



Report of the Adjudicator

Complaint number	#60750
Cited WASPA members	Exceptional Rights Membership Number: 2021
Notifiable WASPA members	None
Source of the complaint	WASPA Compliance Department
Complaint short description	Advertised content was not the same as that offered.
Date complaint lodged	2024-09-19
Date of alleged breach	2024-08-19
Applicable version of the Code	17.7
Clauses of the Code cited	5.4; 5.5; 8.8
Related complaints considered	n/a
Fines imposed	R10 000 fine for breach of clauses 5.4. and 8.8
Other sanctions	None
Is this report notable?	No
Summary of notability	N/a

1. INITIAL COMPLAINT

- 1.1. This complaint was lodged by the WASPA Compliance Department on the 19th of September 2024, and the member was notified of the complaint by the WASPA Secretariat the next day.
- 1.2. The WASPA Compliance Department undertook a test of the member's operations on the 19th of August 2024.
- 1.3. The tester proceeded from an advertisement posted on a Facebook group, and followed the link provided to the member's platform. The tester made notes of the examination of the member's advertisement and service, and provided screenshots of this examination.
- 1.4. As the substance of the complaint is quite short, I reproduce it in full as Annexure A.

2. MEMBER'S RESPONSE

- 2.1. The member's general manager responded to the complaint on the 8th of October 2024 in the following terms:
I acknowledge your email and we are taking corrective action to resolve this issue.
- 2.2. On the 16th of October 2024 the general manager sent a further email stating the following:
Placement and traffic source has been identified and removed from our marketing.
- 2.3. No further correspondence was received from the member.

3. COMPLAINANT'S RESPONSE

- 3.1. The complainant made no further substantive response.

4. SECTIONS OF THE CODE CONSIDERED

- 4.1. As the conduct complained of took place on or around the 19th of August 2024, version 17.7 of the WASPA Code of Conduct applies to this complaint.
- 4.2. It is alleged that the member has infringed clauses 5.4, 5.5 and 8.8 of the Code of Conduct. These 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.

8.8. Content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service. Advertising must not mislead consumers into believing that it is for an entirely different service or for different content.

5. Decision

- 5.1. Having reviewed the complaint, supporting communications offered by the complainant and the member's response, I have reached the conclusions set out below.
- 5.2. It appears from the record that the member advertised a service, the "Crazy Fox Spins Gifts", on the Facebook group described by the tester. However, on following the provided link, the tester was presented with first a free offer for "Best Kids TV" and then to a paid subscription service for a service called "Da Vinci Kids Azoomee". Neither of these services have any connection with the advertised "Crazy Fox Spins Gifts" service.
- 5.3. Moreover, while the "Crazy Fox Spins Gifts" service was advertised as a free service, the service to which the tester was ultimately directed was a subscription service charged at R5 per day.
- 5.4. In the circumstances the member has infringed clauses 5.4 and 8.8. I do not find the member to have infringed clause 5.5, as I cannot deduce intention on the part of the member from the record.

6. Sanctions

- 6.1. I will impose a sanction upon the member for its breaches of clauses 5.4 and 8.8 together, as the provisions of clause 5.4 are broad enough to encompass the provisions of clause 8.8. It would hence be unjust to fine the member separately for its infringements of both.
- 6.2. I note that while the member has five complaints against it (according to WASPA's records), all of them are recent and all of them are pending determination. The member hence has no record either in respect of previous complaints against it generally, or relating to the relevant clauses of the Code specifically.
- 6.3. I also note that the member quickly remedied its breach upon receiving notice of this complaint (or at least it submitted correspondence to this effect).
- 6.4. Looking at the record of sanctions for infringements of clause 8.8, it appears that other adjudicators have imposed a fine of R10 000 for such breaches, rising to R20 000 for egregious breaches.
- 6.5. Accordingly, and taking account of the above factors, the member is fined an amount of R10 000 for its infringements of clauses 5.4 and 8.8 of the WASPA Code of Conduct

7. Matters referred back to WASPA

None.

