



## Report of the Adjudicator

Complaint number	#57834
Cited WASPA members	ADX Digital PTE Ltd
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant subscription service
Date complaint lodged	2022-10-28
Date of alleged breach	2022-08-12
Applicable version of the Code	v17.2
Clauses of the Code cited	5.4, 5.5, 5.11, 8.8, 12.1, 15.4, 15.5, 18.2, 18.3, 18.4 (a)-(h), 18.6 and 18.9 (b), (c) and (d).
Related complaints considered	n/a
Fines imposed	Member fined following amounts: R5 000 for breach of clause 5.4; R5 000 for breach of clause 5.5; R5 000 for breach of clause 5.11; R5 000 for breach of clause 8.8; R5 000 for breach of clause 12.1;

	R5 000 for breach of clause 15.4; R5 000 for breach of clause 15.5; and R10 000 for breach of clauses 18.3, 18.4, 18.6 and 18.9.
Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

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## Initial complaint

1. On 12 August 2022, whilst monitoring and conducting manual tests, a tester from the WASPA Compliance Department came across one of the Member's services which allegedly does not comply with the requirements as set out in the WASPA Code of Conduct.
2. In support of the complaint, the Complainant provided an outline of the tester's experience when interacting with the Member's service and relevant screenshots of the banner adverts and pages visited.
3. The tester was browsing on a movie website with the following URL: <https://123movies.sc/watch-father-stu-2022-123movies.html>, using their test device on the Vodacom network.
4. The tester clicked on a pop-up banner with the following text: *"Congratulations Your phone number has won R100 000 CASH!"* and they were directed to another website which stated: *"WIN R100 000 CASH Prize, August 12, 2022, Congratulations Samsung user! National Consumer Center would like to Thank you with a prize contest. Spin the wheel to claim your special prize Good Luck! OK"*.
5. The tester clicked on the "OK" button and was redirected to a page which stated: *"Congratulations Samsung user, You have (1) reward pending! Every Friday we select 10 lucky users to receive a reward. Claim Your Prize Spin the wheel"*
6. The tester clicked on the "Spin" button on the wheel. A pop-up notification displayed with the wording: *"Try again! \*\*\*You've won one extra spin\*\*\* OK"*.

7. The tester clicked on the “OK” button and directed to another page which stated: *“SPIN AND WIN Congratulations! Just complete these steps to receive your R 100 000 CASH prize today! Click ‘Claim Prize’ to claim your prize. You will be redirected to our partner’s site. Follow the steps on the partner’s site. IMPORTANT: Product may become unavailable at any time. Choose quickly! The offer is valid for next 1 minutes and 49 seconds. {Count-down timer} \*\*R100 000 CASH prize\*\* Claim Prize....”*
  8. The tester clicked on the “Claim Prize” button and was then directed to the Vodacom Network Hosted Confirmation Page (NHCP) for a subscription service called Quick Heal charged at R7.00 per day.
  9. The tester then elected to stop the test at this point, as there were multiple breaches of the Code during the subscription acquisition flow for Quick Heal subscription service.
  10. In summary, the Complainant alleges that:
    - 10.1 The ‘Claim Prize’ button, which when clicked on, triggers the Vodacom confirmation page (NHCP), qualifies as a ‘call-to-action’, which does not display any pricing information.
    - 10.2 The subscription acquisition flow, which is a ‘single opt-in flow’, is misleading as it appears to relate to a promotion for a R100 000 cash prize, which the tester is trying to claim, but by responding to this offer and following the prompts the tester is eventually directed to the Vodacom confirmation page for an unrelated subscription service called Quick Heal charged at R7.00 per day.
    - 10.3 The tester was misled to believe that they could claim or get the prize, as advertised, but were then deceived into a subscription service that does not have anything to do with the advertised promotional competition.
    - 10.4 There is no customer support number.
    - 10.5 If this is a promotional competition, then various requirements and terms and conditions set out in the Code have not been met.
    - 10.6 Furthermore, the promotional competition is not ancillary to the subscription service.
  11. Based on the foregoing, the Complainant alleges that the Member has breached the following clauses of the WASPA Code of Conduct: 5.4, 5.5, 5.11, 8.8, 12.1, 15.4, 15.5, 18.2, 18.3, 18.4 (a)-(h), 18.6 and 18.9 (b), (c) and (d).
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## Member's response

