



Report of the Adjudicator

Complaint number	#59771
Cited WASPA members	OnMobile Global SA Ltd (2025).
Notifiable WASPA members	N/a
Source of the complaint	WASPA Compliance Department,
Complaint short description	Honest and fair dealing Disseminating information that is false or deceptive Pricing information that is clear and prominently displayed Compliant subscription process
Date complaint lodged	2023-12-05
Date of alleged breach	14 November 2023 8 December to 2 February 2024
Applicable version of the Code	17.7
Clauses of the Code cited	5.4, 5.5 12.1 23A.5 24.76
Related complaints considered	#57713
Fines imposed	<ul style="list-style-type: none"> ● A fine of R25,000 for the infringement of section 5.4 and 5.5; ● A fine of R50,000 for the infringement of section 12.1 and 23A.5

Matters referred back to WASPA	The matter is also referred back to WASPA to consider whether a complaint should be laid against the Member for not complying with the Emergency Panel orders since there seems to be a prima facie case, but the Member did not have an opportunity to respond to such a complaint even though it was mooted by the WASPA.
Is this report notable?	Not applicable
Summary of notability	Not applicable

Initial complaint

1. Whilst monitoring, testing services and conducting compliance checks of test results, the WASPA Compliance Department identified a service which did not comply with the requirements as set out in the WASPA Code of Conduct (Code). Below is an outline of the test results, together with the alleged breaches of the Code.

2. **Test A**
 On the 14th of November 2023 at around 10:00 a tester was browsing on a website with the following URL: [xxx] using their test device on the MTN Network. The tester clicked on a banner advertisement with the following text:
 - “Play Best Mobile Games Now
 - Your Gaming Adventure Starts Here.
 - Earn Coins and Reap the Rewards. 1st
 - Day Free Play Now
 - Open”

3. The banner advertisement directed the tester directly to the MTN Network Hosted Confirmation Page (NHCP) for a subscription service called ONMO from OnMobile charged at R15.00 per day. In summary:
 - a. The banner advertisement, which when clicked on triggers the MTN Confirmation Page (NHCP), and therefore qualifies as the ‘call-to-action’, did not display any pricing information.
 - b. There was no subscription service landing page as required for a service on the MTN network. The tester elected to stop the test at this point, as there were multiple breaches of the Code during the subscription acquisition flow for the ONMO service from OnMobile.

4. **Test B**

On the 16th of November 2023 at around 09:53 a tester was browsing on a website with the following URL: [xxxx] using their test device on the MTN Network. The tester clicked on a banner advertisement with the following text:

“Play Best Mobile Games
Now
Your Gaming Adventure Starts Here.
Earn Coins and Reap the Rewards. 1st Day Free
Play Now
ONMO
Open”

5. The banner advertisement directed the tester directly to the MTN Network Hosted Confirmation Page (NHCP) for a subscription service called ONMO from OnMobile charged at R15.00 per day. The tester elected to stop the test at this point, as there were multiple breaches of the Code during the subscription acquisition flow for the ONMO service from OnMobile. In summary:

- a. The banner advertisement, which when clicked on triggers the MTN Confirmation Page (NHCP), and therefore qualifies as the ‘call-to-action’, does not display any pricing information.
- b. There is no subscription service landing page as required for a service on the MTN network.

6. **Test 3**

On or about the 8th of November 2023 at around 11:30 a tester was browsing the Good News Bible App using their test device on the MTN Network. The tester clicked on a banner advertisement at the bottom of the page with the following text:

“ONMO
Speedy Mobile Games
For Free”

7. The banner advertisement directed the tester directly to the MTN Network Hosted Confirmation Page (NHCP) for a subscription service called ONMO from OnMobile charged at R15.00 per day. The tester clicked on the “Confirm” confirmation button on the MTN NHCP. The tester then checked for active subscription services using the MTN USSD self-help portal by dialling *155# and following the prompts. The result was an active subscription for ONMO. The tester then reviewed his messages and confirmed that a welcome message was received to confirm the subscription to ONMO charged at R15.00 per day. The tester elected to stop the test at this point, as there were multiple breaches of the Code during the subscription acquisition flow for the ONMO service from OnMobile.
8. In summary:

- a. The banner advertisement, which when clicked on triggers the MTN Confirmation Page (NHCP), and service landing page as required for a service on the MTN network.
9. The Complainant alleged breaches of sections 5.4, 5.5, 5.12 and 23A.5 in the complaint filed on 5 December 2023. The Member was notified of the complaint on 6 December 2023.
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Member's response

