



Report of the Adjudicator

Complaint number	#60329
Cited WASPA members	Whole Way Mobile Services
Notifiable WASPA members	Not applicable
Source of the complaint	WASPA Compliance Department
Complaint short description	Misleading advertising
Date complaint lodged	2024-07-09
Date of alleged breach	2024-06-13 and 2024-06-14
Applicable version of the Code	17.7
Clauses of the Code cited	5.4, 5.5, 8.2, 8.7, 8.9, and 12.1
Related complaints considered	Not applicable
Fines imposed	R25 000.00 fine for breaches of clauses 5.4, 5.5, 8.2, 8.7, 8.9, and 12.1. Suspended for six months, triggered by any other breach of these clauses.
Other sanctions	Not applicable
Is this report notable?	Not notable
Summary of notability	Not applicable

Initial complaint

1. Whilst monitoring, testing and conducting compliance checks on wireless application services, the WASPA Compliance Department (“the Complainant”) identified a service which they believed did not comply with the requirements of the WASPA Code of Conduct (“the Code”).
2. A WASPA tester (“the tester”) conducted three manual tests on the Vodacom network.

Test 1

3. On 2024-06-14, the tester was browsing on a website with the following URL: https://napkforpc.com/apk/com.cdsft.nagiramovies.new_nigeria_movie/. The tester clicked on a banner advertisement with the word ‘Continue’.
4. The tester was directed directly to the confirmation page for a subscription service called ‘Winsports’ charged at R10.00 per day, first day free of charge.
5. In summary, the tester clicked on a banner advertisement which triggered the confirmation step, and therefore qualifies as the ‘Call-to-Action’. There was no pricing information displayed on the banner advertisement as required. This resulted in a single opt-in flow.

Test 2

6. On 2024-06-14, the tester was browsing a website at the following URL: <https://wappgroups.com/ukraine-whatsapp-group-links/>. While on the site, the tester clicked on a banner advertisement labelled ‘Watch’.
7. The tester was then redirected directly to a confirmation page for a subscription service named ‘Winsports’, which is charged at R10.00 per day, with the first day being free of charge.
8. The tester chose to terminate the test at this point due to breaches of the Code observed in the subscription acquisition process.
9. In summary, the tester's click on the banner advertisement triggered a confirmation step, thus qualifying as the ‘Call-to-Action’. There was no pricing information displayed on the banner advertisement, as required, resulting in a single opt-in flow.

Test 3

10. On 2024-06-13, the tester visited the Pixiz website, clicked on a 'View More' banner advertisement without any pricing information, and was redirected to a confirmation page for a subscription service called 'Winsports' charged at R10.00 per day, with the first day supposedly free.
 11. After clicking 'Accept,' the tester was subscribed to the service, received a Welcome Message, and noticed R10.00 was deducted from their airtime balance despite the free day offer.
 12. The tester then used Vodacom's self-help USSD portal to unsubscribe and received confirmation. The test revealed issues with the subscription flow, including a lack of pricing information and a misleading free day offer.
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Member's response

13. The Member highlighted the following proactive measures they took once becoming aware of the alleged breaches of the Code:
 - 13.1. The Member detected non-compliant banners on 2024-06-11, and immediately took steps to address the issue. A technical meeting was held on 2024-06-14, where it was determined that improper website configurations by some webmasters had caused the problem. The Member alleged that they promptly excluded these sites from their advertising campaigns. By 2024-06-21, an exclusion list had been implemented to avoid advertisement on problematic sites.
 - 13.2. The Member established a daily monitoring system to review MCP tickets and proactively exclude non-compliant website pages from their Google campaigns.
 - 13.3. Internal communications showed that problematic domains were excluded within hours of ticket receipt. Evidence indicated that while some advertisements were incorrectly displayed due to responsive advertisement issues, most of the Member's advertisements remained compliant. The Member also provided documentation of their campaign configurations and proactive exclusions.
 - 13.4. Impact assessments revealed minimal harm, as the affected pages were low-traffic fringe websites. The Member demonstrated that by the time the complaint was issued, no advertisements were placed on the problematic sites. They also monitored their advertisements using third-party services like EVINA and Empello.

