



Report of the Adjudicator

Complaint number	#61789
Cited WASPA members	Newstor (1990)
Notifiable WASPA members	Not notable.
Source of the complaint	WASPA Compliance Department
Complaint short description	Unauthorised subscriptions
Date complaint lodged	2025-12-02
Date of alleged breach	2025-11-05 and 2025-11-21
Applicable version of the Code	17.4
Clauses of the Code cited	4.2; 4.11; 5.4; 5.5; 12.1 read with 8.9; 15.8B; 15.9; 15.10
Related complaints considered	#61079 and #61323
Fines imposed	The following fines are imposed herein: R5,000.00 for breach of clause 4.2 suspended for 3 years; R5,000.00 for breach of clause 5.5; R5,000.00 for breach of clause 12.1 read with 8.9; R5,000.00 for breach of clause 15.8B; R5,000.00 for breach of clause 15.9; and

	R5,000.00 for breach of clause 15.10.
Other sanctions	The Member must provide proof of the refunds to the customers affected by the non-compliant subscription services to the WASPA Secretariat within 7 business days of receipt of this Adjudication Report.
Is this report notable?	Not notable.
Summary of notability	Not applicable.

Initial complaint

1. Complaint #61789 was lodged by the WASPA Compliance Department (the Complainant) on 2025-12-02 against the Member. The Member was concurrently issued with a notice of an emergency panel hearing, which was subsequently cancelled following remedial action taken by the Member. The matter therefore proceeded as a formal complaint against the Member, as considered herein.
2. Whilst monitoring, testing services and conducting compliance checks of test results, the Complainant identified two services belonging to the Member which did not comply with the requirements as set out in the WASPA Code of Conduct (Code). The test analyses performed on the Telkom network were “Annexure A” and “Annexure C” respectively. These tests form the basis of the complaint.

Annexure A – Test Analysis of VYDOZINE Subscription Service

3. On or about 2025-11-05, a compliance test was conducted on the Telkom network by the Complainant’s tester. During the test, the tester downloaded and installed the “4K Fresh Wallpaper” application. After opening the application and dismissing an initial notification by selecting “OK,” the tester browsed the content available within the application.
4. While using the application, the tester received a “Welcome Message” confirming activation of the *Vydozine* subscription service at a charge of R5.00 per day. The tester had not been presented with any promotional material, pricing information, landing page, or network-hosted confirmation step related to the service. The subscription was activated without the tester’s explicit consent or awareness, and the tester only became aware of it upon receipt of the “Welcome Message”.
5. This demonstrated that the prescribed subscription acquisition process was bypassed, resulting in an unauthorised auto-subscription and indicating inadequate fraud prevention and mitigation controls in breach of the Code.
6. A video recording of the test was also attached to the formal complaint and marked “Annexure B”.

Annexure C – Video of GAMEZONE Subscription Service

7. On or about 2025-11-21, a compliance test was conducted on the Telkom network by the Complainant's tester. The tester accessed the previously installed "4K Fresh Wallpaper" application and browsed the content available within the application.
 8. During use of the application, the tester received a "Welcome Message" indicating activation of the *Gamezone* subscription service at a charge of R5.00 per day. Upon selecting the link contained in the Welcome Message, the tester was redirected to the Gamezone service homepage.
 9. The subscription was activated without the tester being presented with any promotional material, pricing disclosure, landing page, or network-hosted confirmation step. The tester had not provided explicit consent and became aware of the subscription only upon receipt of the "Welcome Message". This confirmed that the prescribed subscription acquisition process required by the Code was bypassed, resulting in an unauthorised auto-subscription. The findings further indicated inadequate fraud detection and mitigation measures to prevent unauthorised or fraudulent subscriptions, constituting a breach of multiple provisions of the Code.
 10. A video recording of the test was also attached to the formal complaint and marked "Annexure D".
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Member's response

Clause 4.2

11. The Member stated that it had conducted itself professionally and transparently in its dealings with customers, advertising partners, service providers, and WASPA. It submitted that it consistently followed WASPA and mobile network operator guidelines and communicated compliance requirements to advertising agencies before and during campaigns. Sample communications with the errant marketing agency were provided as evidence.

Clause 4.11

12. The Member indicated that it had implemented technical and operational anti-fraud controls in line with WASPA best-practice guidelines and that these controls were reviewed regularly. It asserted that, once users were redirected to Telkom, control over the user journey rested with the network operator. The Member attributed the incident to fraudulent conduct by the advertising agency, which it stated had circumvented its systems despite existing controls.

Clause 5.4

13. The Member submitted that all services were offered using honest and fair practices and that customers were ordinarily provided with clear information regarding subscriptions. It provided screenshots of banners, landing pages, and confirmation pages to support its assertion that its standard processes complied with disclosure requirements.

