



Report of the Adjudicator

Complaint number	#60463
Cited WASPA members	U2OPIA MOBILE / Collective Networks Membership no: 1962
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant promotion of subscription service
Date complaint lodged	2024-08-19
Date of alleged breach	2024-07-24
Applicable version of the Code	v17.7
Clauses of the Code cited	5.4, 5.5, 8.8, 12.1 read with 8.9, 15.4, and 15.5
Related complaints considered	60141; 60142
Fines imposed	Member fined following amounts: R5 000 for breach of clause 5.5; R5 000 for breach of clause 8.8; and R10 000 for breach of clause 12.1.

Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

Initial complaint

1. Whilst monitoring, testing services and conducting compliance checks of test results, the WASPA Compliance Department (“Complainant”) identified services which do not comply with the requirements as set out in the WASPA Code of Conduct (“Code”).
 2. The Complainant’s tester conducted a manual test on 24 July 2024 on the Telkom network and provided an outline of the test results, together with screenshots as evidence of various alleged breaches of the Code.
 3. While browsing on the X social media platform, the tester clicked on a link that appeared with an image related to various gaming characters.
 4. Instead of being directed to the advertised, the tester was directed to the Telkom Network Hosted Confirmation Page (NHCP) for a contact or dating subscription service called ‘Ukuthanda’, charged at R3.00 per day.
 5. The Complainant submitted further that there was no 18+ included on the promotional material for the contact and dating subscription service as required by the Code.
 6. The tester elected to stop the tests at that point.
 7. The Complainant alleges that the Member has breached the provisions of clauses 5.5, 8.8, 12.1 read with 8.9, and 20.4 of the Code.
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Member’s response

8. The Member responded to the complaint by stating that they had identified the source of this promotional campaign and had immediately paused all their active promotions through that particular source.

9. The Member provided a copy of an email that was sent to all their partners to stop all traffic on the Telkom network because of the number of complaints being received.
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Complainant's further submissions

10. The Complainant referred to clauses 3.1, 3.2, 3.5, 3.6 and 3.7 of the Code and submitted that there was a positive obligation on the Member to ensure that their third-party marketing suppliers promote and market the Member's services in accordance with the requirements of the Code.
 11. The Complainant stated that the Member needs to ensure that the marketing material used to promote their service aligns with the content that is actually provided as part of the subscription service.
 12. The Complainant also noted that the Member had not denied the non-compliant promotion and marketing of their service and had only referred to remedial and corrective steps taken to address the breaches emanating from their marketing partners. The Complainant submitted that the Member remains liable for the breaches occasioned or facilitated by their third-party marketing suppliers.
 13. The Complainant also stated that the Member had failed to address the complaint relating to the alleged breach of clause 12.1 and 20.4 of the Code.
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Member's further submissions

14. The Member submitted further that they had terminated the services of the marketing partners involved as it appeared that their mainstream content was being misused with incorrect creatives.
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Sections of the Code considered

15. Clauses 5.5, 8.8, 12.1 read with 8.9, and 20.4 of the Code were cited in the formal complaint and considered.
 16. Clauses 3.1, 3.2, 3.5, 3.6 and 3.7 of the Code were also considered.
 17. No other relevant clauses were assigned by WASPA.
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Decision

18. The Member has acknowledged that the promotional campaign that was the subject of this complaint were not compliant with the requirements of the Code.
19. It is common cause between the parties that this promotional campaign was conducted by a third-party marketing partner/supplier.
20. The Complainant has correctly stated that the Member has a positive obligation, in terms of clauses 3.6 of the Code, to ensure that such suppliers, who are not members of WASPA, market the Member's services in a manner consistent with the requirements of the Code. Clause 3.7 of the Code also states that the Member is liable for any breaches of the Code resulting from services marketed by such suppliers.
21. With regard to the specific clauses of the Code that the Complainant alleges have been breached and after carefully reviewing the complaint and supporting evidence, I have made the following findings:
 - 21.1 The promotional material found on the X social media platform includes a link provided above an image of certain iconic gaming characters. When viewed in conjunction with the nature of the service actually provided, the material and/or the presentation thereof is ambiguous and there is a reasonable likelihood that an ordinary consumer would be misled into believing that by clicking on the link they would be directed to other content, or to a product or service, relating to gaming. Instead, they are directed to an unrelated contact or dating service.
 - 21.2 The design of this promotional campaign was intentional and I am satisfied based on the evidence presented that there has been a breach of clause 5.5 of the Code for which the Member is responsible. The complaint is accordingly upheld in this regard.
 - 21.3 The promotional link and image of the gaming characters presented to the prospective customer, in this case the Complainant's tester, relates to content that is clearly not the same as the service offered to subscribers to the Member's 'Ukuthanda' service, which enables the subscriber to "*make meaningful connections*".
 - 21.4 This advertising also misleads consumers into believing that it is for an entirely different service or for different content. I am satisfied that there has been a breach of clause 8.8 of the Code for which the Member is responsible, and the complaint is accordingly upheld in this regard.

