



## Report of the Adjudicator

Complaint number	<b>#60848</b>
Cited WASPA Members	<b>HyveMobile Membership no: 1518</b>
Notifiable WASPA Members	<b>N/A</b>
Source of the complaint	<b>WASPA Compliance Department</b>
Complaint short description	<b>Non-compliant advertising Non-compliant subscription service</b>
Date complaint lodged	<b>2024-10-08</b>
Date of alleged breach	<b>2024-09-03 and 2024-09-30</b>
Applicable version of the Code	<b>17.9</b>
Clauses of the Code cited	<b>5.4, 5.5, 8.8, 15.4, 15.5</b>
Related complaints considered	<b>Not applicable.</b>
Fines imposed	<b>The Member is fined as follows: R7 500 for the breach of clauses 5.4 and 5.5; R5 000 for the breach of clause 8.8; R7 500 for the breach of clauses 15.4 and 15.5.</b>
Other sanctions	<b>N/A</b>
Is this report notable?	<b>Not notable</b>

Summary of notability	N/A
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## Initial complaint

1. Whilst monitoring, testing services and conducting compliance checks of test results, the WASPA Compliance Department (“the Complainant”) identified a service which they believed did not comply with the requirements as set out in the WASPA Code of Conduct (“the Code”).
2. An outline of the test results are set out in Annexures A to E below.

### **ANNEXURE A:**

3. On or about 3 September 2024 a test was conducted on the MTN network.
4. The tester was browsing on a profile on TikTok that included the following information:  
*“YOU WIN – LINK IN MY BIO...”*
5. The tester clicked on the link and was directed to a page that included the following information:  
*“Get Free Robux – Limited Time Offer!...”*
6. The tester selected one of the ‘FREE’ offers and was directed to a page that included the following information:  
*“VERIFICATION  
Unlock your Robux instantly!  
Complete just one offer below, and watch as your Robux are sent directly to your account automatically!...”*
7. The tester selected one of the offers as prompted, with the expectation of receiving the free Robux.
8. The tester was however directed to the landing page for an unrelated subscription service called ‘My Arcade’ charged at R35.00 per week.
9. The tester clicked on the ‘Subscribe’ button and was directed to a page where the tester was requested to submit their MSISDN. The tester was then directed to a page advising that a pop-up would appear, and that the tester must select ‘1’ to continue. The USSD confirmation pop-up appeared.

10. 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 *'My Arcade'* subscription service.
11. The relevant screenshots were provided.
12. In summary it was submitted that:
  - a. The tester was engaging with a free offer for *'Robux'* and was prompted to complete steps to receive the offer but was directed to the landing page for a totally unrelated subscription service charged at R35.00 per week.
  - b. It was stated that the offer for *'Robux'* was free, and the tester merely had to follow the prompts to receive it. However, it appeared that they first needed 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.
  - c. 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 chance of a prize/gift as an incentive, it is not clearly communicated or advertised that it is dependent on a subscription service being activated.

**ANNEXURE B:**

13. On or about 3 September 2024 a test was conducted on the MTN network.
14. The tester was browsing on a profile on TikTok that included the following information:

*"YOU WIN – LINK IN MY BIO..."*
15. The tester clicked on the link and was directed to a page that included the following information:

*"Complete any one of the Offers below, and your PRIZE will unlock automatically..."*
16. The tester selected one of the offers as prompted, with the expectation of receiving the *'PRIZE'*.
17. The tester was however directed to the landing page for an unrelated subscription service called *'My Arcade'* charged at R35.00 per week.
18. The tester clicked on the *'Subscribe'* button and was directed to a page where the tester was requested to submit their MSISDN. The tester was then directed to a page advising

that a pop-up would appear, and that the tester must select '1' to continue. The USSD confirmation pop-up appeared.

19. 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 'My Arcade' subscription service.
20. The relevant screenshots were provided.
21. In summary it was submitted that:
  - a. The tester was engaging with an offer to win a prize and was prompted to complete steps to receive the prize but was directed to the landing page for a totally unrelated subscription service charged at R35.00 per week.
  - b. It was stated that the tester had to select any offer presented to claim the prize. However, it appeared that they first needed to subscribe to the service in order to claim the existing prize/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.
  - c. 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 chance of a prize/gift as an incentive, it is not clearly communicated or advertised that it is dependent on a subscription service being activated.

