



Report of the Adjudicator

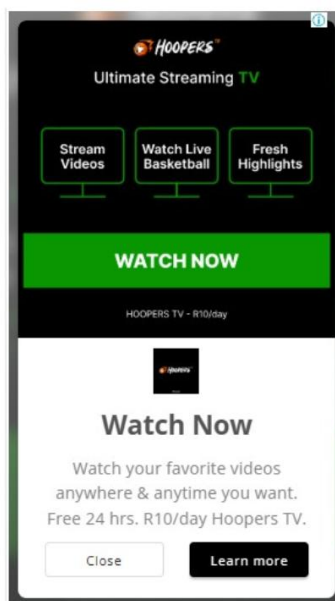
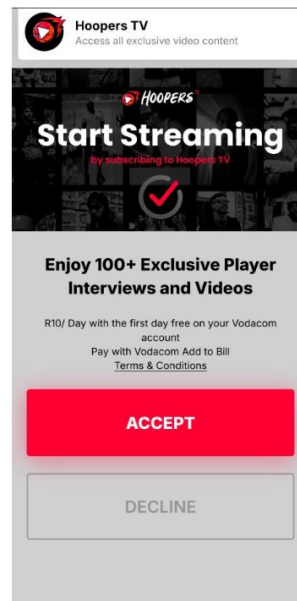
Complaint number	#62680
Cited WASPA members	Bright Mobile BV Membership no: 2147
Notifiable WASPA members	n/a
Source of the complaint	WASPA affiliated person
Complaint short description	Auto-subscription of subscription services
Date complaint lodged	15 September 2026
Date of alleged breach	30 August 2026
Applicable version of the Code	17.14
Clauses of the Code cited	5.4; 8.9, 8.9A, 15.8B; 15.9;
Related complaints considered	n/a
Fines imposed	None
Other sanctions	n/a
Is this report notable?	No
Summary of notability	N/a

Initial complaint

1. The initial complaint was lodged by a person who is affiliated with WASPA who, herself received the complaint from the consumer. The name of the consumer is not provided and as a result this adjudication will refer to the two parties as the “complainant” and the “consumer” respectively.
 2. The complainant alleged that the consumer had been auto-subscribed to a subscription service and provided a screenshot of the subscription service – named “HoopersTV” - where the consumer had been subscribed the service at R10 a day and thereafter unsubscribed on the 30th August 2026.
 3. The complainant alleged that the Member had contravened clauses 5.4; 8.9, 8.9A, 15.8B; 15.9 of the WASPA Code of Conduct.
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Member’s response

4. The Member then responded by indicating that their records clearly show that the consumer clicked on the “accept” button and provided the log for the transaction and the screenshot below.



5. The Member further provided a screenshot of the source code (below) confirming that the system had received a request for a subscription from the consumer.

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14      "id": "VC mobile direct HoopersTV 01",
15      "@referredType": "service-id"
16    },
17    {
18      "id": "Accepted",
19      "@referredType": "contentblock-override"
20    },
21    {
22      "id": "DOI/Double OPT In Accepted",
23      "@referredType": "interaction-type"
24    },
25    {
26      "id": "DOI/Double OPT In Accepted for HoopersTV",
27      "@referredType": "message"

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Complainant response

6. The complainant responded by stating that she had a duty to submit any allegation to the WASPA complaints process for investigation.
7. The complainant further indicated that it was not in dispute that the consumer was subscribed to the service, but rather it was in dispute that the consumer had clicked on “accept” button. Instead, the consumer allegedly clicked on the “decline” button but was nonetheless subscribed to the service. Specifically, the complainant requested information relating to the following:
 - 7.1. *“Which system/component captured the consumer’s ACCEPT or DECLINE selection;*
 - 7.2. *2. Whether the value “DOI/Double OPT In Accepted” in the Product Order request is generated by that system or populated by the CP application;*
 - 7.3. *3. The raw event corresponding to the consumer’s button selection, including timestamp and transaction/session identifier; and*

7.4. 4. *The correlation between that interaction, sourceTransactionId [transaction number redacted by adjudicator], subscription ID [subscription number redacted by Adjudicator] and the relevant MSISDN.”*

Member’s response

8. The Member then responded with a 6 page “Customer Complaint Document” which alleged that the subscription flow was “fully guarded” by Evina, an anti-fraud solution and the system goes through an extensive quality assurance process. Once the page is finalised it is validated by Vodacom after which it may not be changed without approval by Vodacom.
 9. In addition to the report the Member also provided the logs for the transaction.
 10. The member further alleged that Evina had confirmed that the consumer had clicked on the “accept” button and not the decline button.
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Further opportunity for complainant to reply

11. Ordinarily the complainant does not get another opportunity to reply to the Member’s response. However, in the present case as there was new evidence presented in the Member’s final response, the Adjudicator ordered that the Complainant be afforded an opportunity to address the new evidence within 5 days. The Complainant failed to respond in this period.
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Clauses of the Code considered

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.

