



## Report of the Adjudicator

Complaint number	#60824
Cited WASPA members	Buongiorno SA (Pty) Ltd (2044)
Notifiable WASPA members	Not applicable.
Source of the complaint	WASPA Compliance Department
Complaint short description	Misleading advertising Advertising targeting children
Date complaint lodged	2024-10-03
Date of alleged breach	2024-09-26
Applicable version of the Code	17.9
Clauses of the Code cited	5.4 and 22.4
Related complaints considered	Not applicable.
Fines imposed	The member is fined R5 000.00 for breach of clause 5.4 of the Code, and R25 000.00 for breach of clause 22.4 of the Code.
Other sanctions	Not applicable.
Is this report notable?	Not notable.
Summary of notability	Not applicable.

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## **Initial complaint**

1. Whilst monitoring, testing, and conducting compliance checks on wireless application services, the WASPA Compliance Department (“the complainant”) identified a service that they believed did not comply with the requirements of the WASPA Code of Conduct (“the Code”).
2. A WASPA tester (“the tester”) conducted a manual test on the Vodacom network while engaging with an application that was designed for use by very young children.
3. The complainant included an excerpt of the description of the application from the application store describing the content and the target audience of the application: “Learn numbers, colors, animals, music, rhymes in baby games. Perfect for 1,2,3,4,5 year olds, the ideal first baby toy phone! Musical fun baby phone games for toddlers”.
4. During the manual test, the tester clicked on a banner advertisement for the "Latest football news" displayed at the bottom of the application page.
5. The tester was directed to the Vodacom Network Hosted Confirmation Page for a subscription service called "ClicNScores," charged at R5.00 per day. The tester chose to stop the test at this point due to breaches of the Code identified during the subscription acquisition flow for the "ClicNScores" subscription service.

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## **Member’s response**

6. The member explained that they took action after receiving several "Heads Up" notices from the complainant. The member explained that they removed problematic placements from their Google Ads shortly after each of the four notices was received, between July and September 2024.
7. On 2024-10-16, the member stated that they also introduced stricter controls to avoid placements of advertisements that involved children's content.

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## **Complainant’s response**

8. The complainant reviewed the original complaint and the member’s submissions. They emphasised the member’s responsibility to ensure compliance by any third-party marketing suppliers, including Google Ads, in accordance with the Code.

9. The complainant cited clauses 3.5, 3.6, and 3.7 of the Code, which hold members accountable for third-party breaches unless reasonable preventive measures are demonstrated. The complainant stated that the member must ensure promotional material does not target children and is not placed on child-orientated platforms.
  10. The complainant further pointed out that the member did not deny the breaches but only outlined corrective actions taken after the complaint, leaving the member liable for violations caused by their suppliers.
  11. The complainant noted that the member had received four prior "Heads Up" notifications between July and September 2024 for similar breaches, suggesting ongoing non-compliance despite warnings.
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## **Sections of the Code considered**

12. The following sections of the Code are considered herein, and read as follows:

"5.4. Members must have honest and fair dealings with their customers.

22.4. Subscription services must not be intentionally targeted at children".

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## **Decision**

13. The placement of the advertisement for the "ClicNScores" subscription service within an application specifically designed for very young children was misleading and deceptive. It gave a false impression that the advertised content was appropriate for the application's intended audience. According to the Code, a child is defined as a natural person under the age of 18. The application's description clearly stated it was intended for children aged 1 to 5 years and was designed to be child-like. By promoting a subscription service within this application, the member directly targeted children.
14. Therefore, the member is found in breach of clause 5.4 of the Code as they misled the customer, which was neither fair nor honest.
15. The member's actions revealed a concerning lack of adequate measures to prevent the intentional targeting of children through their marketing campaigns. Despite receiving prior warnings from the complainant, the member failed to implement sufficient preventive measures. This inaction underscores a deliberate disregard for the vulnerability of young children, a particularly susceptible audience. The repeated violations, combined with the

inappropriate targeting of such a sensitive demographic, amplify the seriousness of the breaches. Therefore, the member is found in breach of clause 22.4 of the Code.

16. A mitigating factor is that the member has not been found in breach of these clauses by adjudicators in formal published complaints prior to this complaint. The member also took corrective actions shortly after receiving non-compliance notices from the complainant.
  17. Therefore, the complaint is upheld, and the member is found in breach of clauses 5.4 and 22.4 of the Code.
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### **Sanctions**

18. The advertising of subscription services to children is expressly prohibited, and the failure of the member to comply with these requirements must be viewed in a serious light.
  19. The member is fined R5 000.00 for breach of clause 5.4 of the Code and R25 000.00 for breach of clause 22.4 of the Code.
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### **Matters referred back to WASPA**

20. Not applicable.
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