Clause 5.5

14. The Member stated that it did not knowingly disseminate false, deceptive, or misleading information. It indicated that all advertising material was vetted and approved prior to launch to prevent inaccuracies, ambiguity, exaggeration, or omissions.

Clause 8.9

15. The Member asserted that calls-to-action were prominently displayed on its landing and confirmation pages and were implemented in accordance with WASPA guidelines. Supporting images were provided to demonstrate compliance in the past.

Clause 12.1

16. The Member stated that it displays its pricing information clearly and prominently displayed adjacent to the call-to-action on its landing and confirmation pages, in accordance with WASPA requirements. Screenshots were submitted in support of this claim.

Clause 15.8B

17. The Member submitted that it clearly instructed advertising agencies to ensure that no customer was subscribed without completing a confirmation step, as required by the Code. It further stated that it conducted testing during live campaigns to verify compliance.

Clause 15.9

18. The Member stated that its confirmation steps required an explicit and conscious action from customers and that the process was neither automated nor concealed in any manner.

Clause 15.10

19. The Member submitted that an additional confirmation step was always implemented prior to billing. It stated that, in the cases under review, the mobile network operator managed the confirmation page or confirmation messaging process and that customers were not billed for confirmation messages.

Remedial Actions and Conclusion

20. The Member acknowledged responsibility for the incident, expressed regret, and apologised. It stated that all affected URLs were immediately disabled, the advertising agency was notified of its misconduct, and the relationship with the agency was terminated. As a precautionary goodwill measure, all customers activated through the agency were deactivated and fully refunded. The Member further indicated that internal logs were reviewed and shared, and no irregularities were identified.
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Complainant's response

Member Liability for Third-Party Marketing

21. The Complainant relied on independent test evidence which, it submitted, demonstrated that consumers were routed through a subscription acquisition journey that was not fair, clear, or accurate. This allegedly included misleading promotional framing and insufficient transparency regarding the nature and cost of the service.
22. The Complainant submitted that the complaint arose from the marketing, advertising, and subscription acquisition flows used to promote the Member's service, as reflected in the complaint evidence and independent testing. The Complainant relied on clauses 3.5, 3.6, and 3.7 of the Code, which imposed a positive obligation on members to ensure that third-party suppliers, affiliates, or marketing partners were aware of the Code, marketed services in compliance with it, and did not absolve members of liability for breaches committed by non-member third parties.
23. The Complainant argued that, although the Member attributed the non-compliant conduct to third-party marketing sources, clause 3.7 of the Code expressly maintained member liability for breaches arising from third-party marketing activities.
24. It was further submitted that no sufficient evidence was provided demonstrating that the Member had implemented adequate prior approval controls, pre-emptive oversight, risk-based traffic screening, and ongoing monitoring measures that would constitute "reasonable steps" in the context of the acquisition flows identified during testing.

Use of Anti-Fraud or Monitoring Tools

25. The Complainant acknowledged the Member's reliance on fraud detection, monitoring, and brand-protection tools but submitted that the use of such tools did not relieve the Member of its obligation to ensure that marketing was compliant prior to publication or distribution. It was argued that members were required to demonstrate proactive oversight and effective preventative controls, and that the existence of non-compliant acquisition flows at the time of testing established a breach regardless of later detection or corrective action.

Remedial Steps

26. The Complainant noted that the Member had taken remedial measures, including issuing warnings to partners, terminating affiliates and/or suppliers, pausing campaigns, and/or strengthening compliance controls. However, it was submitted that these steps were relevant only to mitigation and did not negate that consumers were exposed to misleading marketing and subscription flows during the relevant period.

Reliance on Prior Adjudication

27. The Complainant submitted that previous adjudicator findings supported the principle that members bore responsibility for marketing conducted by third-party suppliers and that clauses 3.6 and 3.7 imposed a positive obligation on members to ensure third-party marketing complied with the Code.

Member's further response

Member Liability for Third-Party Marketing

28. The Member confirmed that its obligations were not extinguished by the conduct of advertising or marketing agencies in line with clauses 3.5, 3.6, and 3.7 of the Code.
29. The Member maintained that it communicated the requirements of the Code and compliance obligations to all advertising agencies with which it engaged. The Member contended that, in this instance, the relevant agency was experienced and active in the local South African market but nevertheless circumvented the Member's anti-fraud platform controls.

Reasonable Steps and Anti-Fraud or Monitoring Tools

30. The Member submitted that no anti-fraud platform was entirely foolproof due to the evolving nature of fraudulent activity and detection mechanisms. It stated that it had implemented multiple preventative and detection measures through its anti-fraud platform, including technical validation and monitoring controls intended to detect suspicious traffic and fraudulent behaviour.
31. The Member submitted that, despite these controls being active, the fraudulent activity was not detected at the time. It characterised this as a failure of detection rather than a failure to implement preventative compliance measures or oversight.