14. The Member emphasised its commitment to clean traffic and maintaining advertisement compliance. They argued that other content providers faced similar issues with the same sites, showing they had acted diligently to prevent non-compliance. The Member also claimed no harm was done to consumers and requested the withdrawal of the formal complaint based on their proactive measures and adherence to advertising standards.
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Complainant's response

15. The Complainant provided a detailed response highlighting the non-compliance of the Member's advertising with the Code's requirements.
 16. They first acknowledged the functionality of Google Responsive Ads and pointed out that the absence of pricing information in three test instances was the basis of their complaint. To verify this, they conducted a manual video test to ensure accurate representation of the advertisements. The test confirmed that no pricing information appeared on the 'Winsports' advertisement, corroborating the findings from automated discovery tools. Other advertisements on the page rendered correctly, suggesting that the webpage could display advertisements properly.
 17. The Complainant also noted the Member's admission of non-compliant banners and acknowledged the subsequent remedial actions, such as implementing an exclusion list and daily monitoring. However, they emphasised that at the time of testing, the service breached the Code's provisions. They also highlighted that the Member is obligated to ensure compliance, even when using third-party suppliers like Google Ads. The Complainant referenced specific clauses in the Code that hold members liable for breaches by their affiliates or subcontractors unless reasonable steps are taken to ensure compliance.
 18. Furthermore, while appreciating the corrective measures, the Complainant argued that these could only serve as mitigating factors rather than absolving the Member of responsibility. The basis of the complaint remained focused on the three specific instances where the 'Winsports' advertisements failed to display pricing information. They reiterated that even though similar issues might exist with other members, each breach is addressed according to procedures.
 19. In conclusion, the Complainant maintained that the Member's service breached the Code at the time of testing and that the complaint remains valid, despite any subsequent remedial actions.
 20. They also noted unresolved issues, such as billing during the free trial period, which still needed addressing.
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Member's further response

21. In their further response to the initial complaint and WASPA's comments, the Member clarified several points to defend their position:
 - 21.1. The Member reiterated that while some advertisements were not displaying correctly on the webpage, other advertisements from the same campaign were functioning as intended. This indicated a technical failure on the webpage's end, not with the advertisements themselves. The Member argued that they have always created campaigns that comply with WASPA standards and have proactively blocked malfunctioning pages to prevent any recurrence.
 - 21.2. The Member expressed concern that WASPA's response showed a lack of understanding of digital advertising and how Google advertisements function. They explained that Google advertisements are generally reliable, and their responsibility was to ensure advertisement compliance and trust Google's algorithm to display them correctly. The Member believed they were being unfairly penalised for an issue stemming from technical glitches rather than their advertising practices.
 - 21.3. The Member acknowledged that there were technical issues identified with non-compliant banners on certain fringe webpages. However, they emphasised that these issues occur rarely, affecting only a small fraction of impressions, and typically on low-traffic pages. They clarified that they had configured their Google campaigns correctly, with all necessary information displayed, and took measures to exclude problematic pages once detected.
 - 21.4. Addressing WASPA's point about liability under clauses 3.5, 3.6, and 3.7 of the Code of Conduct, the Member argued that they have taken reasonable steps to ensure compliance. They emphasised that these clauses were mainly introduced to address issues with affiliate marketing, where affiliates could manipulate advertisement content. In contrast, their advertisements on Google were directly controlled by them and displayed exactly as created.
 - 21.5. The Member highlighted their proactive efforts to address any issues beyond their control, including working with media monitoring tools, identifying problematic pages, creating exclusion lists, and ensuring there was no harm to users. They argued that these proactive measures should be considered mitigating factors in determining any liability for breaches of the Code.
 - 21.6. While agreeing with WASPA's assertion that they have a positive obligation to ensure their advertisements comply with the Code, the Member contended that Google had done its part correctly and that the issue lay with the webpages not being optimised or having technical glitches. They provided an updated list of excluded websites to show their ongoing efforts to clean up the market.

- 21.7. The Member stressed their commitment to consumer protection and noted that the fringe webpages where issues were detected received minimal engagement. They argued that any potential harm was negligible, as the pages involved had no clicks other than bots from monitoring tools.
- 21.8. The Member addressed the issue of billing during the free trial period, clarifying that billing was controlled by the operator (Vodacom) and not by them. They explained that the tester may have encountered charges due to multiple tests of the service and highlighted that Vodacom's business rules govern such situations.
- 21.9. The Member emphasised their commitment to maintaining high standards in their advertising practices and their decision not to engage with affiliates to maintain full control over their banners. They offered to share detailed information with adjudicators and even provide training to testers for a better understanding of their practices and rules.

