



## Report of the Adjudicator

Complaint number	#60413
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; and 15.4; 15.5
Related complaints considered	59472; 57366
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 R10 000.00 For Breach of Clause 15.4 and 15.5 a fine imposed of R10 000.00
Other sanctions	n/a
Is this report	Not notable

notable?	
Summary of notability	n/a

---

## 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 Instagram and clicked on a link titled high revenue network.
  - 2.2 The tester was directed to a page that indicated a rand value winning that required answering of 7 questions to take the cash prize indicated and the time that would be required to complete the survey.
  - 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 'Cash Hub 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 'Cash Hub subscription service.
4. In Summary:
  - a. The tester was engaging with a page that stated that he/she would win money if they completed a survey and duly followed the prompts 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 a survey/free online test in order to claim a cash reward, however, was lured into a totally unrelated subscription service.
  - d. It was stated that the tester had already won a cash prize and merely had to complete the survey to claim it. However, it appears that they first need to subscribe to the service in order to claim the existing reward which is a breach of

Clause 15.4. Alternatively, if there is no existing prize/reward, then the member is in breach of Clauses 5.4 and 5.5.

- e. A breach of Clause 15.5 applies in both scenarios, since irrespective of whether the tester is being offered a guaranteed prize/gift, or just a change of a prize/gift as an incentive, it is not clearly communicated or advertised that it is dependent on a subscription service being activated.
  5. The Complainant provided screenshots showing each landing page.
  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 and clauses 15.4; 15.5 of the WASPA Code of Conduct.
- 

### **Member's response**

7. The Member thanked the Compliance department for bringing the concerns regarding to the service to their attention, and affirmed that the concerns are not taken lightly.
8. The Member acknowledged that the test revealed a user journey unintentionally misleading users into believing they had won a cash prize and that only a survey is required to claim the prize money. The intention was listed as providing users with an interactive experience.
9. The Member admitted that requiring users to subscribe to a service to claim a supposed reward is in breach of Clause 15.4, and subsequently apologised for this oversight and claimed that the oversight was not in the Member's direct control.
10. The member further stated the publisher that is dealing with their marketing has been alerted and instructed to review the advertising content and user flows to ensure that all promotions are clear and transparent moving forward.
11. An undertaking was further communicated to ensure that any incentives tied to subscription services are to be communicated with the utmost clarity, adhering to Clause 15.5.
12. Furthermore, the Member alluded to the understanding that pricing information must be displayed clearly adjacent to any call-to-action, and will alert the publisher who is in charge of the preparation of the banner/flow without their knowledge to ensure that pricing information is always prominently displayed before any subscription action is confirmed.
13. The Member undertook in future they will implement additional checks to ensure compliance with Clause 12.1 on all their digital assets.

14. The Member remarked regrettably that the content presented in the advertisement did not fully align with the actual service provided. This was communicated to their publisher to revise the content of their promotional material to ensure that it accurately reflects the service and its terms.
  15. Additionally, the Member undertook to ensure their publishers check and ascertain that all advertisements and landing pages meet the requirements outlined in Clause 8.8, ensuring that there is no disconnect between the promoted content and the service itself.
  16. Remedial Actions proposed by the Member is to take immediate corrective action and that the Member's team has already alerted the publisher about the complaint and shared the relevant findings.
  17. The Member noted their sincere apologies for any inconvenience caused and commitment to ensuring full compliance with WASPA Code of Conduct.
- 

### **Complainant's response**

18. The Complainant noted the Member's response and draw the Member's attention to the clauses of the Code of Conduct making specific reference to the Member's responsibility to ensure:
  - 18.1 that any client, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by the Code of Conduct, is aware of the requirements of this Code of Conduct
  - 18.2 that any client, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of the Code of Conduct.
19. And to note, the 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 this Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches.
20. The Complainant noted the Member's acknowledgement of non-compliance and/or breach of the Code of Conduct and noted steps taken to address the various beaches but

reiterated the Member's liability for the breaches occasioned or facilitated by their third-party marketing suppliers.

