



Report of the Adjudicator

Complaint number	#60327
Cited WASPA members	YellowDot Mobile Membership no: 1950
Source of the complaint	WASPA Compliance Department
Complaint short description	Dishonest and unfair dealings with customers. Disseminating false or deceptive information. Misleading subscription through requiring customers to subscribe in order to obtain an existing reward.
Date complaint lodged	2024-07-09
Date of alleged breach	2024-06-20
Applicable version of the Code	17.7
Clauses of the Code cited	5.4, 5.5, 15.4, 15.5
Related complaints considered	N/A
Fines imposed	The member breached clauses 5.4, 5.5, 15.4 and 15.5 There are some mitigating factors and, accordingly, the member is fined: <ul style="list-style-type: none"> - R5000 for the breach of clause 5.4 - R5000 for the breach of clause 5.5 - R5000 for the breach of clause 15.4; and - R5000 for the breach of clause 15.5

Other sanctions	- The member is ordered to suspend the services in question and rectify the breached clauses above before continuation of the service to customers.
Is this report notable?	Not Notable
Summary of notability	N/A

1. Initial complaint

1.1 This complaint was initially logged by the WASPA Compliance Department (“the complainant”) on 9 July 2024 and sent to YellowDot Mobile (“the member”) on 11 July 2024. The member responded on 2 August 2024 after extension to respond was granted by the WASPA. The complainant responded to the members' submission on 16 August 2024. The member did not provide a final submission within the timeframe provided to them and the matter was assigned for adjudication on 27 August 2024.

1.2 The complainant included comprehensive notes of its examination of the member’s service, as well as images to help illustrate the examination. The report can be summarised as follows:

1.2.1 Whilst monitoring, testing services and conducting compliance checks of test results, the complainant, on or about 20 June 2024, conducted a test on the Telkom network. The tester received a push notification on their mobile device and then browsed on the page which included the following information:

*“Congratulations! You’re the lucky winner!
With every 10 millionth search query worldwide, we will proclaim a winner to send reward to.
Select your lucky prize below and claim it by following the instructions...”*

1.2.2 The tester selected a prize as instructed and was directed to a page which included the following information:

*“Your prize:
R10,000
Congratulations! You’ve won R 10,000.
Complete the steps on the next page to claim your prize.
ACCEPT PRIZE...”*

1.2.3 The tester then clicked on the 'ACCEPT PRIZE' button expecting to be directed to a page providing information on how he/she could claim the prize, however, was directed to the landing page for a quiz subscription service called Big Cash charged at R5.00 per day.

1.2.4 The tester stopped the test at this point as he/she believed there were already multiple breaches of the code.

1.2.5 On or about 21 June 2024, another test was conducted by the tester on the Telkom network. Similarly to above, the tester was browsing on Facebook and clicked on an advertisement for free data and airtime. The tester was directed to a page which included the following information:

"For each gift, there is a button below. You can choose both gifts for free GET FREE 35 GB..."

The tester clicked on the 'GET FREE 35 GB' button with the expectation to claim the free gift, however, was directed to the landing page for the same quiz subscription service called 'Big Cash' charged at R5.00 per day.

1.2.6 Again, the tester stopped the test at this point as he/she believed there were already multiple breaches of the code.

1.2.7 In summary, on both days of testing, the WASPA Compliance Department identified the following problem areas and breaches:

1.2.7.1 In both test results, it is stated that the tester had already won a prize/gift and merely had to claim it. However, it appears that they first need to subscribe to the service in order to claim the existing reward. This is deceitful, dishonest, false and/or deceptive dissemination of information.

1.2.7.2 The complainant thus believes that the member has breached several clauses of the WASPA Code of Conduct ("the code") (stated at section 5 below), believing that the service is generally deceitful, dishonest, misleading and financially harmful to consumers.

2. Member's response

2.1 Following receipt of the formal complaint from the WASPA compliance department on 11 July 2024, the member responded to the complaint on 2 August 2024. The response is summarised as follows:

2.1.1 The member emphasised that it prides itself on conducting fair and honest business practices in the telecommunications industry in South Africa. It acknowledged the misleading advertising cited in the Formal Complaint, but

pointed out that all its marketing is done by third party advertising agencies who are under strict instruction to only use approved marketing flows and advertising creatives and materials in full compliance with the WASPA code of conduct. The member thus didn't deny the breaches but insinuated that it was not them who were at fault.

2.1.2 The member then indicated that, since being made aware of the various breaches, it has sought to implement an anti-fraud detection and blocking system for all its services in South Africa as a long-term remedy to misleading advertising. To prove this the member attached a signed agreement with a leading anti-fraud service provider and indicated that it expected the technical integration to be completed on or before the end of August 2024, with their expectation being that that this will be a long-term remedy to the current problems.

2.1.3 The member concluded its response by vowing to continue to take proactive steps to prevent such issues from happening in the future.

3. Complainant's response

3.1 In response to the member's submissions in response to its initial complaint, the complainant responded on 16 August 2024 as follows:

3.1.1 In response to the members submission that the breaches were caused by third party advertisers and that it was, thus, not their fault or responsibility/liability, the complainant referred to the following 3 further clauses in the code.

3.5. Members must ensure that any client, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.

3.6. Members must ensure that any client, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of this Code of Conduct.

3.7. A member is liable for any breaches of this Code of Conduct resulting from services offered or marketed by a client, supplier, affiliate or sub-contractor 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.