10. The member's first response was an internal email on which the Complainant was copied. Another internal email outlined the steps necessary to make the service complained about compliant.
11. An emergency panel meeting that was scheduled was cancelled after assurances that the necessary changes had been made to the services to become compliant on 7 December 2023. After the Complainant submitted a revised complaint an emergency panel hearing was nevertheless scheduled and held on 8 December 2023. The Emergency Panel held that:
- (a) In terms of Clause 12.1 of the Code, the Member's three banner advertisements were deemed call-to-actions as they directed the tester directly to the MTN NHCP for a subscription service which required that the pricing information be clearly and prominently displayed adjacent to the call-to-action. The Member did not comply with these requirements.
 - (b) The Member had not acted fairly, reasonably, or transparently, by misleading its customers through the display of pricing information that was not compliant with the requirements of the Code. Not only was the pricing information not compliant with the Code for banner advertisements and call-to-actions as per Annexure A and B, but the Member also misled the customer into believing that the subscription service (which costs R15.00 per week as advertised in Annexure C), was free. Therefore, the Member has breached clauses 5.5, 5.5 and 12.1 of the Code.
 - (c) The Member also did not provide a service landing page before the tester was directed to the MTN NHCP, which is in breach of 23A.5 of the Code as per the MTN requirements.
 - (d) More seriously the Member had not confirmed that it had implemented this amendment, as set out in clause 23A.5 of the Code.
 - (e) The emergency panel acknowledges that the Member had confirmed that it had taken some partial steps to remedy its non-compliance with the Code, however the emergency panel has not had sight of any evidence to this effect and cannot take

confirmation by way of email at face value as the Member's non-compliance poses a real and immediate threat to the public. Subscription services typically involve an ongoing commitment from customers, and inaccurate or misleading pricing information introduces an element of real continuous risk and harm to unsuspecting subscribers.

12. The Emergency Panel issued the following sanctions:
 - (a) The Member's service "ONMO" is suspended with immediate effect pending the outcome of the formal WASPA adjudication.
 - (b) The Member's service "Quiz Up" is referred to the WASPA Compliance Department to perform a formal investigation regarding its compliance with the Code.
 - (c) The Member's service "Quiz Up" is suspended with immediate effect pending the outcome of the formal investigation by the WASPA Compliance Department.
 - (d) In the event that the WASPA Compliance Department declines to issue a complaint and refer this service to an adjudicator; or the WASPA Compliance Department fails to provide its findings within 14 calendar days of this ruling then the "Quiz Up" service may resume.
 - (e) In the event that the WASPA Compliance Department does issue a complaint against the Member regarding the "Quiz Up" service, then the "Quiz Up" service will remain suspended until the outcome of the formal WASPA adjudication.
13. The Member responded that they had halted the campaigns for both services, but that they were not sure what 'suspend the service' would mean on this as they could not halt a live service for which subscribers had paid. Furthermore, since campaigns were halted and screenshot as well as their emails were not sufficient, they were not clear as to how they could move forward with adjudication or review as the ad would need to be tested.
14. Lastly while they understood that the WASPA Code of Conduct states that they must have a landing page plus confirmation for a 3-click flow, their understanding from MTN and their TCF is not the same. The Member understood that if a banner ad has a price point, validity, as well as Ts&Cs apply, the first click on the banner is considered a first opt-in, then leading to a confirm page, which means that the amendment described on mail is sufficient to sort out the issue. As WASPA knows, members are not responsible for the subscription flow. Hence, they would not be able to have a two-click flow from their own choosing.
15. The WASPA Secretariat responded that the compliance department needed to be given access to the testing environment or provided with the unique URL which was unconnected to any adverts for the purposes of testing. This was a temporary solution and could be simply a unique URL with no security controls at all, so long as it was unconnected to any "live" adverts. They should need to click on an advert, be redirected to

the landing page, complete the landing page and be subscribed). It also advised that the entire service was suspended, not just the non-compliant adverts.

16. The Member responded on 21 December 2023 that they checked with the backend team for confirmation, but they could not take the service down, because it was a cloud-based service online. Also, they could not remove a service for which they did not have control of user lifecycles. At this point all campaigns had been halted on their side. Also, if they took down the services and everything there was no way for WASPA to test. They further believed that they if they removed the service, it would become a disservice to those who were subscribed as they would not be able to access the platforms from that point on, although they had paid for it.
17. On 17 January 2024 the WASPA secretariat requested confirmation that the service had been taken down as ordered by the Emergency Panel. It also advised that a formal response to the formal complaint was due by 24 January 2024 and finally that non-compliance with the Emergency Panel's orders would be an infringement of section 24.76.
18. After an extension was granted, the Member on 2 February 2024 notified WASPA that the services had finally been deactivated. It also advised on 5 February that their formal response was that they had amended the campaigns already for testing and that the suspension had been taken care of. They were also ready to test the services and provide some links whenever WASPA was ready.
19. After some more correspondence the dummy service was ready for testing and the test result provided. There were no further complaints from the Compliance department.

