



## Report of the Adjudicator

Complaint number	<b>#61172</b>
Cited WASPA members	<b>Hungama</b>
Notifiable WASPA members	<b>N/A</b>
Source of the complaint	<b>WASPA Compliance Department</b>
Complaint short description	<b>Various breaches</b>
Date complaint lodged	<b>2025-04-14</b>
Date of alleged breach	<b>2025-03-27</b>
Applicable version of the Code	<b>17.9</b>
Clauses of the Code cited	<b>5.8 (a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (l); 5.11, 5.11A 8.2; 12.5 (a)</b>
Related complaints considered	<b>30748, 41661</b>
Fines imposed	<b>R 15 000-00, possible suspension</b>
Other sanctions	<b>N/A</b>
Is this report notable?	<b>Not notable</b>
Summary of notability	<b>N/A</b>

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## Initial complaint

1. Whilst monitoring, testing services and conducting compliance checks of test results, the WASPA Compliance Department identified a service which does not comply with the requirements as set out in the WASPA Code of Conduct (Code). Below is an outline of the test results, together with the alleged breaches of the Code.
2. In its 'ANNEXURE A – TEST RESULT' it states the following:
  - 2.1. On or about the 4th of March 2025 a test was conducted on the MTN network.
  - 2.2. The tester was browsing on YouTube and came across a banner advertisement that included the following information: "Hungama CHECKMATE Subscribe Now @ 5R / day..."
  - 2.3. The tester clicked on the banner advertisement and was directed to a landing page for a subscription service called 'Hungama Play' charged at R5.00 per day.
  - 2.4. The tester clicked on the blue 'Subscribe Now' button and was directed to a MTN confirmation page.
  - 2.5. The tester elected to stop the test at this point as there were breaches of the Code during the subscription acquisition flow for the 'Hungama Play' subscription service.
3. In summary:
  - 3.1. The pricing information on the banner advertisement and the image on the landing page is in the incorrect format – 5R.
  - 3.2. The pricing information on the landing page immediately adjacent to the call-to-action button {Subscribe Now}, is not in the correct format, as it should state 'Subscription Service R5/day'.
  - 3.3. There is no clear customer support information available on the landing page.
  - 3.4. Upon further review, the terms and conditions of the service do not comply with the provisions of the Code. They can be accessed using this link:  
[p.hungama.com/mtn\\_sa/index.php/page/152265?mdnreturn=WDIxMGJsOXpZUT09&mdnreturn=WDIxMGJsOXpZUT09](https://p.hungama.com/mtn_sa/index.php/page/152265?mdnreturn=WDIxMGJsOXpZUT09&mdnreturn=WDIxMGJsOXpZUT09).
  - 3.5. In addition to the above information, the Complainant referred to formal complaint #60865 against the same Member, which raised the same concerns. The corresponding breaches have according to the Complainant not yet been remedied.
4. Emergency Panel
  - 4.1. The WASPA Secretariat initiated an Emergency Panel wherein the Member was found to have breached all the referenced clauses

- 4.2. A notice about the emergency panel was sent to the Member at 08:15 on 25 March 2025 with no response forthcoming from the Member.
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## **Member's response**

After various failed attempts in soliciting a response from the Member, the Member eventually offered the following explanation, copied here verbatim:

"With regards to complaint no #61172, we respect your feedback and suggest on while we would like to clarify that the price format and T&C was not informed before, and we kept the price point same in values i.e. 5 in local currency. However, we had stopped the google campaigns in March itself and not running any campaigns on any platforms till date and will not start until further notice with suggested guidelines. Hence the concern is to be considered resolved and closed. For Complaint no. #60865, please refer to the mail sent on 03 April 2025 01:24 PM and find the attached receipt of mail confirmation along with the Payment (Debit advice) against the payment done by the team. Please help close the case on WASPA portal"

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## **Complainant's response**

The Complainant's response is copied here verbatim:

"We have reviewed the original complaint as well as the Respondent's submissions in respect thereof. We will endeavour to address the points raised by the Respondent that are relevant to the non compliant service complained of and the correlating breaches, however, any failure to address a specific point should not be construed as an admission of any sorts.

1. With regards to the following statement – "...while we would like to clarify that the price format and T&C was not informed before, and we kept the price point same in values i.e. 5 in local currency..." - we would like to respectfully disagree with the Respondent, as the Respondent was in fact made aware of the non-compliant pricing format and non-compliant terms and conditions as part of formal complaint #60865, and have been provided with sufficient time to correct the breaches. Unfortunately, the non-compliance has persisted as set out in the complaint.
2. We take note that the marketing of the service has been suspended. However, at the time of testing the subscription acquisition flow was non-compliant and the Respondent should be held accountable for the breaches.
3. The submissions regarding formal complaint #60865 fall outside of the scope of this complaint and we will accordingly not respond.
4. We respectfully submit that the Respondent's service was in breach of the Code on the date of testing the service, and that our original complaint sufficiently sets this out. The Respondent

should be held liable for their non-compliant service.”