### **ANNEXURE C:**

22. On or about 3 September 2024 a test was conducted on the MTN network.
23. The tester was browsing on a profile on TikTok that included the following information:

*"YOU WIN – VISIT LINK..."*
24. The tester clicked on the link and was directed to a page that included the following information:

*"YOU WIN  
Claim Now..."*
25. The tester clicked on the 'Claim Now' button, with the expectation to claim the prize.
26. The tester was however directed to the landing page for an unrelated subscription service called 'My Arcade' charged at R35.00 per week.

27. The tester clicked on the '*Subscribe*' button and was directed to a page where the tester was requested to submit their MSISDN. The tester was then directed to a page advising that a pop-up would appear, and that the tester must select '1' to continue. The USSD confirmation pop-up appeared.
28. 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 '*My Arcade*' subscription service.
29. The relevant screenshots were provided.
30. In summary it was submitted that:
  - a. The tester was engaging with an offer to win a prize and clicked on the '*Claim Now*' button to receive the prize but was directed to the landing page for a totally unrelated subscription service charged at R35.00 per week.
  - b. It stated that the tester had to click on the '*Claim Now*' button to receive the prize. However, it appeared that they first needed to subscribe to the service in order to claim the existing prize/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.
  - c. 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 chance of a prize/gift as an incentive, it is not clearly communicated or advertised that it is dependent on a subscription service being activated.

#### **ANNEXURE D:**

31. On or about 3 September 2024 a test was conducted on the MTN network.
32. The tester was browsing on a profile on TikTok that included the following information:  
*"you win \$750 check my...  
get \$750 now from the website link below..."*
33. The tester clicked on the link and was directed to a page with the name '*Cash App*' and clicked on the '*Proceed*' button. The tester was directed to another page and prompted to select one of the offers to proceed. The tester was directed to another page and clicked on '*Verify Now*'.
34. The tester was directed to a page that included the following information:  
*"Manual Verification Required*

*Just complete 1 of the offers in the list to unlock the content  
Don't worry it is very easy!..."*

35. The tester selected one of the offers as prompted, with the expectation of receiving the cash prize.
36. The tester was however directed to the landing page for an unrelated subscription service called 'My Arcade' charged at R35.00 per week.
37. The tester clicked on the 'Subscribe' button and was directed to a page where the tester was requested to submit their MSISDN. The tester was then directed to a page advising that a pop-up would appear, and that the tester must select '1' to continue. The USSD confirmation pop-up appeared.
38. 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 'My Arcade' subscription service.
39. The relevant screenshots were provided.
40. In summary it was submitted that:
  - a. The tester was engaging with an offer to win cash and duly followed the prompts to claim the cash prize but was directed to the landing page for a totally unrelated subscription service charged at R35.00 per week.
  - b. It stated that the tester had won a cash prize and had to follow the prompts to claim the prize. However, it appeared that they first needed to subscribe to the service in order to claim the existing prize/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.
  - c. 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 chance of a prize/gift as an incentive, it is not clearly communicated or advertised that it is dependent on a subscription service being activated.

#### **ANNEXURE E – MANUAL TEST:**

41. On or about 30 September 2024 a manual video test was conducted on the MTN network. The purpose of the test was to determine what the actual content of the My Arcade subscription service included, and whether there were any prizes or rewards or

incentives available once subscribed to the service, as promoted in the advertising for this service.

42. The tester:
  - a. Switched on the video recorder to show the date, time, and network.
  - b. Checked the airtime balance: **Airtime: R360.48.**
  - c. Checked that there were no active subscriptions: **Y'ello. Kindly note that you do not have any active Subscriptions Services on your number.**
  - d. Cleared the browsing history.
43. The relevant screenshots were provided.
44. The tester visited a Coin Tales Facebook page that included the following information:  
*"Today we are giving 20000 Spins away link  
Just follow this step  
Get free rewards  
Rewards are waiting..."*
45. The tester clicked on the link next to "*Claim spins here*" and was directed to a page that included the following information:  
*"Finish the Survey Or Complete and Email Submit To Confirm your Human..  
Once this page is unlocked your 10,000 SPINS will be added to your Coin Tales Account  
..."*
46. The tester selected one of the '*FREE*' offers as prompted and a pop-up notification appeared. The tester clicked on the '*Tap to Install*' button, with the expectation of claiming the free reward.
47. The tester was however directed to the landing page for a totally unrelated subscription service called '*My Arcade*' charged at R35.00 per week. The tester clicked on the '*Subscribe*' button and was directed to the MTN confirmation page. The tester clicked on the '*Confirm*' button. The tester was directed to a page confirming the subscription to '*My Arcade*' and clicked on the '*Continue*' button.
48. The tester received a welcome message and reviewed the content thereof. The tester clicked on the link provided to access the service and was directed to the homepage of the '*My Arcade*' subscription service.
49. The tester browsed for some time and selected a game to play. The tester then reviewed the menu options and selected the category '*All Games*' and browsed through the catalogue of games to determine what content was included in the subscription service.

