



## Report of the Adjudicator

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| Complaint number               | <b>#60844</b>   |
| Cited WASPA members            | <b>Arshiya</b>  |
| Notifiable WASPA members       | <b>N/A</b>  |
| Source of the complaint        | <b>WASPA Compliance Department</b>  |
| Complaint short description    | <b>Various Irregularities</b>   |
| Date complaint lodged          | <b>2024-10-10</b>   |
| Date of alleged breach         | <b>On or about the 10th of September 2024</b>   |
| Applicable version of the Code | <b>17.9</b>   |
| Clauses of the Code cited      | <b>5.1, 5.4, 5.5, 5.6A, 8.7, 8.8, 15.4, 15.5.</b>   |
| Related complaints considered  | <b>N/A</b>  |
| Fines imposed                  | R 5 000-00 suspended for 6 months is given for breach of section 5.1.<br>R 5 000-00 suspended for 6 months is given for breach of section 5.4.<br>R 5 000-00 suspended for 6 months is given for breach of section 5.5.<br>R 3 000-00 suspended for 6 months is given for breach of section 5.6A.<br>A formal reprimand is given for breach of section 8.7<br>A formal reprimand is given for breach of section 8.8.<br>R 10 000-00 suspended for 6 months is given for breach of section 15.4. |

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|                         | A fine of R 10 000-00 suspended for 6 months is given for breach of section 15.5. |
| Other sanctions         | <b>N/A</b>  |
| Is this report notable? | <b>Not notable</b>  |
| Summary of notability   | <b>N/A</b>  |

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## Initial complaint

The Complainant in this matter is of the opinion that a particular service of the Member breached various clauses of the WASPA Code of Conduct.

In the formal complaint the Complainant provided detailed tests (Test 1 & 2) of the Member's service in dispute with an in-depth analysis of what it thought to be various breaches of the Code. For the sake of brevity, the whole complaint will not be replicated here, as both parties are in possession of the same.

**The following abstract however, which was provided as summaries by the Complainant of its Test 1 & 2, is provided in full below:**

### TEST 1

- The tester was engaging with a page that stated that they would win 'FREE' Cash Tornado Slots coin packs and duly followed the prompts but was directed to the landing page for a totally unrelated subscription service charged at R7.00 per day.
- The landing page led to the MTN confirmation pages for a subscription service charged at R79.00 per month. The pricing information is not aligned – the advertisements reference 'FREE', the landing page R7.00 per day and the confirmation pages R79.00 per month.
- The tester was prompted to complete steps in order to claim a 'FREE' reward, however, was lured into a totally unrelated subscription service.
- It was stated that the tester should follow the prompts to claim the 'FREE' reward, however, it appears that they first need to subscribe to the service in order to claim the existing reward which is a breach of Clause 15.4. Alternatively, if there is no existing prize/reward, then the member is in breach of Clauses 5.4 and 5.5.
- A breach of Clause 15.5 applies in both scenarios, 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 that it is dependent on a subscription service being activated.

## TEST 2

- The tester was interacting with an Instagram page offering a 'FREE' Netflix premium account and followed the prompts to claim the offer. The tester was directed to a page where they had to select a 'FREE' offer to confirm that they are human. This action directed the tester to a totally unrelated subscription service landing page for a service called 'MobiTV' charged at R7.00 per day.
- The tester clicked on subscribe and was directed to the MTN confirmation steps for a subscription service called 'Gameshub' charged at R79.00 per month.
- The landing page led to the MTN confirmation pages for a subscription service charged at R79.00 per month. The pricing information is not aligned – the advertisements reference 'FREE', the landing page R7.00 per day and the confirmation pages R79.00 per month.
- The tester was prompted to complete steps in order to claim a 'FREE' Netflix premium account, however, was lured into a totally unrelated subscription service.
- It was stated that the tester should follow the prompts to claim the 'FREE' reward, however, it appears that they first need to subscribe to the service in order to claim the existing reward which is a breach of Clause 15.4. Alternatively, if there is no existing prize/reward, then the member is in breach of Clauses 5.4 and 5.5.
- A breach of Clause 15.5 applies in both scenarios, 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 that it is dependent on a subscription service being activated.
- The tester was unable to access the content of the subscription service. No information was provided on how to login to use the subscription service. Money was deducted for a service that the tester could not use.

The Complainant alleged the same breaches in both tests although additional breaches of sections 5.1 and 5.6A.

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## Member's response

The Member provided the following response, **copied here verbatim**:

*"Thank you for bringing this to our attention. We want to inform you that we have block the particular source and the ticket has been closed at our end."*

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## Complainant's response

In its response, the Complainant stated the following, **copied here verbatim**:

“We have reviewed the original complaint as well as the Respondent’s submissions in respect thereof. We will endeavour to address the points raised by the Respondent that are relevant to the non-compliant service complained of and the correlating breaches, however, any failure to address a specific point should not be construed as an admission of any sorts.

1. There is a positive obligation on the Respondent to ensure that any client, supplier, affiliate or sub-contractor – in this case the third-party marketing supplier – promotes and markets the Respondent’s services in accordance with the requirements of the Code.

2. Please refer to the following clauses as set out in the WASPA Code of Conduct (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. The Respondent 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.

4. Furthermore, the use any incentives, prizes or gifts must be promoted and offered in accordance with the provisions of the Code.

5. The Respondent does not deny the non-compliant promotion and marketing of their service. The Respondent only refers to remedial and corrective steps taken to address the breaches emanating from their marketing partners. The Respondent remains liable for the breaches occasioned or facilitated by their third-party marketing suppliers.

6. The Respondent does not address the concerns raised regarding the pricing information inconsistencies across the subscription acquisition flow, which results in misleading and ambiguous information being provided to consumers.

