



Report of the Adjudicator

Complaint number	#60412
Cited WASPA members	NDOTO MEDIA (Membership no: 1948)
Notifiable WASPA members	None
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-Compliant Service Levels, Accuracy of services and content advertised by third parties, responsibilities of the Member
Date complaint lodged	2024-08-07
Date of alleged breach	2024-07-24
Applicable version of the Code	17.9
Clauses of the Code cited	5.4; 5.5; 8.8; 12.1 read with 8.9
Related complaints considered	53158; 57478
Fines imposed	For Breach of Clause 5.4 & 5.5 a fine imposed of R15 000.00 For Breach of Clause 8.8 a fine imposed of R 5 000.00 For Breach of Clause 12.1 & 8.9 a fine imposed of R15 000.00
Other sanctions	n/a
Is this report notable?	Not notable

Summary of notability	n/a
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Initial complaint

1. This complaint was lodged by the WASPA Compliance Department after tests conducted by the complainant on the Member's system.
2. The tester conducted a test on 24 July 2024 on the Telkom network.
 - 2.1 The tester was browsing on Twitter (X) and clicked on a link titled high revenue network.
 - 2.2 The tester was directed to a page that that requested confirmation of age over 18 with the enticement to 'Answer a few questions, Then Earn Big...' The tester accepted the request by clicking on a green Yes button.
 - 2.3 Whereafter, the tester was directed to a page that enticed with "Would you make a great Career online And Become a Millionaire by 2024?" included a request to disclose the tester's gender.
 - 2.4 The tester selected on her gender button with the expectation to continue with the free online test, but was directed to a confirmation page for a subscription service called 'Sports and Beyond' charged at R3.00 per day.
3. 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 'Sports and Beyond' subscription service.
4. In Summary:
 - a. The tester was engaging with a free online test and followed the prompts with the expectation to get information on how to make money on the internet but was directed to the Telkom Confirmation Page for a totally unrelated subscription service.
 - b. The option selected (Woman), which when clicked on triggers the Telkom Confirmation Page, and therefore qualifies as the 'call-to-action', does not display any pricing information.
 - c. The tester was prompted to complete certain steps in order to complete a free online test, however, was lured into a totally unrelated subscription service.

5. The Complainant provided screenshots showing the results of each test conducted.
 6. As such, the Member is alleged to be in breach of clauses 5.4; 5.5; 8.8; 12.1; read together with clause 8.9 of the WASPA Code of Conduct.
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Member's response

7. Screenshot of a conversation with a client, supplier, affiliate or sub-contractor and advising the traffic is not live at that moment in time.
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Complainant's response

8. The Complainant noted the Member's response and requested confirmation that the response submitted should be construed as Ndoto Media's formal response to be considered during adjudication.
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Member's further response

9. The Respondent noted in further correspondence:
 - 9.1 The complaint was reviewed and would like to inform the Complainant that the publisher responsible for their marketing has ceased traffic from that source;
 - 9.2 The publisher is investigating the complaint internally to ensure a breach of this nature does not occur again.
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Sections of the Code considered

10. The Complainant cited the following clauses of the WASPA Code of Conduct as the basis for their complaint

Service levels

- 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.

Accuracy of services and content advertised

- 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.

Display of pricing information

- 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.

Read with Clause 8.9:

Definition of call-to-action

- 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.
- 8.9A. A call-to-action must require an explicit action by the consumer in order to trigger the confirmation step. The call-to-action may not be automatically triggered such that the consumer reaches the confirmation step without taking any action.

Decision

11. After carefully reviewing the complaint and the brief response from the Member, and on the basis of the evidence presented by the Complainant, I have made the following findings.
12. In review:
- 12.1 To note:
- 12.1.1 Clause 3 of the Code of Conduct under heads of *Services provided or marketed by third parties*, responsibilities of the Member in relation to any client, supplier, affiliate or sub-contractor is clearly defined and a positive obligation rest on the Member to ensure a client, supplier, affiliate or sub-contractor provides and markets those services in a manner consistent with the requirements of this Code of Conduct.

- 12.1.2 A Member is liable for any breaches of the Code of Conduct resulting from services offered or marketed by a client, supplier, affiliate or sub-contractor if that party is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of the Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches, no supporting submissions has been made for consideration of mitigating liability.
- 12.2 The submissions made and evidence provided by the Complainant has not been disputed nor denied by the Member, remedial and corrective steps were only taken after the fact to address the misleading marketing of their services.
- 12.3 I am satisfied from the submissions made and evidence presented by the Complainant that the service that was activated indicated to the customer that the service was a free service, only to be directed to an unrelated subscription service. Therefore, the information that was disseminated by the Member was false and was likely to mislead users by ambiguity and omission. There is no evidence to suggest that any other person was responsible for disseminating the information relating to the Member's service or that information about the service was disseminated without the Member's knowledge. I am also satisfied that it has been established that the Member did not act honestly and fairly in its dealings with the customer (in this case the Complainant's tester), therefore the complaint in terms of Clause 5.4 and 5.5 of the WASPA Code of Conduct is upheld.
- 12.4 The advertising and subscription acquisition flow would mislead consumers into believing that it is for an entirely different service or for different content not aligned to the browser/customers intent, that is not the case in in this instance as the intent of the Complainant's tester was to gain information on making money on the internet and was directed to a sports subscription service. The Member has been found in breach of clause 8.8 of the WASPA Code of Conduct and the complaint is upheld.
- 12.5 It is clear from a simple review of the "Sports & Beyond" landing page that there is pricing information displayed however the pricing display is ambiguous and does not comply with the prescribed opt-in flow that requires explicit action by the consumer in order to trigger the confirmation step, therefore the Member is in breach of clause 12.1 read together with Clause 8.9 of the WASPA Code of Conduct and the complaint therefore upheld.

13. The Member is found to be in breach of clauses 5.4; 5.5; 8.8 and 12.1 read together with Clause 8.9 of the WASPA Code of Conduct

Sanctions

- 14. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
 - (a) any previous successful complaints made against the Member in the past three years;
 - (b) any previous successful complaints of a similar nature;
 - (c) the nature and severity of the breach; and
 - (d) any efforts made by the Member to resolve the matter.

 - 15. I have also taken account previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions when determining appropriate sanctions.

 - 16. No previous complaints of this nature have been made against the Member in the preceding 3 years and thus taken into consideration as a mitigating factor.

 - 17. Minimal substantiated effort has been presented and or made by the Member to resolve or rectify this matter.

 - 18. The Member failed to provide mitigating support that a client, supplier, affiliate or sub-contractor (the third party) that provided and marketed the services has been instructed and cautioned to ensure the service is provided in a manner consistent with the requirements of the Code of Conduct.

 - 19. Based on the aforementioned, the following sanctions are imposed:

19.1	For Breach of Clause 5.4 & 5.5	a fine imposed of R15 000.00
19.2	For Breach of Clause 8.8	a fine imposed of R 5 000.00
19.3	For Breach of Clause 12.1 & 8.9	a fine imposed of R15 000.00
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Matters referred back to WASPA

20. None noted.