Telkom Subscription Flow and Technical Limitations

32. The Member described the technical subscription flow relevant to the complaint. It submitted that initial user interaction occurred within its own environment without MSISDN information and that user clicks were sanitised through its anti-fraud platform prior to being forwarded to Telkom's charging gateway. The Member stated that any clicks identified as fraudulent were filtered and not forwarded.
33. The Member further submitted that, once traffic was passed to Telkom, the subscription journey took place entirely within Telkom's environment, and the Member had no technical visibility into or control over MSISDN handling, subscription processes, or billing mechanisms. The Member contended that the ability to deploy its anti-fraud scripts within the Telkom environment would enhance fraud mitigation but stated that such deployment was not currently permitted.

Additional Fraud Mitigation Measures

34. The Member stated that it had implemented additional fraud mitigation tools, including subscribing to and implementing services provided by Evina. The Member submitted that Telkom and WASPA also used Evina, which assisted in aligning fraud detection markers across the subscription journey.

Remedial and Corrective Actions

35. The Member submitted that it had taken proactive corrective measures following identification of the issue. These included unsubscribing all users activated through the relevant publisher, processing refunds for customers activated through that publisher, and confirming that it would no longer engage with the publisher in question. The Member indicated that supporting evidence of refunds could be provided if required and submitted that these actions were taken proactively and in good faith to protect consumers.

Sections of the Code considered

36. The following clauses of the Code are considered herein:

“4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

4.11. Members must take reasonable steps to prevent their networks and systems from being used in a fraudulent manner, and must comply with WASPA’s published best practices for fraud prevention.

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.

12.1. For any web page, pricing information must be displayed for premium-rated services or when a mobile network operator prescribes specific advice of charge requirements. For these services, where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action.

15.8B. A customer must not be subscribed to any subscription or notification service without completing a confirmation step.

15.9. The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

15.10. For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

- (i) The customer's mobile carrier may implement the confirmation step.*
 - (ii) The member can provide the customer with a "confirmation page".*
 - (iii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message".*
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Decision

- 37. The Adjudicator has considered the complaint, the evidence contained in Annexures A to D, and the written submissions made by both parties.
- 38. The video and test evidence provided by the compliant demonstrated that, on two separate occasions, the Complainant's tester was subscribed to the Vydozine and Gamezone services (the Member's services) without being presented with promotional material, pricing disclosure, landing pages, or confirmation steps prior to activation. The tester did not give their explicit consent for the subscription to the Member's service, and only became aware of the subscriptions upon receipt of welcome messages confirming billing at R5.00 per day.
- 39. The Member did not materially dispute that the subscriptions occurred in the manner reflected in the test evidence. Instead, the Member attributed the conduct to third-party marketing activity and technical limitations associated with the Telkom subscription environment. Therefore, it is clear and undisputed that an auto-subscription took place in violation of the Code.
- 40. Clauses 3.5, 3.6, and 3.7 of the Code impose a positive obligation on members to ensure that third-party marketing is compliant with the Code and expressly provide that members remain liable for breaches arising from such third-party conduct. In particular, clause 3.7 of the Code states that: "A member is liable for any breaches of this Code of Conduct resulting from services offered or marketed by a client, supplier, affiliate or subcontractor 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".
- 41. It is noted that the Member made the relevant third-party marketing agency aware of the Code and its compliance requirements and implemented anti-fraud measures. However, these measures do not absolve the Member of liability where non-compliant marketing resulted in unauthorised subscription activation. Such measures are relevant only insofar as they are considered a mitigating factor.

Clause 4.2

- 42. Clause 4.2 of the Code requires members to conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA. Professional conduct includes ensuring that marketing practices are lawful, transparent, and do not mislead or prejudice consumers. The Member's services did not include any promotional material, pricing disclosure, landing page, or network-hosted confirmation step. Instead, the customer was auto-subscribed to the Member's services. Subscribing customers without providing adequate disclosure and confirmation mechanisms demonstrates a failure to act

transparently and professionally towards consumers. Therefore, the Member is found in breach of clause 4.2 of the Code.

Clause 4.11

43. Clause 4.11 of the Code requires members to take reasonable steps to prevent their networks and systems from being used in a fraudulent manner and to comply with WASPA's published best practices for fraud prevention.
44. It is noted that the Member implemented anti-fraud systems, monitoring tools, and operational controls, and these were alleged to be regularly reviewed. However, insufficient evidence was provided demonstrating that the Member had implemented prior approval controls, pre-emptive oversight, risk-based traffic screening, and ongoing monitoring measures that would constitute "reasonable steps" in the context of the acquisition flows identified during testing. What is apparent from the evidence is that the fraudulent subscription flows were active and accessible to consumers, resulting in unauthorised subscriptions to both of the Member's services.
45. While the Member's systems and monitoring measures may have been in place, proactive monitoring measures were insufficient to prevent or detect the fraudulent activity in practice. The Code requires that reasonable preventative steps must be effective in operation, not only in theory. Therefore, the Member is found in breach of clause 4.11 of the Code.