12. The Member responded to the formal complaint by alleging that the issues highlighted by the Complainant regarding this service are dated in that this service was the subject of a Heads-Up Complaint raised on 26 August 2022 [HU2315].
  13. The Member advised that it had responded to the previous Heads-Up Complaint by advising WASPA that it had stopped working with the relevant third party ad network who was responsible for the non-compliant adverts in that matter. That case was closed on 1 September 2022.
  14. The Member stated further that this particular ad network was non-compliant with the Member's own guidelines, which had been sent to them. This ad network was blocked by the Member in the last week of August 2022, which was two weeks later to the formal test which was conducted in this complaint.
  15. The Member stated that after it had received this formal complaint, it had also reiterated all of its guidelines to all its other ad networks and had categorically told them not to run ads which are non-compliant.
  16. The Member also advised that after MTN had changed their pricing and the landing page policy, the Member has complied with the new rules since the second week of September 2022 and has instructed its ad networks to only use the Member's banners and not any random banners.
  17. The Member advised that as part of its company policy now, it uses Google traffic and for which it will be using the MTN landing page, an example of which was provided with the response.
  18. The Member gave its assurance that these settings won't change for any of its advertising practices in the future and it apologized for the current issue.
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## Complainant's further submissions

19. The Complainant provided the following further submissions after reviewing the Member's response:
  - 19.1 This complaint relates to a subscription service called 'Quickheal', which was tested on the Vodacom network. The Heads-Up complaint (HU2315) referred to by the Member, was issued by the Compliance Department on the 23rd of August 2022 and was for a service called 'Gamesify', which was tested on the MTN

network and which is unrelated to this complaint and the service complained of, namely 'Quickheal'.

- 19.2 The issues raised as part of this formal complaint #57834 are stand-alone issues identified on the Vodacom network for the 'Quickheal' subscription service. As such, the points raised regarding HU2315 has no bearing on this complaint.

(The Complainant attached one of the test results for HU2315 to substantiate that it was for a service called 'Gamesify').

- 19.3 The Member submits that the ad network was running incorrect advertisements, however the Member has failed and/or omitted to provide the alleged correct banners to be used, which must contain the name of the service, pricing information and customer support number.

- 19.4 The Member referred to MTN requirements, however, this complaint relates to a service tested on the Vodacom network, and these requirements are irrelevant for the purposes of this complaint.

- 19.5 The Member submits that they have implemented corrective measures to ensure that ad networks only use compliant banners. This only addresses one of the breaches cited. The Member has failed and/or omitted to address any of the other breaches complained of.

20. The Complainant again submitted that the Member's service was in breach of several clauses of the WASPA Code of Conduct on the date of testing the service, and that the original complaint sufficiently sets this out. The Member should be held liable for their non-compliant service.

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## **Member's further submissions**

21. No further submissions were made by the Member.

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## **Sections of the Code considered**

22. Clauses 5.4, 5.5, 5.11, 8.8, 12.1, 15.4, 15.5, 18.2, 18.3, 18.4 (a)-(h), 18.6 and 18.9 (b), (c) and (d) of the WASPA Code of Conduct were cited in the formal complaint and considered.

23. No other relevant clauses were assigned by WASPA.
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## Decision

24. After carefully reviewing the complaint and supporting evidence, the Member's response, and the Complainant's further submissions I have made the following findings:
- 24.1 In the circumstances outlined by the Complainant, the tester, as a prospective customer, was directed to the Member's subscription service when they responded to a banner advert that referred to a cash prize of R100 000 that could be claimed. However, it is apparent from the evidence provided by the Complainant that the tester was never placed in a position where they were able to claim or receive the advertised cash prize.
- 24.2 When the promotion of the Member's 'Quickheal' subscription service and subscription flow is viewed in its totality, I am satisfied that the Member has not been honest and fair in its dealings with customers.
- 24.3 The Member has therefore breached clause 5.4 of the WASPA Code and the complaint is upheld in this regard.
- 24.4 I am also satisfied that the promotion of the Member's 'Quickheal' subscription service and subsequent subscription flow is also likely to mislead prospective customers by inaccuracy, ambiguity and omission. The Member has therefore breached clause 5.5 of the WASPA Code and the complaint is upheld in this regard.
- 24.5 The Member has failed to provide any customer support mechanism, whether telephonic or via email (or via any other accessible medium) for the 'Quickheal' subscription service. The Member has breached clause 5.11 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 24.6 The content that was promoted in the banner advert clicked on by the tester, i.e. to claim a cash prize, bears no relation to the content or type of content that is provided to customers as part of the advertised subscription service. The banner advertising would mislead consumers into believing that it is for an entirely different service or for different content. The Member has breached clause 8.8 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 24.7 It is evident that the Member's services are not free nor are they billed at standard rates.