Sections of the Code considered

20. The following sections of the Code were 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.

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) must clearly show the pricing information for the service;
- (b) must contain a link to, or the URL of, the Ts&Cs for the service;
- (c) must not have a misleading call-to-action (such as “download” instead of “subscribe” or “join”);
- (d) must not mislead by presenting examples of content not available as part of the service;

24.76. WASPA will provide the member concerned with access to the emergency panel’s report. The member concerned must comply with any urgent remedy ordered as soon as practicable. Failure to do so constitutes a breach of this Code.

Decision

21. The Member has not contested the complaint by the Compliance Department that their advertisements for their services were misleading or that their subscription services were non-compliant. After a perusal of the screenshots and evidence provided by the Complainant, I am satisfied that the advertisements were misleading in that they seemed to advertise services that were free and furthermore failed to indicate that additional terms and conditions would apply. It was also not clear from the advertisements that these were subscription services. Neither the Homepage nor the Advertisement referred to a subscription service. The Test 3 example is particularly egregious since the banner ad was displayed on a religious app.
22. I find that in all three instances the conduct did not display fair and honest dealings with customers and the information provided was deceptive and likely to mislead. I find that the Member was in breach of Sections 5.4 and 5.5.
23. In terms of the Code of Conduct the pricing information must be clearly and prominently displayed adjacent to the call-to-action. In all three instances the pricing information was in a type face that was significantly smaller than the rest of the text on the page and in muted colours designed to blend into the background whereas the rest of the text and graphics were bright and colourful. I therefore find that the member is in breach of Section 12.1 in all three instances.
24. The Member has not seriously contested that their subscription process did not meet with the requirements of Section 23A.5. Their submission that they had not been in control of the subscription flow and that their understanding of the MTN process was different from what the Code of Conduct prescribes, was not pursued further after it had initially been

raised. I agree with the Emergency Panel that the process was non-compliant. I find that the Member was in breach of Section 23A.5 in all three instances.

25. Although the Emergency Panel ordered the member to suspend both the ONMO and Quiz Up subscription services as soon as practicable, the Member seems to have failed to suspend the services entirely as they submitted that they had to keep the services running for customers who had already paid and so that it could be tested. After much correspondence between the Member and the WASPA Secretariat, it seems that the services were finally suspended by 2 February 2024, a considerable time after it had been ordered by the Emergency Panel to suspend the services as soon as practicable.
 26. Although the Complainant did not file a complaint in this regard, the WASPA Secretariat did notify the Member that it would be in breach of this section by not complying with the suspension order in an email dated 17 January 2024. Despite this warning, the services did not seem to have been finally removed before 2 February 2024. The Member seemingly did not pursue other avenues to the suspension of the services in order to comply with the order, like refunding already paid-up customers, instead choosing to drag out the matter for a considerable period of time.
 27. As the Complainant and the Emergency panel did not raise a formal complaint of a breach of Section 24.76 and the Member did not have an opportunity to respond to such a complaint, the matter of a breach of Section 24.76 is referred back to the WASPA Secretariat for consideration.
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Sanctions

28. In considering the sanctions to be imposed I take into account that the member did seemingly respond positively to the complaints upon notification of the complaint by WASPA, but also that it was still necessary to convene an Emergency Panel to get the Member to suspend their services.
29. I also take into account that this is not the first time that the member has infringed sections 12.1 and 23A.5. In Complaint #57713 dated 19 November 2022 the Member was held to have infringed both of those sections in circumstances very similar to the facts in this case. A fine of R25,000 was imposed.
30. I take into account that the Member has previously infringed sections 12.1 and 23A.5 and could not have been unaware that its conduct in this instance was an infringement of the Code of Conduct. For the infringement of these clauses which are taken together as was done in Adjudication #57713, a fine of R50,000 is imposed.

31. As far as the infringement of sections 5.4 and 5.5 are concerned these sections both deal with similar matter, namely honest and fair dealing and conduct which is deceptive and misleading. For purposes of a sanction these sections are taken together. There has been no similar infringement recorded in the past, but such conduct is regarded in a serious light as it tends to bring the industry into disrepute. A fine of R25,000 is imposed.

Matters referred back to WASPA

32 As the Complainant and the Emergency panel did not raise a formal complaint of a breach of Section 24.76 and the Member did not have an opportunity to respond to such a complaint, the matter of a breach of Section 24.76 is referred back to the WASPA for consideration.