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## **Member’s further response**

The Member then offered the following response:

“This is following our last response dated 11th Apr; we once again confirm that we are not running any campaigns on any channel, and we stopped campaigns in March its self.”

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## **Sections of the Code considered**

Terms and Conditions and Customer Support Information:

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) instructions for obtaining effective customer support;
- (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);
- (h) a statement that the service must only be used with the permission of a parent or guardian (for children’s services); and
- (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.za](http://www.waspa.org.za)”.
- (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.

Incorrect pricing information format:

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 2 the full price and not the incremental amounts (“R30/month” and not “6 x R5 per month”).

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...

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## Decision

In reaching a decision the Adjudicator relies on all the information provided by both the Complainant and Member in this matter. The Adjudicator also finds it pertinent to reference the decision reached by the Emergency Panel on the 26<sup>th</sup> of March 2025, which is copied here in part verbatim:

“7. We considered the complaint, and the graphics provided by the complainant. The graphics clearly confirm the complaint in regard to the pricing information, ie that it is not in the format required by clause 8.2 of the Code of Conduct. The pricing indicated as ‘Subscribe now @ 5R / day’ and ‘Charges R 5.00 / 1 day(s) (Auto Renewal)’ is non-compliant as it should state ‘Subscription Service R5/day’. The clause is clear and no deviation from the prescribed formats

are allowed. The member should be aware of this as it had been fined for a similar infringement in complaint #60865 dated 23 January 2025. In that case it was fined R 5,000 for the infringement of clause 8.2.

8. The graphics also substantiate the complainant's complaint that the member's standard terms and conditions do not comply with the prescribed minimum information that should be contained in the terms and conditions in terms of clauses 5.8, 5.11, 5.11A and clause 12.5 in that it contains none of the following information as required by these clauses: (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)."

9. Other than the fact that it is a subscription service, the rest of the information in the terms and conditions are simply a description of the service provided and do not provide the information necessitated by clause 5.8 (a), (b), (c), (d), (e), (f), (g), (i), (j), (k) and (l) of the Code. The lack of a contact number and customer support service and no indication on how the subscription may be stopped, as prescribed by clauses 5.8, 5.11, 5.11A, and 12.5 is regarded as particularly egregious as that information is necessary to combat the harm caused by subscription services. This is clearly not compliant with clauses 5.8, 5.11, 5.11A and clause 12.5 and the member is found in breach thereto."

The Adjudicator in this matter concurs with the findings of the Emergency Panel and also agrees with the complaint and subsequent response provided by the Complainant.

Even though the Member alleges that the disputed advertisements have been withdrawn, these breaches occurred during the time of testing, and the Member is therefore found to have been in breach of all the sections noted.

It is also impossible for the Adjudicator in this matter to assess whether the said advertisements have indeed been removed.

Although the notion of such action by the Member is noted, the undue delays in providing any response to the WASPA Secretariat and disregard for previous sanctions / fines, all cast doubt on the Member's intent to abide by the WASPA Code of Conduct and its associated processes.

The Complaint is upheld.

## Sanctions

In determining appropriate sanctions against the Member, the following factors have been taken into consideration:

- any previous successful complaints made against the Member in the past three years;
- any previous successful complaints of a similar nature;
- the nature and severity of the breach; and
- any efforts made by the Member to resolve the matter.

A fine of R 5 000-00 is levied against the Member for its breach of section 8.2.

A combined fine of R 10 000-00 is levied against the Member for its breaches of sections 5.8, 5.11, 5.11A and 12.5.

All fines are to be paid by the Member within seven days to WASPA after having received notice hereof.

The Member remains suspended (as per Emergency Panel report) subject to the instructions below:

The Member is instructed to provide WASPA with a demo / beta version of any new online ad campaigns it intends on running. Before the Member is allowed reinstating any online ad campaign, WASPA must provide the Member with a notice once the WASPA Compliance Department is satisfied that the service is compliant, whereafter the suspension will be lifted.

**Failure to comply with any of the sanctions and / or instructions above will lead to the Member remaining suspended until date of compliance with the issued sanctions and instructions. The “suspension” is a reference to the suspension of the Member’s WASPA membership and the MNOs should be notified accordingly.**

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## Matters referred back to WASPA

None

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