Annexure A

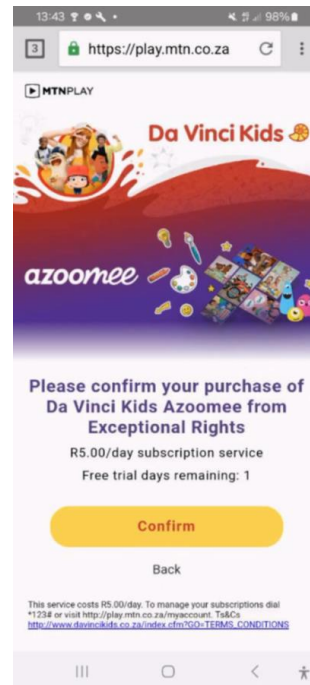
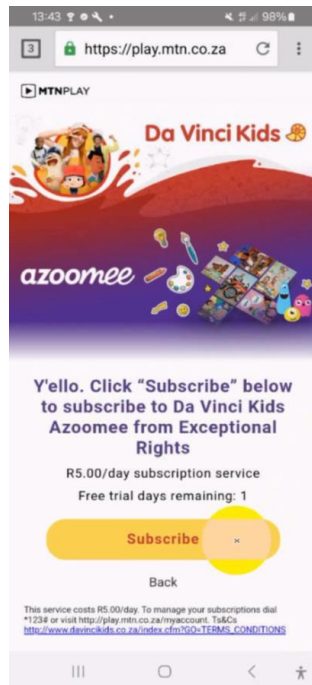
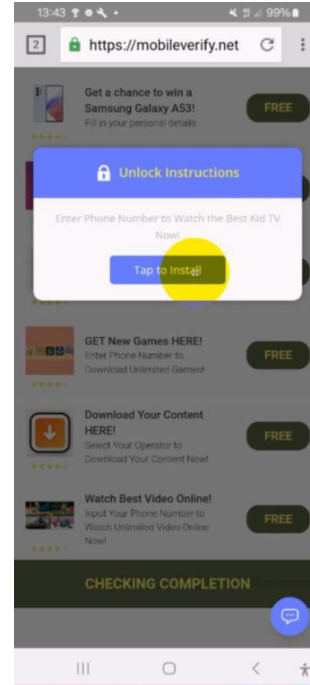
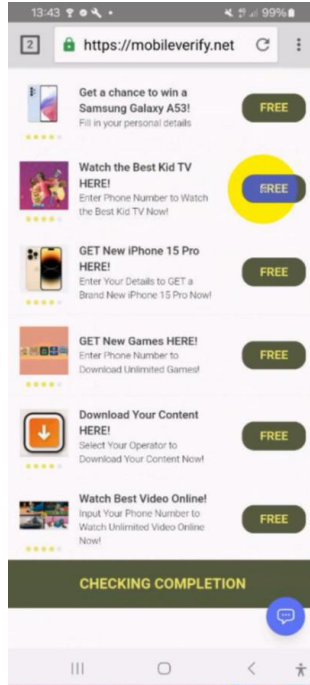
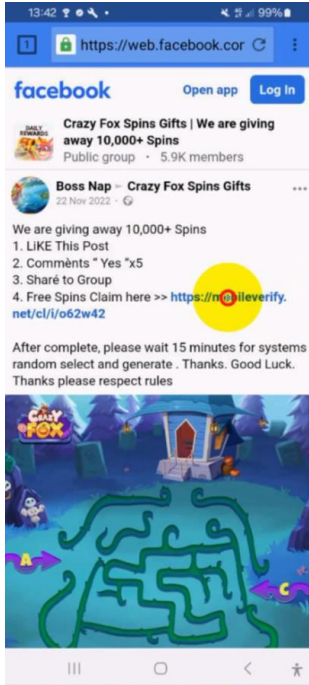
FORMAL COMPLAINT – EXCEPTIONAL RIGHTS – DA VINCI KIDS

1. Whilst monitoring, testing services and conducting compliance checks of test results, the WASPA Compliance Department identified a service which does not comply with the requirements as set out in the WASPA Code of Conduct (Code). Below is an outline of the test result, together with the alleged breaches of the Code.
2. On or about the 19th of August 2024 a test was conducted on the MTN network.
3. The tester was browsing on a Facebook group that included the following information:

“Crazy Fox Spins Gifts
We are giving away 10,000+ Spins
Free Spins Claim here >>
After complete, wait for 15 minutes for systems random select and generate. Thanks. Good luck...”
4. The tester clicked on the link for the ‘Free’ spins and was directed to a page with multiple ‘FREE’ offers, and the words “CHECKING COMPLETION” at the bottom of the page.
5. The tester selected an offer which stated:

“Watch the Best Kid TV Here! FREE”
6. A Pop-up notification appeared which stated:

“Unlock Instructions
Enter Phone Number to Watch the Best Kid TV Now!
Tap to Install...”
7. The tester clicked on ‘Tap to Install’ and was directed to the landing page for a subscription service called ‘Da Vinci Kids Azoomee’ from Exceptional Rights charged at R5.00 per day.
8. The tester clicked on the ‘Subscribe’ button and was directed to the confirmation page.
9. The tester elected to stop the test at this point as there were multiple breaches of the Code during the subscription acquisition flow for the ‘Da Vinci Kids Azoomee’ subscription service.
10. In summary: The tester was engaging with a page that offered FREE spins and followed the prompts and was directed to a FREE offer for the ‘Best Kids TV’, however was directed to the landing page for a subscription service charged at R5.00 per day.



11. The following provisions of the Code have been breached:

- 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.*

8.8. *Content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service. Advertising must not mislead consumers into believing that it is for an entirely different service or for different content.*

12. The member has breached several clauses of the Code of Conduct and is required to take immediate remedial action to ensure that the service complies with the requirements as set out in the WASPA Code of Conduct.

Kind Regards,

WASPA Compliance Department