



Report of the Adjudicator

Complaint number	#60199
Cited WASPA members	One Ten Labs (Membership number 2119)
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant subscription service
Date complaint lodged	2024-05-24
Date of alleged breach	2024-05-16; 2024-05-17; 2024-05-20
Applicable version of the Code	v17.7
Clauses of the Code cited	5.1; 5.4, 5.5, 8.8, 12.1, and 23A.5(a)(b)(c)(d).
Related complaints considered	n/a
Fines imposed	Member is fined the following amounts: R2 500 for breach of clause 5.1; R2 500 for breach of clause 5.4; R2 500 for breach of clause 5.5; R2 500 for breach of clause 8.8; R2 500 for breach of clause 12.1; and

	R2 500 for breach of clause 23.A.5.
Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

Initial complaint

1. The Complainant provided three separate test results of instances when one of its testers came across promotional campaigns for the Member's 'Gamesville' subscription service (found at three different URLs) while monitoring and conducting manual tests on the Cell C and MTN networks, which the Complainant alleges are not compliant with various requirements of the WASPA Code of Conduct.
2. In support of the complaint, the Complainant provided screenshots and an outline of the tester's experience for each separate test.
3. In the first test, the tester was engaging with a monopoly game page and followed the instructions, which appeared to relate to that game. They were directed to the Cell C Confirmation Page for a totally unrelated subscription service. The option selected, which when clicked on triggers the Cell C Confirmation Page, qualifies as the 'call-to-action' and did not display any pricing information. The tester was prompted to complete certain steps in order to claim credits, however, was lured into a totally unrelated subscription service.
4. In the second test, the tester was engaging with a video and followed instructions to access information/content on blackhead treatments. They were directed to the MTN NIUSSD Confirmation Step for a totally unrelated subscription service. The initial offer stated that it was 'FREE' but there was a charge of R7.00 per day for the service. The pop-up notification, which when clicked on triggers the MTN NIUSSD Confirmation Step and therefore qualifies as the 'call-to-action', did not display any pricing information. There was also no subscription service landing page as required for a service on the MTN network. The tester was prompted to complete certain steps in order to unlock content, however, was lured into a totally unrelated subscription service.

5. In the final test, the tester was browsing on a site and followed instructions to confirm that they were not a robot. They were directed to the MTN NIUSSD Confirmation Step for a totally unrelated subscription service. The offer stated that it was 'FREE' but there was a charge of R7.00 per day for the service. The pop-up notification, which when clicked on triggers the MTN NIUSSD Confirmation Step and therefore qualifies as the 'call-to-action', did not display any pricing information. There is no subscription service landing page as required for a service on the MTN network. The tester was prompted to complete certain steps in order to unlock content, however, was lured into a totally unrelated subscription service.
 6. Based on the foregoing, the Complainant alleges that the Member has breached the following clauses of the WASPA Code of Conduct: 5.1, 5.4, 5.5, 8.8, 12.1, and 23A.5(a)(b)(c)(d).
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Member's response

7. The Member initially stated that they had no live campaigns on the Cell C network. They acknowledged the other campaigns on the MTN network and that they were not compliant with the WASPA Code of Conduct.
 8. The Member advised that they had been using affiliates to promote the Gamesville subscription service before opting to only use in-house promotional campaigns. The non-compliant campaigns were therefore run by an affiliate at the time when the testing took place.
 9. The Member only became a WASPA member on 27 June 2024 and were notified of this complaint on that same day. The Member indicated that had they been given prior notification they would have remedied the situation.
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Complainant's further submissions

10. The Complainant stated in response that at the time that the test was conducted on the Cell C network, advertising led the tester to a Cell C confirmation page referencing the Member by name, as well as the service complained of.
11. If the service was still being set up on Cell C then it should have been placed in a testing environment and should not have been accessible to the public.
12. Furthermore, the subscription acquisition flow had to be corrected to ensure that it complied with the requirements as set out in the WASPA Code of Conduct.

13. The Complainant understood from the Member's response that an affiliate marketing company was responsible for the non-compliant marketing of the service, which had been stopped on or about 27 May 2024. However, during the period that the tests were conducted, the marketing activities identified were non-compliant and the Member remains responsible for the acts of their third-party suppliers. The Complainant referred to clause 3.5 to clause 3.7 of the Code in this regard.
 14. The Complainant also stated that besides the non-compliant marketing of the service, the Member had to ensure that they aligned with the requirements of MTN, which prescribes a mandatory landing page for all services offered on its network. The Member must also ensure that all pricing requirements are adhered to during the subscription acquisition flow.
 15. The Complainant advised that the complaint had originally been assigned to another member as they were the closest identifiable member at the time of lodging the complaint. However, after the Member became a member of WASPA the complaint was re-assigned to it. The Complainant noted that the Member was only alerted to the non-compliance at that time and could not have taken remedial action earlier.
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Member's further submissions

16. The Member provided a further response where they stated that the promotional campaign appearing on the Cell C network had been automatically included as part of the integration with the aggregator, which was a misunderstanding.
17. They confirmed that no customers were actually charged as part of the integration since a prerequisite of charging is that the Member pushes the billing request to the aggregator. Since the Member had not known they were live on the Cell C network, they had not pushed any billing requests. Moving forward, the aggregator would be stopping the integration with Cell C.
18. The Member also stated that there would not be any lack of adherence to any of the operator requirements as they would be running all their campaigns in-house from premium traffic sources, which would put the Member in complete control of their own advertising strategy and techniques. Affiliate traffic was used purely for testing purposes due to the technical issues that the Member was facing at the time.
19. The Member reiterated that the complaints referenced were in no way a result of deliberate ill-intended practices, but rather misunderstandings and temporary investigatory efforts. With respect to the Cell C case, there were no attempts to bill any

customers. The Member embodies a clean reputation, one of trust, transparency, and ethical business dealings, and had never been faced with complaints of this nature before in any of the countries they operate in.