---

## **Member's further response**

21. The Respondent noted in further correspondence:
  - 21.1 Receipt of response was acknowledged and the Member appreciated the review of both the original complaint and submissions. The Member expressed their wish to address the key points raised, as well as clarify their position regarding the matters discussed as follows:
  - 21.2 Under heads of Compliance with WASPA Code of Conduct:  
The Member respect the importance of the clauses outlined in the WASPA Code of Conduct and reiterate their commitment to ensuring that all their clients, suppliers, affiliates, and subcontractors fully comply with these provisions. The Member further recognize the obligation to ensure that services are marketed and promoted in line with the requirements of the Code, and have always taken the necessary steps to reinforce this with their third-party partners.
  - 21.3 Under heads of Third-Party Supplier Marketing: While they acknowledge that the marketing efforts conducted by their third-party supplier fell short of compliance, the Member emphasized that they always take proactive steps to rectify these issues.
  - 21.4 Under heads of Acknowledgement of Breaches: The Member accept responsibility for the non-compliant promotion and the omission of pricing information. However, the Member also wished to highlight the corrective actions taken immediately upon being made aware of the breach. These actions demonstrate their intent to uphold the standards set by the WASPA Code.
  - 21.5 Under heads of Liability for Breaches: While the Member understood that liability rests with the Member for the breaches that occurred, The Member respectfully request that their diligent efforts to address and correct the breaches be taken into account as mitigating factors when determining the extent of their liability.
  - 21.6 The Member reiterated that they are actively engaged in preventing a recurrence and ensuring that all future promotions adhere strictly to the required standards.
  - 21.7 The Member further ensured the publisher is investigating the complaint internally to ensure a breach of this nature does not occur again.

---

## Sections of the Code considered

22. 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.

### General requirements

- 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".)

- 15.5. 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".)
- 

## Decision

23. After carefully reviewing the complaint and the comprehensive prompt responses from the Member, and on the basis of the evidence presented by the Complainant, I have made the following findings.
24. In review:
- 24.1 The submissions made and evidence provided by the Complainant has not been disputed nor denied by the Member, remedial and corrective steps were taken after the fact to address compliance by the Member's clients, suppliers, affiliates, and subcontractors.
- 24.2 It is common cause that even though it was the member's affiliate that ran the campaign, the member ultimately bears responsibility.
- 24.3 From the submissions made, evidence presented by the Complainant and Acknowledgement of the Member that the user journey may have misled users into believing they had won a cash prize and only needed to complete a survey to claim it only to be directed to an unrelated subscription service, I find the information 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 nor that the service was disseminated without the Member's knowledge. I am 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.
- 24.4 The advertising and subscription acquisition flow would mislead consumers into believing that they have won a cash prize and the claim requirement is to complete a short survey to be directed to a different content page not aligned to the browser/customers intent, Therefore, The Member has been found in breach of clause 8.8 of the WASPA Code of Conduct and the complaint is upheld.

- 24.5 It is clear from the submission and by admission of the Member that pricing was not transparent, and the prescribed opt-in flow that requires explicit action by the consumer was not followed and the Member undertook to ensure compliance in future, 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.
- 24.6 Breach of Clauses 15.4 and Clauses 15.5 was recognized by the Member and remedial action undertaken for future promotions. Therefore, the complaint is upheld.
25. 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 and of Clauses 15.4 and 15.5 of the WASPA Code of Conduct
- 

## Sanctions

26. 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.
27. 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.
28. 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.
29. The Member has undertaken to resolve or rectify this matter. It is to be noted no mitigating supporting correspondence has been submitted by the member.
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 R10 000.00 |
| 19.4 | For Breach of Clause 15.4 and 15.5 | a fine imposed of R10 000.00 |
-



## **Matters referred back to WASPA**

20. None noted.

---