



Report of the Adjudicator

Complaint number	#60461
Cited WASPA members	U2OPIA MOBILE / Collective Networks Membership no: 1962
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant promotion of subscription service
Date complaint lodged	2024-08-19
Date of alleged breach	2024-07-19
Applicable version of the Code	v17.7
Clauses of the Code cited	5.4, 5.5, 8.8, 12.1 read with 8.9, 15.4, and 15.5
Related complaints considered	n/a
Fines imposed	Member fined following amounts: R2 500 for breach of clause 5.4; R2 500 for breach of clause 5.5; R2 500 for breach of clause 8.8; and R5 000 for breach of clause 12.1.

Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

Initial complaint

1. Whilst monitoring, testing services and conducting compliance checks of test results, the WASPA Compliance Department (“Complainant”) identified services which do not comply with the requirements as set out in the WASPA Code of Conduct (“Code”).
2. The Complainant’s tester conducted a manual test on 19 July 2024 on the Telkom network and provided an outline of the test results, together with screenshots as evidence of various alleged breaches of the Code.
3. While browsing on the X social media platform, the tester clicked on a link that appeared to be related to a music video. Instead of being directed to the video, the tester was directed to a web page that contained the following information:

*“Congratulations!
Today, July 19, 2024, You win R 4,404,783!
Answer 7 quick questions and take your money R
4,404,783! This promotion is valid for South
Africa Only!
You only have 4 minutes and 52 seconds, to
answer this survey!...
WITHDRAW MONEY...”*

4. The tester clicked on the blue ‘WITHDRAW MONEY’ button and was directed to a page that included the following information:

*“Would You Make A Great Career Online And Become A Millionaire by 2024?
Take this FREE test and find out how you can make money on the internet.
What is your gender?
Woman
Man...”*

5. The tester clicked on the 'Woman' button with the expectation to continue with the survey/free online test in order to claim the money. However, they were directed to a confirmation page for the Member's subscription service, called 'Reycreo', charged at R3.00 per day.
 6. The tester elected to stop the tests at that point.
 7. The Complainant alleges that the Member has breached the provisions of clauses 5.4, 5.5, 8.8, 12.1 read with 8.9, 15.4, and 15.5 of the Code.
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Member's response

8. The Member responded to the complaint by stating that they had identified the source of this promotional campaign and had immediately paused all their active promotions through that particular source.
 9. The Member provided a copy of an email that was sent to all their partners to stop all traffic on the Telkom network because of the number of complaints being received.
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Complainant's further submissions

10. The Complainant referred to clauses 3.1, 3.2, 3.5, 3.6 and 3.7 of the Code and submitted that there was a positive obligation on the Member to ensure that their third-party marketing suppliers promote and market the Member's services in accordance with the requirements of the Code.
11. The Complainant stated that the Member needs to ensure that the marketing material used to promote their service aligns with the content that is actually provided as part of the subscription service.
12. The Complainant also noted that the Member had not denied the non-compliant promotion and marketing of their service and had only referred to remedial and corrective steps taken to address the breaches emanating from their marketing partners. The Complainant submitted that the Member remains liable for the breaches occasioned or facilitated by their third-party marketing suppliers.
13. The Complainant also stated that the requirements as set out in clauses 15.4 and 15.5 need to be adhered to if this type of promotion or marketing mechanism is linked to the Member's services.

Member's further submissions

14. The Member submitted further that they had terminated the services of the marketing partners involved as it appeared that their mainstream content was being misused with incorrect creatives.

Sections of the Code considered

15. Clauses 5.4, 5.5, 8.8, 12.1 read with 8.9, 15.4, and 15.5 of the Code were cited in the formal complaint and considered.
16. Clauses 3.1, 3.2, 3.5, 3.6 and 3.7 of the Code were also considered.
17. No other relevant clauses were assigned by WASPA.

Decision

18. The Member has acknowledged that the promotional campaign that was the subject of this complaint were not compliant with the requirements of the Code.
19. It is common cause between the parties that this promotional campaign was conducted by a third party marketing partner/supplier.
20. The Complainant has correctly stated that the Member has a positive obligation, in terms of clauses 3.6 of the Code, to ensure that such third party suppliers, who are not members of WASPA, market the Member's services in a manner consistent with the requirements of the Code. Clause 3.7 of the Code also states that the Member is liable for any breaches of the Code resulting from services marketed by such third party suppliers.
21. With regard to the specific clauses of the Code that the Complainant alleges have been breached and after carefully reviewing the complaint and supporting evidence, I have made the following findings:
 - 21.1 In the promotional materials used for this campaign, a representation was made that a music video content could be viewed by clicking on the link provided. This representation was patently false.

