



## Report of the Adjudicator

Complaint number	<b>#60865</b>
Cited WASPA members	<b>Hungama mobile FZLLC Membership no: 2086</b>
Notifiable WASPA members	<b>N/A</b>
Source of the complaint	<b>WASPA Compliance Department</b>
Complaint short description	<b>Misleading marketing subscription acquisition flow No access to service Incorrect pricing information format Terms and Conditions</b>
Date complaint lodged	<b>2024-10-07</b>
Date of alleged breach	<b>August and September 2024</b>
Applicable version of the Code	<b>17.9</b>
Clauses of the Code cited	<b>5.1, 5.4, 5.5, 5.6A, 5.8, 5.11, 5.11A, 8.2 read with 12.1 and 12.2, 8.8, 12.5(a) 15.4</b>
Related complaints considered	<b>N/A</b>
Fines imposed	<p><b>The member breached clauses 5.1, 5.4, 5.5, 5.6A, 5.8, 5.11, 5.11A, 8.2 read with 12.1 and 12.2, 8.8, 12.5(a) 15.4 of the code.</b></p> <p><b>Accordingly, I fine the Member:</b></p> <p><b>a) R 10 000.00 for a breach of clauses 5.1, 5.4, 5.5 and 8.8;</b>  <b>b) R 10 000.00 for a breach of clauses 5.6A, 5.11 and 5.11A ;</b></p>

	<p>c) R 10 000.00 for a breach of clauses 5.8 and 12.5;  d) R 5000.00 for a breach of clause 15.4;  e) R 5000.00 for a breach of clause 8.2</p> <p>payable to WASPA within 7 days of receipt of this adjudication.</p>
Other sanctions	<b>The Member is ordered to stop provision of the service in question and only continue to provide it again once all of the breached clauses have been rectified.</b>
Is this report notable?	<b>Not Notable</b>
Summary of notability	<b>N/A</b>

## 1. Initial complaint

1.1 This complaint was lodged by the complainant on 17 October 2024, and the member was notified of the complaint by the WASPA Secretariat on 21 October 2024. The member however failed to respond in the time frame provided and the case was assigned to adjudication

1.2 The complainant included both comprehensive notes of its examination of the member's service, as well as a video recording of the examination in its formal complaint. The report is comprehensive but can be summarised as follows:

1.2.1 On or about the 13th of August 2024 a test was conducted on the MTN network. The tester was browsing on a website that included the following information:

*"FREE DATA Get 100GB free internet for all following networks here. Get 100GB for free from here you will not get your data without subscribing to offer..."*

1.2.2 The tester then clicked on the 'Get 100GB for free from here' button and was directed to a landing page for a subscription service called 'Hungama Play' charged at R5.00 per day. The tester clicked on the blue 'Subscribe' button and was directed to a MTN confirmation page. The tester elected to stop the test at this point as the complainant believed there were several breaches of the WASPA Code of Conduct ("the code") at this stage, during the subscription acquisition flow for the 'Hungama Play' subscription service.

