



## Report of the Adjudicator

Complaint number	#60932
Cited WASPA members	Ndoto Media (1948)
Notifiable WASPA members	STS (0090)
Source of the complaint	WASPA Compliance Department
Complaint short description	Call-to-action Terms and conditions Pricing information
Date complaint lodged	2024-11-14
Date of alleged breach	2024-10-31 and 2024-11-01
Applicable version of the Code	17.9
Clauses of the Code cited	5.1; 5.4; 5.6A; 5.8 (b), (g), (i); 12.1 read with 8.2 and 8.9; 12.5 (a)
Related complaints considered	60412, 60413, and 60414
Fines imposed	The member is fined:  R15 000 for breach of clauses 5.1, 5.4, and 5.6A of the Code; R15 000 for breach of clauses 8.2 and 12.1 read with clause 8.9 of the Code; and R15 000 for breach of clauses 5.8 (b), (g), (i) and 12.5(a) of the Code. breach of this clause.

Other sanctions	Not applicable.
Is this report notable?	Not notable.
Summary of notability	Not applicable.

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## Initial complaint

1. Whilst monitoring, testing services, and conducting compliance checks of test results, the WASPA Compliance Department (“the complainant”) identified the member’s service below, which did not comply with the requirements of the WASPA Code of Conduct (“the Code”).

### Annexure A

2. On or about 2024-11-01, the complainant’s tester (“the tester”) used a test device to conduct a manual test on the Cell C network.
3. The complainant alleged that:
  - 3.1. The tester was browsing on a website and clicked on a banner advertisement, which directed the tester to a landing page for GameHub (“the member’s service”); the tester then entered their MSISDN and clicked on the ‘SUBSCRIBE’ button, which triggered the confirmation SMS. Therefore, the ‘SUBSCRIBE’ button qualified as the call-to-action. There was no pricing information displayed immediately adjacent to the call-to-action button. This resulted in a single opt-in flow as the tester was only presented with the pricing information on the confirmation SMS.
  - 3.2. The member’s terms and conditions of the service were not fully compliant with the Code as some provisions were omitted.
  - 3.3. The tester successfully subscribed to the member’s service, and money was deducted. The tester used the link provided in the welcome message to access the service but was directed to a page informing them that they had already subscribed to the service, without providing access to the service. With no further information provided on how to access the service, the tester was unable to access the service that they had paid for.

### Annexure B

4. On or about 2024-10-31, the Complainant’s tester (“the tester”) used a test device to conduct a manual test on the Vodacom network.
5. The complainant alleged that:
  - 5.1. The tester typed the following URL into Google Chrome: <https://sts-game.ndotomobile.com> which directed the tester to the landing page for the member’s service; the tester then entered

their MSISDN and clicked on the 'SUBSCRIBE' button, which triggered the confirmation SMS. Therefore, the 'SUBSCRIBE' button qualified as the call-to-action. There was no pricing information displayed immediately adjacent to the call-to-action button. This resulted in a single opt-in flow as the tester was only presented with the pricing information on the confirmation SMS.

- 5.2. The member's terms and conditions of the service were not fully compliant with the Code as some provisions were omitted.
  - 5.3. The tester successfully subscribed to the member's service, and money was deducted. The tester used the link provided in the welcome message to access the service but was directed to a page informing them that they had already subscribed to the service, without providing access to the service. With no further information provided on how to access the service, the tester was unable to access the service that they had paid for.
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## **Member's response**

6. The member alleged that they did not use Cell C or Vodacom as active mediums for subscriber acquisition. It was further claimed that the company neither marketed the GameHub service nor acquired any subscribers through these networks.
  7. Since operational issues were allegedly present on these networks, the member stated that they liaised with their aggregator ("STS") to cease the service's availability on Cell C immediately, ensuring testers were not redirected there.
  8. Concerning Vodacom, the member alleged that a request was made to STS to pause the service until its functionality met expected standards, and a decision was taken to actively market it.
  9. The member further alleged that subscriber acquisition was conducted exclusively through MTN.
  10. According to the member, they utilised AVM marketing on the MTN network and ran targeted digital campaigns specifically aimed at MTN subscribers.
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## **Complainant's response**

11. The complainant stated that despite the member's claims, the GameHub service was marketed, and subscribers were acquired, on both Cell C and Vodacom networks. They noted that a tester accessed an advertisement on a public website, submitted their MSISDN, and successfully subscribed to the service on both networks. This triggered confirmation messages, welcome notifications, deductions from airtime, and active subscription listings on the USSD portals of both Cell C and Vodacom.
  12. The complainant acknowledged the member's intention to stop the service on these networks, but insisted that measures should have already been in place to prevent public access, if the service was only intended for MTN customers.
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## Member's further response

13. The member stated that STS used a single marketing link for the GameHub service, with all marketing materials and colour schemes aligned with MTN branding to ensure clear targeting of MTN subscribers.
  14. They explained that as an aggregator connected to multiple networks (excluding Telkom), the STS platform employed an automatic network redirection system. This system ensured that if a user accessed the service link with a SIM card from another network, such as Cell C or Vodacom, they were automatically redirected to that network's equivalent subscription service.
  15. The member acknowledged the tester's experience where the link redirected to the Cell C and Vodacom networks. However, they clarified that this redirection and subsequent engagement with the service were not part of an intentional or direct campaign for these networks, but rather a result of the aggregator's network routing mechanism.
  16. To address the concerns raised, the member confirmed that they had already initiated steps to restrict the availability of the GameHub service on the Cell C and Vodacom networks. This ensured alignment with their intent to market the service solely to MTN customers.
  17. Finally, in response to the concern about public accessibility during testing, the member assured that additional safeguards would be implemented to ensure that the test environment remained private and inaccessible to users not on the MTN network.
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## Sections of the Code considered