- 21.2 A further representation was made in the subsequent web page used to advertise or promote the Member's service to the effect that the tester had won R 4,404,783 and only had to answer 7 quick questions to take this money.
- 21.3 When the tester clicked "WITHDRAW MONEY", they were then directed to another web page which does not contain any reference to the money that was just won. Instead, they are invited to take a "FREE test" to find out how they could make money on the internet.
- 21.4 The representation made that the tester had won a sum of money was also patently false.
- 21.5 I am satisfied that this does not constitute honest and fair dealings with customers as required by clause 5.4 of the Code. In terms of clause 3.7 of the Code, the Member is responsible for this breach by their third party marketing partner/supplier, and the complaint is accordingly upheld in this regard.
- 21.6 The false representations that are made in the relevant promotional materials, used to promote the Member's subscription service is inherently deceptive and likely to mislead consumers by ambiguity. This campaign also appears to have been designed intentionally in this manner. I am satisfied that there has been a breach of clause 5.5 of the Code for which the Member is responsible, and the complaint is accordingly upheld in this regard.
- 21.7 The music video content that is promoted in the first web page used to advertise the Member's subscription service is clearly not the same content that is provided to subscribers when they subscribe to this service. This advertising also misleads consumers into believing that it is for an entirely different service or for different content. I am satisfied that there has been a breach of clause 8.8 of the Code for which the Member is responsible, and the complaint is accordingly upheld in this regard.
- 21.8 I agree with the submission made by the Complainant that the "Woman" button used on the second promotional web page, which triggers an automatic redirect to the Telkom Confirmation Page, qualifies as the 'call-to-action' as defined in clause 8.9 of the Code. There is no pricing information displayed adjacent to this 'call to action' or at all in breach of the requirements of clause 12.1 of the Code. The Member is responsible for this breach and the complaint is accordingly upheld in this regard.
- 21.9 The Complainant has alleged that there was also a breach of clause 15.4 of the Code. However, based on my review of the evidence presented, none of the web pages referred to in the test results include any requirement that the customer must join the Member's subscription service in order to claim the

money that has purportedly been won. This clause is not relevant to the facts presented in this complaint and the complaint in this regard is dismissed.

- 21.10 The Complainant also cited clause 15.5 of the Code. Clause 15.5 permits members to offer an incentive to prospective customers to join their subscription service, provided that it is made clear that the benefit only applies once they have joined the service.
- 21.11 If the relevant promotional web page used in this campaign is examined, the claim is made that a cash prize has been won and then the further representation is made that this prize can be 'taken' by simply answering "7 quick questions". No claim is made that the prize is dependent on the tester joining the Member's subscription service.
- 21.12 While this promotional campaign is no doubt deceptive and/or misleading in nature, the deception or ambiguity is not caused by any claim or representation made that the cash prize is linked to joining the Member's subscription service.
- 21.13 I am therefore of the view that clause 15.5 of the Code is also not relevant to the facts presented and the complaint in this regard is dismissed.
22. To summarize my findings, the Member is found to be responsible for the breach of clauses 5.4, 5.5, 8.8, and 12.1 read with 8.9 and the complaint is upheld in this regard. The complaint in respect to the alleged breach of clauses 15.4 and 15.5 of the Code is dismissed.

Sanctions

23. When determining the appropriate sanctions to be imposed for the various breaches of the Code, the following factors must be taken into consideration:
- 23.1 Whether any previous successful complaints have been made against the Member in the past three years?
- 23.2 Whether any previous successful complaints of a similar nature have been made against the Member?
- 23.3 The nature and severity of the breach.
- 23.4 Whether any efforts were made by the Member to resolve the matter.

24. Furthermore, when considering the extent of the Member's liability for the various breaches of the Code and the appropriate sanctions to be imposed, clause 3.7 of the Code also provides that it must be considered whether the Member has demonstrated that it took reasonable steps to ensure that the third party marketing partners/suppliers appointed by them do market their services in a manner consistent with the requirements of the Code. If so, this will be considered as a mitigating factor when determining such sanctions.
 25. No previous complaints have been made against the Member. This is taken into account as a mitigating factor.
 26. In their response to the complaint, the Member paused this particular non-compliant campaign and sent a notification to all their marketing partners to immediately stop all traffic on the Telkom network. The Member then subsequently terminated the services of the marketing partners responsible for the non-compliant marketing of their services. I am satisfied that the Member has made an effort to resolve the complaint and has demonstrated that it takes reasonable steps to ensure that its services are marketed by third parties in a manner consistent with the Code.
 27. These are all factors taken into account in mitigation.
 28. However, the use of deceptive marketing like this and the failure to display pricing information when promoting a subscription service must be viewed in a serious light, based on the potential risk of harm to consumers. This is taken into account as an aggravating factor.
 29. In light of all of the foregoing factors, the following fines are to be paid by the Member:
 - 29.1 R2 500 for breach of clause 5.4 of the Code;
 - 29.2 R2 500 for breach of clause 5.5 of the Code;
 - 29.3 R2 500 for breach of clause 8.8 of the Code; and
 - 29.4 R5 000 for breach of clause 12.1 of the Code.
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