- 1.2.3 In summary the complainant believes the various breaches alleged in this adjudication occurred because of the following:
- 1.2.3.1 The tester was engaging with a page offering FREE data, however, was required to subscribe to an offer (subscription service) to claim the 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.
  - 1.2.3.2 The promotion material that the tester engaged with – FREE 100GB data – and the actual content of the subscription service do not align.
  - 1.2.3.3 The pricing information on the landing page is not in the correct format.
  - 1.2.3.4 Upon further review, the terms and conditions of the service do not comply with the provisions of the code as well and the complainant believes there are various breaches of the code as a result of this.
- 1.2.4 The complainant then decided to conduct manual tests in order to determine what content was provided as part of the subscription service, and whether there was any incentive, reward or prize (benefit) once subscribed, as promoted in the marketing material. They could not recreate the test using the marketing material source, as it directed to a different service, however, they used the URL from the first test case to follow the procedure from the landing page onwards as part of the investigation.
- 1.2.5 The first manual test took place on 19 September 2024 and, in summary, after following the subscription acquisition flow, the tester was ultimately directed to a blank page that was buffering/loading for some time. The tester was not directed to the service to access the content and there was no incentive, reward or prize (benefit) once subscribed (which happened as the tester checked that subscription was active and money had been deducted from its airtime balance).
- 1.2.6 A second manual test was then conducted on 26 September 2024 in order to confirm the findings of the first manual test. While this time, the tester was able to access the home page of the App, the tester was unable to access any of the content.
- 1.2.7 The result of these 2 further manual tests are such that, on top of the other breaches that the complainant had already identified, the complainant also added the breaches of 5.1 and 5.6A of the code as a result of the lack of information on how to access the services as well as the inability to actually provide the services.
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## 2. Member's response

N/A

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## 3. Complainant's response

N/A

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## 4. Member's further response

N/A

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## 5. Sections of the Code considered

*5.1 As the conduct complained of was prevalent took prior to and up to 26 September 2024, version 17.9 of the WASPA Code of Conduct applies to this complaint.*

*5.2 It is alleged that the member has infringed clauses **5.1, 5.4, 5.5, 5.6A, 5.8, 5.11, 5.11A, 8.2 read with 12.1 and 12.2, 8.8, 12.5(a) 15.4**, of the code. The clauses read as follows:*

*5.1. Members must not offer or promise or charge for services that they are unable to provide.*

*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.*

*5.6A. Members must ensure that customers have ready access to information on how to access and use services.*

*5.8. The full terms and conditions for any service provided by a member must contain: (a) the registered company name of the WASPA member providing the service; (b) a customer support number; (c) unsubscribe instructions (for subscription services); (d) any handset compatibility requirements for the service; (e) an indication that network fees may apply; (f) an indication of how billing errors are handled; (g) a statement that the service must only be used with the permission of the bill-payer (for paid services); (i) the following statement: "[member name] is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. [member name] may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint.*

WASPA web site: [www.waspa.org.xn--za-02t](http://www.waspa.org.xn--za-02t). (j) a statement that the service must not be used: (i) to intentionally engage in illegal conduct, (ii) to knowingly create, store or disseminate any illegal content, (iii) to knowingly infringe copyright, (iv) to knowingly infringe any intellectual property rights, or (v) to send spam or promote the sending of spam. (k) a statement that the member has the right to suspend or terminate the services of any customer who does not comply with these terms and conditions or any other related contractual obligations, and; (l) a statement that the member has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.

**5.11.** Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to. (Example: support should not be limited to email if a significant number of customers do not have access to email).

**5.11A.** Customer support instructions in advertising and communications must be sufficiently clear that a customer can easily follow them to obtain support.

**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”).

• Read with 12.1 and 12.2

**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.

**12.2.** There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated. It must not be a requirement that the viewer of an advert has additional software installed in order to see pricing information in the advert.

**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.

**12.5.** *The minimum terms and conditions displayed on any web page must include at least the following information: (a) a customer support number or customer support instructions...*

**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".)*

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## **6. Decision**

6.1 Having reviewed the complaint, I have reached the conclusions set out below wherein I deal with the relevant clauses of the code in order.

### Clause 5.1

6.2 Based on the manual tests, it is evident that the member was unable to provide any working service and they also did not offer the free data promised. It was clear that they also charged for the subscription.

6.3 Accordingly, I find a breach of this clause.

### Clause 5.4

6.4 Based on the evidence provided by the complainant and without any response or evidence to the contrary offered up by the member, it can only be found that the issues and problems occasioned in this matter amount to dishonest and unfair dealings with customers.

6.5 Accordingly, I find a breach of this clause.

### Clause 5.5

6.6 Again, based on the evidence provided by the complainant and without any response or evidence to the contrary offered up by the member, it can only be found that the incorrect information offered up by the member was knowingly false, deceptive and inaccurate.