8.9. 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.

8.9A A call-to-action must require an explicit action by the consumer in order to trigger the confirmation step. The call-to-action may not be automatically triggered such that the consumer reaches the confirmation step without taking any 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.

Decision

12. This matter turns on three issues:

- 12.1. Is a person who is not affected by the actions entitled to bring a complaint to WASPA and are there any restrictions on this?
- 12.2. If the complainant is not the person affected by the actions / inactions of the Member is there any difference in the manner in which the evidence is treated?
- 12.3. Based on the available evidence, was the consumer auto-subscribed to the HoopersTV subscription service in breach of clauses 8.9A, 15.8B, 15.9 (all of which require a positive step by the consumer to agree to the subscription service) of the WASPA Code of Conduct?

13. Before addressing the questions set out above, it is clear that the remaining clauses of the WASPA Code of Conduct are not applicable as imposing any sanction in terms of clauses 5.4 and 5.5 would amount to the sanctioning of the same conduct of the Member which is dealt with by clauses 8.9A, 15.8B, 15.9. Indeed, if the Member were to be found guilty of breach of clauses 8.9A, 15.8B, 15.9 then this would amount to a cumulative breach of all of these clauses considered together in order to avoid a situation where a Member is sanctioned several times for the same action.

Can a complaint be lodged by a person other than the affected person?

14. There is little doubt that clause 17.16 of the WASPA Code of Conduct does allow “any person” to lodge a complaint. However, care should be taken not to conflate the ability to lodge a complaint with the weight given to the evidence provided by the complainant who was not personally involved in the incident. This approach was confirmed in [Mapholisa NO v Phetoe NO and Others \[2022\] ZASCA 168, paragraphs 23–25](#) where the complainant who lodged the complaint against the doctor was not a patient. The court held that there were two distinct questions which should not be conflated, namely: “who may lodge a complaint, on the one hand, and how a complaint may be proved on the other.” Moreover, the fact that the complainant is related to WASPA also does not invalidate the complaint. Indeed, the WASPA secretariat and WASPA compliance department have lodged complaints in the past and so there is clear precedent for allowing a complaint from a complainant who was not personally involved in the incident.

Is the evidence in the matter treated any differently when the complainant is not the affected person?

15. As soon as a person is reporting an incident that affected another person, then by its nature the evidence can be classified as “hearsay”. Our courts do not have a blanket rule to disallow hearsay but rather treat hearsay evidence more carefully and will allow hearsay evidence where the opposing party agrees, where the original person affected (the consumer in the present case) warrants that it is correct or where admitting the hearsay evidence would be in the interests of justice.¹
16. In the present case there is no dispute that the consumer was subscribed but there is a dispute as to whether the consumer clicked on the “accept” button or not. The only evidence provided that the consumer did not click on the “accept” button and rather clicked on the “decline” button is the assurance from the complainant that the consumer had informed her that this is what the consumer did. No other evidence, including confirmation from the consumer that this is accurate, was provided.
17. Bearing the above in mind, the hearsay evidence as provided by the complainant is admitted but given less evidential weight than it would have obtained had the assurance been obtained directly from the consumer.

¹ Section 3 of the Law of Evidence Amendment Act 45 of 1988

Was the consumer auto-subscribed to the HoopersTV subscription service as alleged by the complainant?

18. The Member has gone to some effort to provide evidence to support its claim that the consumer did click on the “accept” button rather than the “decline” button including providing the source code and the actual log of the transaction as well as evidence to support an anti-fraud process supported by Evina and checked by Vodacom. While it is of course possible that these processes failed in some manner, the available evidence clearly supports the Member’s position that the consumer did click on the accept button and the bald denial, which is reported by a third party (the complainant), is the only evidence to the contrary. In addition, the complainant did not challenge the submissions of the Member after it had delivered the 6-page Customer Complaint Document which also included links to the video action (as hosted by Evina) where the consumer clicked on the “accept” button.
19. Bearing the above in mind, the Member is found not to have breached clauses 8.9A, 15.8B, 15.9 and the complaint is consequently dismissed.

Sanction

20. Not applicable.

Matters referred back to WASPA

21. None.

Appeal

22. In terms of clause 24.37, the Member may appeal a decision of an adjudicator within 10 days of the release of this adjudication.