- 24.8 I agree with the Complainant's submission that the '*Claim Prize*' button, which when clicked on, triggers the Vodacom confirmation page (NHCP), qualifies as a 'call-to-action'.
- 24.9 Where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action. The Member has failed to do so and is therefore in breach of clause 12.1 of the WASPA Code. The complaint is upheld in this regard.
- 24.10 There was no indication given to the tester that they were required to join the Member's subscription service in order to claim the advertised prize. The Member has therefore breached clause 15.4 of the Code and the complaint is upheld in this regard.
- 24.11 The Member also did not make it clear that the advertised cash prize was an incentive offered to prospective customers for joining the Member's 'Quickheal' subscription service and/or that the cash prize would only apply once the tester had joined the service. The Member has breached clause 15.5 of the Code and the complaint is upheld in this regard.
- 24.12 Based on the various prompts given to the tester, i.e. 'spin the wheel' or 'try again', in order to win the advertised cash prize, I am satisfied that a promotional competition was offered by or on behalf of the Member here.
- 24.13 It is self-evident from the prompts provided and the various pages used in the promotional flow that various requirements of the Code, which relate to promotional competitions, have not been complied with. I will deal separately with each of the relevant clauses cited by the Complainant and considered
- 24.14 In terms of clause 18.2, the cost for a single entry into a promotional competition must not exceed R1.50. Although the tester, after subscribing to the Member's service would have been charged at a rate of R7.00 per day, there was no evidence presented that the tester was charged for entering the promotional competition. The complaint in this regard is dismissed.
- 24.15 In terms of clause 18.3 of the Code, all valid and correct entries to the promotional competition must have the same chance of winning. It is apparent that the tester had no chance of winning the advertised cash prize regardless of what they did. Therefore, the Member has breached clause 18.3 of the Code and the complaint is upheld in this regard.
- 24.16 It is evident from the screenshots of the pages to which the tester was directed that none of the information, which is required to be stated in relation to an offer

to participate in a promotional competition, was clearly stated. The Member has breached clause 18.4 of the Code and the complaint is upheld in this regard.

- 24.17 The promotional competition offered by or on behalf of the Member did not have a specific closing date, and it is not evident that an entry can instantly win the advertised prize (i.e. they have to first spin the wheel successfully). The Member is in breach of clause 18.6 of the Code and the complaint is upheld in this regard.
- 24.18 Based on the wording of the various prompts given to the tester throughout their journey, the chance of winning the advertised cash prize is either exaggerated, and/or the change of winning is suggested to be a certainty, and/or it is suggested that the tester has already won the advertised prize. The Member has breached clause 18.9 of the Code and the complaint is upheld in this regard.
25. To summarize the findings, the Member is found to have breached clauses 5.4, 5.5, 5.11, 8.8, 12.1, 15.4, 15.5, 18.3, 18.4 (a)-(h), 18.6 and 18.9 (b), (c) and (d) of the WASPA Code of Conduct and the complaint in respect of each has been upheld. The complaint relating to clause 18.2 has been dismissed.
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## Sanctions

26. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
- 26.1 any previous successful complaints made against the Member in the past three years;
  - 26.2 any previous successful complaints of a similar nature;
  - 26.3 the nature and severity of the breach; and
  - 26.4 any efforts made by the Member to resolve the matter.
27. I have also taken account previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions when determining appropriate sanctions.
28. I have noted that a number of other formal complaints have been made against the Member (see complaints #57830, #57833 and #57836). However the adjudication of these other complaints are still pending and so they will not be taken into account in determining the sanctions to be imposed in respect to this complaint.



29. The misleading way in which the Member's subscription service has been promoted must be viewed (and have been viewed in previous adjudications and appeals) in a serious light, based on the potential risk of harm to consumers.
  30. The Member was given an opportunity to respond to the complaint. It opted to refer to a completely unrelated Heads-Up Complaint, which dealt with a different service on a different network, and after this was pointed out by the Complainant, the Member made no further submissions. The Member has therefore not given an adequate response to this complaint and, in particular, has not demonstrated that steps have or will be taken to remove the potential risk of harm to consumers arising from these types of misleading promotional campaigns.
  31. Based on the nature and severity of the Member's various breaches of the WASPA Code of Conduct in this complaint, the Member is fined the following amounts:
    - 31.1 R5 000 for breach of clause 5.4;
    - 31.2 R5 000 for breach of clause 5.5;
    - 31.3 R5 000 for breach of clause 5.11;
    - 31.4 R5 000 for breach of clause 8.8;
    - 31.5 R5 000 for breach of clause 12.1;
    - 31.6 R5 000 for breach of clause 15.4;
    - 31.7 R5 000 for breach of clause 15.5; and
    - 31.8 R10 000 for breach of clauses 18.3, 18.4, 18.6 and 18.9.
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