6.7 Accordingly, I find a breach of this clause

### Clause 5.6A

6.8 Based on the manual tests conducted by the complainant, it could not be verified whether any incentives, prizes or rewards (benefits) formed part of the service offering, nor was any service available or accessible. Based on this and without rebuttal from the member, it can only be found that *customers* do not have ready access to information on how to access and use the services.

6.9 Accordingly, I find a breach of clause 5.6A.

Clause 5.8

6.10 Based on the video evidence provided by the complainant, the Terms and Conditions provided by the member for the service are woefully insufficient and contain none of the prerequisites stipulated in clause 5.8 of the code.

6.11 Accordingly, I find a breach of this clause.

Clause 5.11

6.12 Based on the video and documentary evidence provided by the complainant there was no clear customer support provided, let alone customer support that is *“easily available, and must not be limited to a medium that the customer is unlikely to have access to”*.

6.13 Accordingly, I find a breach of this clause.

Clause 5.11A

6.14 Based on the video and documentary evidence provided by the complainant there were no clear customer support instructions in the advertising and communications that would enable a customer to easily follow to obtain support.

6.15 Accordingly, I find a breach of this clause.

Clause 8.2 (read with 12.1 and 12.2)

6.15 In terms of the code 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. Whilst there is compliant pricing information on the page where the customer is asked to subscribe (confirmation page), this is not prevalent in the initial advert where there is a call-to-action.

6.16 Accordingly, I find a breach of clause 8.2.

Clause 8.8

6.16 Based on the evidence, the complainant was unable to access the subscription service and there was no “free data” available at all upon subscription. It, therefore, must be found that the content promoted in advertising was not the same as was provided to the customer as part of the advertised service.

6.17 Accordingly, I find a breach of this clause.

#### Clause 12.5

6.18 As previously stated, the Terms and Conditions were woefully inadequate for this service and on no web page as part of the service was there any customer support number or customer support instructions.

6.19 Accordingly, I find a breach of this clause.

#### Clause 15.4

6.20 Based on the words contained in the call-to-action including “*you will not get your data without subscribing to offer...*”, the member has required the customer to join a subscription in order to claim an existing reward.

6.21 Accordingly, I find a breach of this clause.

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## 7. Sanctions

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct and intent of the member in the form of any prior contraventions of the code and any mitigating or aggravating circumstances.

7.2. There have been no previous complaints issued or upheld against the member. Accordingly, this would need to be considered mitigatory in nature.

7.3 Regarding aggravating factors, the fact that the member did not respond at all when this formal complaint was sent would have to be considered somewhat aggravating in nature

7.4 I find that the Member breached clauses 5.1, 5.4, 5.5, 5.6A, 5.8, 5.11, 5.11A, 8.2 read with 12.1 and 12.2 8.8, 12.5(a) 15.4 of the code.

7.5 I have reviewed cases previously adjudicated on the same breaches and taken account of the fact that the mitigating factors slightly outway the aggravating factors in this case. The transgressions are, however, still sufficiently serious to warrant a fine that is sufficiently harsh to ensure that this transgression does not occur again.

7.6 Accordingly, I fine the Member:

- a) R 10 000.00 for a breach of clauses 5.1, 5.4, 5.5 and 8.8;
- b) R 10 000.00 for a breach of clauses 5.6A, 5.11 and 5.11A ;
- c) R 10 000.00 for a breach of clauses 5.8 and 12.5;
- d) R 5000.00 for a breach of clause 15.4;
- e) R 5000.00 for a breach of clause 8.2



payable to WASPA within 7 days of receipt of this adjudication.

7.7 Furthermore, the Member is ordered to rectify the breached clauses above before continuation of the actual service to customers.

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## **8. Matters referred back to WASPA**

*N/a*

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