7. Furthermore, as set out in the manual test, the tester was unable to access the service despite numerous attempts and despite being charged the full monthly subscription fee for a service they were unable to use. This is of serious concern and must be addressed and corrected before this service can be prompted and offered to consumers. The member must provide clear instructions on how to access the service and ensure that the service is functioning.
  8. We respectfully submit that the Respondent's service was in breach of several clauses of the Code on the date of testing the service, and that our original complaint sufficiently sets this out. The Respondent should be held liable for their non-compliant service.
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## **Member's further response**

The Member provided a further response, **copied here verbatim**:

We acknowledge receipt of your compliance report dated October 10, 2024, regarding the Gameshub subscription service. We appreciate the time and diligence with which the WASPA team reviewed our service, and we are grateful for the opportunity to address these matters. We are fully committed to upholding the highest standards of compliance with the WASPA Code of Conduct. Below, we have outlined our responses, along with confirmation that all identified issues have been carefully remedied.

### **Advertising Misrepresentation and User Redirection (Clauses 5.4, 5.5, 8.8)**

We understand the importance of transparent advertising and have taken corrective steps to ensure all promotional material used in promoting the Gameshub service, accurately reflects the service content offered. This includes a comprehensive review of our ad placements and redirections, which now guide users to pages relevant to their subscription interests and provide clear, consistent information at each step.

### **Pricing Transparency (Clause 8.7)**

To support transparency and customer trust, we have revised all pricing disclosures across the service. The full retail price, inclusive of VAT, is now clearly communicated from advertising content through to the MTN confirmation page, ensuring customers have complete information with no hidden fees. We are mindful of the opportunity that this test case has given us to ensure and solidify our processes.

The outcome in this particular instance is that of an unfortunately technical error on the part of a provider of promotions that resulted in the incorrect advert/campaign linked to the incorrect Landing page that was mapped to the incorrect service ID.

### **Misleading Use of "Free" Offers and Incentives (Clauses 15.4, 15.5)**

We recognize that a third-party publisher's use of "free" may have lacked clarity. We have since ceased our relationship with this publisher and clarified to all partners that incentives or rewards must explicitly communicate any subscription requirements. Strict monitoring has been in place to ensure all marketing materials comply fully with WASPA's standards.

### **Service Accessibility Issues (Clauses 5.1, 5.6A)**

We have resolved the access issues identified during your testing, ensuring users can access Gameshub content seamlessly. Our technical team has also improved the user experience upon further investigation prior to it having been raised by the Waspa Compliance department, offering clear instructions for logging in and navigating the service.

We regret any inconvenience caused and are committed to ensuring information is complete and accessible from the outset.

### **Remedial Actions Taken**

In response to the compliance report, we have taken the following actions:

- Temporarily paused Gameshub operations to allow for an in-depth internal review and rectify any non-compliant practices before resuming acquisitions.
- Conducted a full internal audit focused on advertising integrity, pricing transparency, and accessibility.
- Active service monitoring has been implemented to ensure consistent availability for all new users.
- Updated our subscription flow and communication materials to ensure pricing, access, and service information is communicated clearly, with all technical issues addressed to the highest standards.
- Terminated our relationship with the non-compliant publisher with no remuneration issued for their services following this compliance concern.

### Future Steps and Commitment

- We are dedicated to continuous improvement and will be implementing stricter internal controls and regular audits to maintain full compliance with the WASPA Code of Conduct.
- We also welcome any further feedback or recommendations from WASPA to support our commitment to improvement.

Please consider this response as our formal acknowledgment of the issues raised and our commitment to promptly addressing them.

If you require further information or clarification, we are here to assist.

Thank you for your attention and guidance on these matters.”

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## **Sections of the Code considered**

### **Service levels**

5.1. Members must not offer or promise or charge for services that they are unable to provide.

### **Provision of information to customers**

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.

5.6A. Members must ensure that customers have ready access to information on how to access and use services.

### **Accuracy of pricing information**

8.7. Pricing information must not be misleading. The price must be the full retail price of the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.

### **Accuracy of services and content advertised**

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.

### **General requirements**

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”.)

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## Decision

In reaching a decision the Adjudicator relies on all the information provided by both the Complainant and Member in this matter.

The Member by its own submission, although not initially, but in its further response, acknowledged the seriousness of the offence and does not deny any of the Complainant's allegations put forth.

The Complainant did however take immediate actions to remediate the alleged breaches and showed commitment and willingness to rectify any existing and future failures on its behalf.

That being said, breaches of the Code are a serious matter and carry consequences and commitment alone does not absolve a Member from its responsibilities.

The Complaint is upheld in full.

The Adjudicator has however taken note of the fact that the alleged breaches could have been caused by a technical error which will be taken into consideration for the sanctioning.

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## Sanctions

In determining appropriate sanctions against the Member, the following factors have been taken into consideration:

- any previous successful complaints made against the Member in the past three years;
- any previous successful complaints of a similar nature;
- the nature and severity of the breach; and
- any efforts made by the Member to resolve the matter.

A fine of R 5 000-00 suspended for 6 months is given for breach of section 5.1.

A fine of R 5 000-00 suspended for 6 months is given for breach of section 5.4.

A fine of R 5 000-00 suspended for 6 months is given for breach of section 5.5.

A fine of R 3 000-00 suspended for 6 months is given for breach of section 5.6A.

A formal reprimand is given for breach of section 8.7

A formal reprimand is given for breach of section 8.8.

A fine of R 10 000-00 suspended for 6 months is given for breach of section 15.4.

A fine of R 10 000-00 suspended for 6 months is given for breach of section 15.5.



**Matters referred back to WASPA**

None

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