Sections of the Code considered

20. Clauses 5.1, 5.4, 5.5, 8.8, 12.1, and 23A.5(a)(b)(c)(d) of the WASPA Code of Conduct were cited in the formal complaint and considered.
 21. No other relevant clauses were assigned by WASPA.
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Decision

22. After reviewing the complaint and the evidence presented by the Complainant, as well as the Member's acknowledgement that these campaigns were non-compliant, I have made the following findings:
 - 22.1 I am satisfied with the Member's explanation that some of these non-compliant campaigns were conducted through third party service providers and that this had been stopped and taken in-house.
 - 22.2 However, the Complainant is correct that the Member remains responsible for any breach of the WASPA Code by such third party service providers, as per clause 3.7 of the Code, while these campaigns were live.
 - 22.3 There is no evidence that the Member was able to provide the promoted content and so there has been a breach of clause 5.1 of the Code for which the Member is responsible, and the complaint is upheld in this regard.
 - 22.4 Dishonest promotional campaigns of this nature which make use of false misrepresentations as to the availability of certain content fall short of the standard of honest and fair dealings expected of members. There has been a breach of clause 5.4 of the WASPA Code for which the Member is responsible, and the complaint is upheld in this regard.
 - 22.5 The promotional campaigns and the promotional flows that were referred to in the complaint for the Member's subscription service are clearly misleading or likely to mislead prospective customers by inaccuracy, ambiguity and omission. On each occasion, the tester, as a prospective customer, was reasonably led to believe that they would be able to engage with different and/or free content and they

were then instead directed to the Member's subscription service that provided completely different content to subscribers, and was not for free. There has been a breach of clause 5.5 of the WASPA Code for which the Member is responsible, and the complaint is upheld in this regard.

- 22.6 The content that was promoted was not the same content that is provided to subscribers as part of the promoted subscription service. The promotional pages and pop-ups, and the resultant promotional flow, mislead consumers into believing that they are for an entirely different service or for different content. There has been a breach of clause 8.8 of the Code for which the Member is responsible, and the complaint is upheld in this regard.
- 22.7 The Member's Gamesville subscription service is not a free service. I agree with the Complainant's submission that the pages/pop-ups presented, which when clicked on directly triggers the relevant confirmation page, qualify as the relevant 'call-to-action'. No pricing information was displayed on or with these pages or pop-ups. There has been a breach of clause 12.1 of the WASPA Code for which the Member is responsible, and the complaint is upheld in this regard.
- 22.8 The pages and pop-ups used for these promotional campaigns do not direct consumers to a compliant landing page before the subscription confirmation step. In particular, there is no pricing information for the service, there is no link to the terms and conditions for the service; they contain misleading call-to-action buttons; and they mislead by presenting examples of content not available as part of the service. There has been a breach of clause 23A.5(a)(b)(c) and (d) of the WASPA Code for which the Member is responsible, and the complaint is upheld in this regard.
23. To summarize my findings, the Member is responsible for the breach of clauses 5.1, 5.4, 5.5, 8.8, 12.1, and 23A.5 of the Code and the complaint is accordingly upheld.
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Sanctions

24. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
- 24.1 any previous successful complaints made against the Member in the past three years;
- 24.2 any previous successful complaints of a similar nature;
- 24.3 the nature and severity of the breach; and

- 24.4 any efforts made by the Member to resolve the matter.
25. I have also taken account of the precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions when determining appropriate sanctions.
26. No previous complaints have been made against the Member.
27. The Member has taken responsibility for the non-compliant campaigns and it has advised that it will not be using third party service providers to promote the service in future.
28. These factors have been taken into account in mitigation.
29. However the relevant breaches of the Code relate to the misleading or deceptive promotion of a subscription service, which is of a serious nature, and poses a substantial risk of harm to consumers. There was also substantial non-compliance with the required subscription flows, confirmation pages and provision of pricing information.
30. Based on the nature and severity of the various breaches of the WASPA Code of Conduct in this complaint, for which the Member is responsible, but also taking into account the aforementioned mitigating factors, the Member is fined the following amounts:
- 30.1 R2 500 for breach of clause 5.1;
- 30.2 R2 500 for breach of clause 5.4;
- 30.3 R2 500 for breach of clause 5.5;
- 30.4 R2 500 for breach of clause 8.8;
- 30.5 R2 500 for breach of clause 12.1; and
- 30.6 R2 500 for breach of clause 23.A.5.
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