Sections of the Code considered

22. The following sections of the Code are considered, and read as follows:

- 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.
- 8.2. For a subscription service, the "pricing information" consists of the word "subscription" and the cost to the customer and frequency of the billing for the service. The cost and frequency portion of the pricing information must follow the following format, with no abbreviations allowed: "RX/day", "RX per day", "RX/week", "RX per week", "RX/month", or "RX per month" (or RX.XX if the price includes cents). For services billed at an interval other than daily, weekly or monthly, the required format is "RX every [time period]", with no abbreviations permitted when specifying the time period. Examples of pricing information: "Subscription R5/week", "R1.50/day subscription", "RX every three days", "RX every two weeks". In a case where the total amount is billed in smaller increments over the subscription period, the pricing must still reflect the full price and not the incremental amounts ("R30/month" and not "6 x R5 per month").
- 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.

- 8.9. A “call-to-action” is any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service. In the case where a mobile network operator provides a two-stage confirmation process for the service, the first page of this confirmation process may be considered to be the call-to-action.
- 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.
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Decision

23. The lack of consistent pricing information in the Member's advertisements constitutes a breach of clause 5.4 of the Code, which mandates honest and fair dealings with customers. Despite the Member's claims that technical glitches were responsible, these issues do not justify the failure to provide clear and accurate information. The Member's inability to ensure that all advertisements adhered to the required standards represents a significant lapse in transparency and fairness, undermining consumer trust and preventing informed decision-making. Additionally, advertising a “first day free” offer while later charging a fee further exacerbates this breach, as it is both unfair and dishonest.
24. Clause 5.5 of the Code prohibits the dissemination of false, deceptive, or misleading information. The evidence provided by the Complainant shows that the advertisements for their service were missing essential pricing details. While the Member attributes this to technical rendering issues, the absence of accurate pricing information can mislead consumers regarding the actual cost of the service. Regardless of whether the issues arose from technical difficulties, the failure to provide correct pricing constitutes a breach of clause 5.5 of the Code. Moreover, advertising a “first day free” offer while charging a fee later is particularly misleading and deceptive. The Member is responsible for ensuring that all advertisements convey clear and honest information, irrespective of technical challenges.
25. The Member's failure to display accurate and clear pricing information in conjunction with the call-to-action constitutes breaches of Clauses 8.2, 8.9, and 12.1 of the Code. In all three tests, the banner advertisements led directly to a subscription page without showing required pricing details. The call-to-action buttons such as ‘Continue,’ ‘Watch,’ or ‘View More’ triggered the subscription process and billed consumers without a confirmation step. Additionally, the advertisements did not provide pricing information in the mandated format, such as “R5/week” or “R30/month,” leading to misleading or incomplete information. While the Member attributed these issues to technical problems with Google Ads and fringe webpages, this does not excuse the failure to comply with the Code's requirements.

26. Therefore, breaches of Clauses 8.2, 8.9, and 12.1 are established, reflecting a significant lapse in ensuring transparent and accurate pricing information essential for informed consumer decision-making.
27. Clause 8.7 of the Code requires that pricing information be clear and reflect the full retail price of the service, including VAT. The Complainant's manual video test confirmed that crucial pricing details were missing from certain advertisements. Despite the Member's acknowledgement of technical issues, the specific instances cited reveal that the advertisements were misleading due to the omission of pricing details. A reasonable consumer viewing an ad without pricing information could be misled about the service's true cost. Additionally, the "first day free" offer followed by subsequent charges misrepresents the actual cost of the service. This discrepancy constitutes a breach of clause 8.7 of the Code, as it fails to provide transparent and accurate pricing information.
28. In considering the Member's response, it is noted that they have taken several proactive measures to address the issues identified. The Member has implemented corrective actions, including the creation of an exclusion list to block problematic webpages and daily monitoring to prevent recurring issues. They have also clarified their commitment to compliance by configuring their Google Ads campaigns accurately and addressing non-compliant banners promptly. These actions demonstrate an effort to mitigate the impact of the breaches and improve their advertising practices. However, while these steps are acknowledged as positive and indicative of a commitment to better practices, they do not absolve the Member of responsibility for the breaches that occurred during the time of testing. The proactive measures, the fact that it is the Member's first offence, and that there was no further consumer harm serve as mitigating factors, but do not negate the fact that the breaches of the Code's provisions were evident.
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Sanctions

29. The Member is fined R25 000.00 for breaches of clauses 5.4, 5.5, 8.2, 8.7, 8.9, and 12.1 of the Code. This fine is suspended for a period of six months and will only be enforced if the Member commits any additional breaches of these clauses during this suspension period. The Member has taken significant remedial actions, which is acknowledged through the suspension of the fine.
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