- 21.5 I agree with the submission made by the Complainant that the link provided on the X web page, which triggers an automatic redirect to the Telkom Confirmation Page, qualifies as the 'call-to-action' as defined in clause 8.9 of the Code.
- 21.6 There is clearly no pricing information displayed adjacent to this 'call to action' or at all, which is in breach of the requirements of clause 12.1 of the Code. The Member is responsible for this breach and the complaint is accordingly upheld in this regard.
- 21.7 In determining whether there has been a breach of clause 20.4 of the Code, the first issue to be considered is whether the service in question was a "dating service".
- 21.8 I have considered the screenshot provided by the Complainant of the Telkom confirmation page and it is not apparent that the Member's "Ukuthanda" service was, in fact, a dating service.
- 21.9 The tester also elected to stop the test process before being directed to and interacting with the promoted service.
- 21.10 Based on the foregoing, the nature of the service in question cannot be confirmed to be a dating service and I am of the view that the Complainant has not provided sufficient evidence to support a finding that there has been a breach of clause 20.4 of the Code. The complaint in this regard is dismissed.
22. To summarize my findings, the Member is found to be responsible for the breach of clauses 5.5, 8.8, and 12.1 read with 8.9 of the Code and the complaint is upheld in this regard. The complaint in respect to the alleged breach of clause 20.4 of the Code is dismissed.

Sanctions

23. When determining the appropriate sanctions to be imposed for the various breaches of the Code, the following factors must be taken into consideration:
- 23.1 Whether any previous successful complaints have been made against the Member in the past three years?
- 23.2 Whether any previous successful complaints of a similar nature have been made against the Member?
- 23.3 The nature and severity of the breach.

- 23.4 Whether any efforts were made by the Member to resolve the matter.
24. Furthermore, when considering the extent of the Member's liability for the various breaches of the Code and the appropriate sanctions to be imposed, clause 3.7 of the Code also provides that it must be considered whether the Member has demonstrated that it took reasonable steps to ensure that the marketing partners/suppliers appointed by them do market their services in a manner consistent with the requirements of the Code. If so, this will be considered as a mitigating factor when determining such sanctions.
25. Two other complaints, which were lodged around the same time, have been upheld against the Member (see formal complaints 60461 and 60462). However, all of these complaints were lodged by the Complainant around the same time and the Member appears to have responded to each of them by pausing each particular non-compliant campaign and then by sending a notification to all their marketing partners to immediately stop all traffic on the Telkom network. The Member then subsequently terminated the services of the marketing partners responsible for the non-compliant marketing of their services. I am therefore satisfied that the Member has made an effort to resolve this complaint (and the others).
26. The fact that there have been a number of different non-compliant promotional campaigns used by one or more of the Member's marketing partners/suppliers does cast some doubt on whether the Member takes reasonable steps to ensure that their services are marketed by third parties in a manner consistent with the Code. I am not satisfied that the Member has demonstrated that they do.
27. The use of deceptive marketing like this and the failure to display pricing information when promoting a subscription service must be viewed in a serious light, based on the potential risk of harm to consumers. This is taken into account as an aggravating factor.
28. In light of all of the foregoing factors, the following fines are to be paid by the Member:
- 28.1 R5 000 for breach of clause 5.5 of the Code;
- 28.2 R5 000 for breach of clause 8.8 of the Code; and
- 28.3 R10 000 for breach of clause 12.1 of the Code.
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