unreasonably prolonged or delayed.

6.5 Accordingly, I find a breach of this clause.

Clause 5.4 and 5.5

6.6 With regards to whether the member had honest and fair dealings with the tester (a customer as the transaction was entered into) or that the member knowingly disseminated information that was false or deceptive, or that would be likely to mislead by inaccuracy, ambiguity, exaggeration or omission, I will evaluate the conduct of the member as a whole as it pertains to the manner in which the service and related promotional material which are the subject of this complaint were promoted and offered.

6.7 Even though it was the member’s affiliate that ran the campaign, the complainant is correct that it is the member who ultimately bears responsibility. Whilst it is clear that the functionality of the service was an issue, including the fact that the member failed to prevent the tester from subscribing to the same service twice, I am not of the opinion that the member was intentionally unfair or dishonest or that they knowingly disseminated information that was false or deceptive, or that would be likely to mislead by inaccuracy, ambiguity, exaggeration or omission. The reason for this is that I am in agreement with the member that the use of the word “win” did not indicate that the prize had already been won and just needed to be redeemed, but rather that there was a “chance to win” the airtime. Further, although the member was wrong to prevent the tester from subscribing to the same service twice, I am in agreement with the member that the different prices were not adverts for the same service at different price points, but rather different prices for the service based on the consumer engagement with the advert (i.e less if the consumer shared it with friends without clicking on the advert and less still with the sms subscription as this was achieved without any advertising whatsoever.) Thus I am in agreement that these are 3 completely different lines, not the same line advertised at different prices. The issues here stem from a lack of functionality but not, in my opinion, intentional misleading or dishonest tactics.

6.8 Accordingly, I do not find a breach of these clauses.

Clause 5.6A

6.9 The predominantly advertised service of “WinAirtime” did not work and no other information about this service was provided (other than in the T’s and C’s for Lynx which is too obscure)

6.10 Accordingly, I find a breach of this clause.

Clause 5.11

6.11 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. (Example: support should not be limited to email if a significant number of customers do not have access to email).* The member advises that customer support is readily available in the member’s terms and conditions, with the argument that more customers have data as opposed to airtime. This implies that only an email was provided and not a customer support number. I am not convinced with the assertion that more customers have access to email as opposed to airtime for phone calls. There is no evidence for this. As such, I am of the opinion that there is not sufficiently readily available customer support for the customer to have access to.

6.12 Accordingly, I find a breach of this clause.

Clause 8.7

6.13 On the basis of the evidence presented, I am satisfied that the different prices were not adverts for the same service at different price points, but rather different prices for the service based on the consumer engagement with the advert. The prices were the full retail price of the service, including VAT. Even though the tester was allowed to subscribe to the same service twice from the different price points (a functionality issue which should not have been allowed to happen), I don’t believe there were any hidden costs over and above the prices included in the pricing information (including the charge for the sms which indicated that standard sms rates would apply).

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

Clause 15.4

6.15 As the member, in my opinion, correctly points out, clause 15.5 of the code says that *“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”* As has been adjudicated on at clause 6.7 above, I am not of the opinion that the member was required to join a subscription service in order to claim an existing reward, but rather offered an incentive of potentially winning the airtime after joining Lynx.

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

Clause 15.9A

6.17 The subscription to WinAirtime was advertised as being a complementary service to subscribing to the Lynx page and although the WinAirtime page was nonfunctional and there were issues with the welcome messages as well as further dysfunctionality of the Lynx subscription, T's and C's explaining the services were readily available on the confirmation page. Despite clear lack of functionality and a clearly untested service, I am not of the opinion that, following the confirmation of subscription, the tester was redirected to any additional network hosted confirmation page in such a way that it encourages the customer to mistakenly subscribe to additional services.

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

Clause 15.15(c)

6.19 There is no customer support number provided at the confirmation step (or anywhere, based on the information at hand).

6.20 Accordingly, I find a breach of this clause.

Clause 15.17(ii)

6.21 The member countered the complainant's allegation that the tester was charged R0.86 for the welcome message by pointing out that the R0.86 was a standard sms rate charged for the tester sending the sms "LYNX" to the short code 33270. It was not a charge for the welcome message. I am convinced of this.

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

Clause 15.18(e)

6.23 This clause makes it mandatory that the welcome message must contain a customer support number. The member places the blame for the lack of this squarely on MTN's shoulders. This, ostensibly, amounts to an admission that the clause has been breached. Even if one is to determine that the member is not responsible for the non-compliance for the MTN initiated welcome message, the member's own follow up welcome message was also non-compliant in that it didn't provide a customer support number either.

6.24 Accordingly, I find a breach of this clause.

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, the previous complaint was dismissed so the member has a clean bill when it comes to previous offences against the code. Accordingly, I don't find that the previous complaints are aggravating when it comes to sanctions, but rather mitigating in nature.

7.3 Further mitigating factors present are:

7.3.1 the member has confirmed that they have cut/will be cutting ties with the affiliate who provided this non-compliant service;

7.3.2 There are not that many people that subscribed and were, thus, affected by this faulty service (only 41);

7.3.3 The member has offered to terminate and refund all 41 subscribers;

7.3.4 Some of the issues here stemmed from the limited aesthetic control that the member had over the MTN hosted welcome messages;

7.3.5 The member showed a spirit of understanding and agreed to make any changes suggested.

7.4 I find that the Member breached clauses 5.1, 5.2, 5.6A; 5.11, 5.15(c), 5.18(e).

7.5 There are a few mitigating factors and, accordingly, I fine the Member:

a) R 15 000.00 for a breach of 5.1 and 5.2;

b) R 10 000.00 for a breach of 5.6A, 5.11, 5.15(c) and 5.18(e);

7.6 The member is also ordered to terminate all of the subscriptions and refund all of the affected customers that subscribed to this faulty subscription service.

7.7 Furthermore, the member is ordered to rectify the breached clauses above before continuation of the service to customers. This will be inclusive of not allowing any customer to subscribe to the same service twice.

8. Matters referred back to WASPA

N/a