Clause 5.4

46. In WASPA Appeal Panel decision #61079, the Appeal Panel confirmed that clause 5.4 is a generalist provision that should only be applied where a member's conduct breaches the Code and no other specific clause adequately addresses that conduct. The panel specifically held: "Moreover, when the Member's conduct is addressed by a clause other than clause 5.4, adjudicators should avoid finding that the Member also breached clause 5.4, as such a finding would amount to the imposition of a double penalty for the same conduct. Therefore, clause 5.4 cannot be used as a "catch-all" clause in these circumstances and is inapplicable.

Clause 5.5.

47. Noting the Member's concession that certain clauses were contravened by a third-party, two provisions of the Code require specific consideration. The first is clause 5.5, which provides that a Member must not knowingly disseminate information that is false, deceptive, or likely to mislead through inaccuracy, ambiguity, exaggeration, or omission. Clause 5.5 contains an element of knowledge or intention. The issue that arises is whether this requirement relates solely to the Member's direct conduct, or whether a Member may be found to have contravened clause 5.5 where a third-party knowingly disseminates misleading information in connection with the Member's service. As previously mentioned, clause 3.7 of the Code provides that a member is strictly liable for breaches of the Code committed by a third-party utilising its systems where that third-party is not a WASPA member.

48. Therefore, in the circumstances where the identity of the third-party is known, the conduct of that third-party must, in terms of clause 3.7, be attributed to the Member. The enquiry then turns to whether the third-party knowingly disseminated false or misleading information. Material information was withheld from customers, and those consumers were misled through omission. Having regard to the nature, extent, and systemic character of the contraventions, and on a balance of probabilities, the dissemination of misleading information is found to have occurred knowingly. Accordingly, the Member is found to have breached clause 5.5 of the Code of Conduct.

Clauses 12.1, 15.8B and 15.9

49. The test evidence demonstrates that, during the subscription acquisition flows for both of the Member's services, the tester was not presented with pricing information prior to subscription. While the Member provided evidence of standard processes that are generally compliant, the flows accessed during testing did not display pricing as required under clause 12.1.

50. In addition, no confirmation step was presented to the tester prior to subscription, and no explicit response was required from the customer for the automated subscription. This constitutes a breach of clause 15.8B, which requires that customers must not be subscribed to any service without completing a confirmation step, and clause 15.9, which requires that the confirmation step be explicit, deliberate, and not automated or concealed. Therefore, the Member is found in breach of clauses 12.1, 15.8B, and 15.9 of the Code.

Clause 15.10

51. Clause 15.10 requires that, for all subscription services initiated via a web page, an additional specific confirmation step must be completed before a customer is billed. The Code provides that this confirmation step may be implemented by the customer's mobile carrier, through a confirmation page provided by the Member, or through a confirmation message sent to the customer, which must be free of charge. The test evidence demonstrates that, during the subscription acquisition flows, the tester was subscribed to the services and received a "Welcome Message" confirming activation without having completed any additional confirmation step prior to billing. There is no evidence that the mobile network operator implemented such a confirmation step, nor that the Member provided a confirmation page or confirmation message requiring a deliberate and conscious action by the tester before billing occurred.

52. While the Member submitted that its standard processes ordinarily incorporate compliant confirmation mechanisms, the evidence before the Adjudicator indicates that these safeguards were not present in the subscription flows accessed during testing. In conclusion, Member is found in breach of clause 15.10 of the Code.

Sanctions

53. Having considered the breaches of the Code and the mitigating factors herein, the following sanctions are imposed:

53.1. A fine of R5,000.00 for breach of clause 4.2, suspended for 3 years;

- 53.2. A fine of R5,000.00 for breach of clause 5.5;
 - 53.3. A fine of R5,000.00 for breach of clause 12.1 read with 8.9;
 - 53.4. A fine of R5,000.00 for breach of clause 15.8B;
 - 53.5. A fine of R5,000.00 for breach of clause 15.9; and
 - 53.6. A fine of R5,000.00 for breach of clause 15.10.
54. The suspended fine of R5,000.00 will cease to be suspended should the Member be found to have breached the same clause of the Code within 3 years of the date of this breach.
55. Furthermore, the Member must provide proof of the refunds to the customers affected by the non-compliant subscription services to the WASPA Secretariat within 7 business days of receipt of this Adjudication Report.
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