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

### **"Access to Service:**

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

5.4 Members must engage in honest and fair dealings with their customers.

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

### **Pricing Information – Single Opt-In Flow:**

8.2 For a subscription service, the "pricing information" must include the word "subscription," the cost to the customer, and the billing frequency. The cost and frequency should follow the format without abbreviations: "RX/day," "RX per day," "RX/week," "RX per week," "RX/month," or "RX per month" (or RX.XX if the price includes cents), as outlined in 8.9 and 12.1.

8.9 A "call-to-action" refers to any link, input box, short code, or other component of an advertisement that triggers the confirmation step for a transaction or service. In cases where a

mobile network operator provides a two-step confirmation process, the first page in the confirmation process may be considered the call-to-action.

12.1 For any web page, pricing information is not required for services that are free or billed at standard rates, provided the mobile network operator does not mandate specific advice of charge. For all other services with a call-to-action, pricing information must be clearly and prominently displayed next to the call-to-action, as per 8.2 and 8.9.

### **Terms and Conditions:**

5.8 The full terms and conditions for any service provided by a member must include:

(b) A customer support number.

(g) A statement indicating that the service must only be used with the bill-payer's permission (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 according to the WASPA complaints procedure. [Member name] may be required to share information related to a service or customer with WASPA for the purpose of resolving a complaint. WASPA website: [www.waspa.org.za](http://www.waspa.org.za)."

12.5 The minimum terms and conditions displayed on any web page must include at least the following:

(a) A customer support number or customer support instructions".

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## **Decision**

19. The member offered and charged for a service that was not accessible to the tester, who is a proxy for the general customer. The tester did not have easy access to the service, nor was the tester provided with information by the member on how to access and use the service. By charging for a service that could not be accessed, the member misled customers, essentially offering something that did not exist in practical terms for the user. Honest dealings demand transparency, and the fulfilment of commitments made to customers. By failing to deliver the service as advertised, the member breached this fundamental duty. Therefore, the member is found in breach of clauses 5.1, 5.4 and 5.6A of the Code.

20. The member's failure to comply with the Code in providing clear pricing information at the point of subscription not only misled consumers but also violated fundamental principles of transparency and fairness that are essential for honest dealings as prescribed by clause 5.4 of the Code.

21. The member did not comply with the requirement to clearly and prominently display pricing information on the initial subscription page to their service. This included failing to state the word "subscription," the cost to the customer, and the billing frequency as required by the Code. The absence of this critical information deprived users of the ability to make informed choices regarding the service and its costs. Therefore, the member breached clause 8.2 of the Code.

22. Clause 8.9 of the Code defines a call-to-action as any mechanism triggering the confirmation step of a transaction. By not displaying pricing information immediately adjacent to the call-to-action, the member did not ensure that their customers were fully aware of costs before proceeding with their subscription.
23. The member also failed to ensure that the call-to-action included a clear and comprehensive disclosure of subscription terms and pricing. Redirecting users to the service without proper acknowledgement of charges undermines consumer transparency and fair dealing principles. This constitutes a breach of clause 12.1, read with clauses 8.2 and 8.9 of the Code, which collectively require pricing information to be prominently visible at the time of engaging the subscription process.
24. Additionally, on review of the member's terms and conditions relating to their service, the member has breached clause 5.8(b) and clause 12.5(a) of the Code by failing to provide a customer support number therein. Furthermore, the member breached clause 5.8(g) by omitting the required statement that the service must only be used with the bill-payer's permission for paid services and clause 5.8(i) by failing to include the prescribed statement regarding WASPA membership and the complaints procedure.
25. In conclusion, the formal complaint is upheld.
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## Sanctions

26. The member took prompt proactive steps to address the issue by working with their aggregator to cease the availability of the service on Cell C and Vodacom networks, demonstrating a willingness to resolve the matter once identified. Additionally, the member requested that STS pause the service on Vodacom until it met the expected operational standards. These steps are mitigating factors taken into consideration.
27. However, the member has demonstrated a pattern of repeated breaches of the Code over the past three years. Specifically, clause 5.4 was breached twice in Complaints 60412 and 60413, while clause 8.2 was breached once in Complaint 60412. clauses 8.9 and 12.1 were both breached multiple times, with two breaches for clause 8.9 in Complaints 60412 and 60413, and three breaches for clause 12.1 in Complaints 60412, 60413, and 60414. These repeated violations indicate ongoing compliance failures and disregard for the Code's requirements.
28. Therefore, the member is fined:
- 28.1. R15 000 for breach of clauses 5.1, 5.4, and 5.6A of the Code;
- 28.2. R15 000 for breach of clauses 8.2 and 12.1 read with clause 8.9 of the Code; and
- 28.3. R15 000 for breach of clauses 5.8 (b), (g), (i) and 12.5(a) of the Code.
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## **Matters referred back to WASPA**

29. Not applicable.

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