3.1.2 The complainant, thus, asserted that there is a positive obligation on the member to ensure compliance with the code from their third party advertisers and thus, the assertion that there was no “fault” on behalf of the member is rendered moot.

3.1.3 The complainant then points out that the member doesn’t deny the various breaches of the code and while the complainant takes note and appreciates the remedial and corrective steps taken by the member to address the continued breaches, the member remains liable for the breaches that occurred prior to these remedial steps being taken.

4. Member’s further response

4.1 The member did not provide a final submission within the timeframe provided to them.

5. Sections of the Code considered

5.1 As the conduct complained of took place on or around 20 June 2024, version 17.7 of the WASPA Code of Conduct applies to this complaint.

*5.2 It is alleged that the member has infringed clauses **5.4**, **5.5**, **15.4** and **15.5** of the Code of Conduct. The clauses read as follows:*

***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.*

***15.4.** A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: “to claim your prize, join this service”.)*

***15.5.** A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: “if you join this subscription service, you will be entered into a monthly draw for a prize”.)*

6. Decision

6.1 Having reviewed the complaint and responses from the complainant and member, I have reached the conclusions set out below wherein I deal with the relevant clauses of the code in order.

6.2 Before dealing with the relevant “breach” clauses, in order, I wish to initially opine on an issue that the member brought up as its main defence in its response; this being the fact that the member asserts that the breaches were caused by third party advertisers and that it was, thus, not their fault or responsibility/liability. While the member may have made the advertisers aware of the code (as per clause 3.5 of the code), clause 3.6 of the code means that the member still bears ultimate responsibility for ensuring compliance with the code and clause 3.7 dictates that the member would be liable for the breaches of the third party non member.

Clause 5.4

6.3 With regards to whether the member had honest and fair dealings with its customers, regardless of the fault or knowledge of the breaches occasioned by the third party advertisers, it has already been established that the member, ultimately, bears responsibility to ensure third party non member compliance. In this matter, the tester (on both 20 and 21 July, for different prizes and on different mediums) was told that they had already won a prize and needed to click to accept the prize but, when doing so, was directed to the landing page for a quiz subscription service called ‘Big Cash’ charged at R5.00 per day.

This is clearly unfair and dishonest dealings with a customer.

6.4 Accordingly, I find a breach of this clause.

Clause 5.5

6.5 With regards to whether the member knowingly disseminated information that was false or deceptive, or that would be likely to mislead by inaccuracy, ambiguity, exaggeration or omission, whilst the member may, itself, not have known, I have already established that the member bears responsibility and liability for its third party advertisers and I am convinced that they would have known. The information disseminated was clearly false, deceptive, involved omission and/or was inaccurate as the customer was not directed to claim a prize as promised but rather directed to a landing page for a quiz subscription service.

6.6 Accordingly, I find a breach of this clause.

Clause 15.4

6.7 On two separate occasions, the tester responded to an advertisement where they were congratulated for winning a prize and were instructed to complete steps to select/claim their respective prizes. The wording in both advertisements clearly implies that the prizes had already been won and just needed to be claimed. There was no indication that a subscription service needed to be subscribed to in order to claim these prizes. As the tester didn’t ultimately subscribe, it is unclear if these prizes would even have been made available and provided to the tester/a customer should they have subscribed to the subscription service. Based on the wording of

the advertisements, the prize was existing and this is in breach of clause 15.4 of the code which provides that *“a member must not require that a customer join a subscription or notification service in order to claim an existing reward...”*

6.8 Clause 15.5 is also in breach since irrespective of whether the tester is being offered a guaranteed prize/gift, or just a change of a prize/gift as an incentive, it is not clearly communicated or advertised on the landing page at the outset that it is dependent on a subscription service being activated in order to claim the prize/gift.

6.9 Accordingly I find that the member has breached both clause 15.4 and 15.5 of the code.

7. Sanctions

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct of the member in the form of any prior contraventions of the code and any mitigating or aggravating circumstances.

7.2. There are currently 2 outstanding complaints being adjudicated upon against the member (also concerning clauses 5.4 and 5.5 of the code) but neither have been adjudicated upon yet. There have been no other previously upheld complaints against the member so I find this neither mitigating nor aggravating in nature.

7.3 When it comes to mitigating factors in this case, the following are present:

7.3.1 The member showed remorse and, after being informed of the breaches by the complainant, put immediate steps in place by contracting with a leading anti-fraud detection and blocking service provider to put measures in place so that this issue is remedied in the future. The member must be commended on taking this proactive remedial step.

7.3.2 As a result of the contraventions all being occasioned by third party advertisers, despite the member being responsible and liable for this, there is no evidence of actual deceit or intent from the member itself when it comes to the contraventions of the code in this instance.

7.4 As such, I feel, on the whole, that there are more mitigating factors than aggravating when it comes to this case.

7.5 I find that the Member breached clauses 5.4, 5.5, 15.4 and 15.5.

7.6 I would have fined the member R5000 for each breach (and there were 2 instances of each breach in this matter) but, due to the mitigating factors I, accordingly, only fine the member for 1 of the breach instances. The member is accordingly fined R5000 for the breach of clause 5.4, R5000 for the breach of clause 5.5, R5000 for the breach of clause 15.4 and R5000 for the breach of clause 15.5.

7.7 Furthermore, the member is ordered to suspend the services in question and rectify the breached clauses above, if not done so already, before continuation of the service to customers.

8. Matters referred back to WASPA

N/a