50. The tester could not locate the game that was advertised and used to promote the 'My Arcade' subscription service. There were also no free spins, coins or rewards available as advertised and used to promote the service and incentivise the tester to join.
  51. The tester checked:
    - a. The airtime balance: **R325.48**.
    - b. The active subscriptions: **My Arcade**.and R35.00 worth of airtime had been deducted.
  52. The tester used the USSD self-help portal to unsubscribe from the service and received an unsubscribe confirmation message.
  53. The tester elected to stop the test at this point as there were multiple breaches of the Code.
  54. The relevant screenshots were provided.
  55. In summary it was submitted that:
    - a. The tester was engaging with the 'Coin Tales' Facebook page and clicked on the link for the offer of free spins and duly followed the process to claim the reward offered but was directed to the landing page for a totally unrelated subscription service called 'My Arcade' charged at R35.00 per week.
    - b. The tester subscribed to the subscription service and determined that:
      - The promoted and advertised game 'Coin Tales' was not available;
      - There were no free spins, coins or rewards as promoted in the marketing material.
  56. In conclusion the Complainant submitted that the Member had breached clauses 5.4, 5.5, 8.8, 15.4 and 15.5 of the Code and was required to take immediate remedial action to ensure that the service complied with the requirements as set out in the Code.
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## Member's response

57. The Member submitted that upon investigating the formal complaint and the details within **Annexures A to D**, they confirmed that the content locking banners which appeared on the respective TikTok accounts on 3 September 2024 (and the competitions, prizes, and



advertisements referenced) were not associated with the Member in any manner. These TikTok accounts and promotional materials were not created, endorsed, or distributed by the Member. The Member submitted that they do not require or condition customers to subscribe to "My Arcade" or any other service to claim any reward, incentive or prize.

58. The Member submitted that they actively implement Evina's anti-fraud technology to protect their services from fraudulent activity, and the same has been activated for My Arcade. Following notification from Evina on 3 September 2024, their AdOps team and publisher immediately investigated these tickets. The publisher confirmed that the sources had been detected and were immediately paused and blocked. The said Evina tickets referenced in Annexures A to D were marked as closed as of 9 September 2024, confirming that the matter was investigated, addressed, and resolved in full by that date. As the tickets are marked closed, the Member believed that no further action is required on these issues, unless WASPA advised otherwise.
59. The Member submitted that no successful customer acquisitions were made from these sources, and they were blocked as of the initial detection.
60. As far as **Annexure E** to the complaint is concerned the Member confirmed that the My Arcade is a gaming subscription service that provides customers access to a wide variety of arcade, adventure, strategy, and action games. The Member submitted that the adverts for My Arcade that are created and published by the Member do not promise any prizes, rewards or incentives to join My Arcade.
61. The Member submitted that the advert for "Coin Tales" on Facebook is not associated with the Member in any manner and was not published by them. They were unable to determine how the tester accessed the My Arcade service through this unrelated "Coin Tales" advertisement or link.
62. To assist in their investigation as to why this unrelated advert links to their service, they kindly requested that the tester provide the link used, as it would enable them to trace and address any potential issues more effectively.
63. The Member reserved the right to respond further to Annexure E and confirmed that they do not require customers to join My Arcade to claim any reward, incentive or prize. The claim that customers must subscribe to My Arcade to receive such benefits stems from third-party advertisements not associated with the Member.

64. The Member respectfully denied any breaches of Clauses 5.4, 5.5, 8.8, 15.4, or 15.5 of the Code and kindly requested that this matter be reconsidered in light of these facts and that the formal complaint against them be dismissed.
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### **Complainant's response**

65. With reference to **Annexures A to D**, the Complainant took note of the Member's submission that the content locking banners which appeared on the respective TikTok accounts on 3 September 2024 (and the competitions, prizes, and advertisements referenced) were not associated with the Member in any manner.
66. However, the Complainant submitted that the basis of the complaint is not centred around the advertisements on the TikTok accounts. The basis of the complaint is centred around the entire consumer journey which originates on these TikTok accounts and has various causally linked steps thereafter, where one of the steps includes an advertisement, banner or component, which when clicked on, triggers the Member's landing page, alternatively, directs consumers to the Member's landing page.
67. The step immediately preceding the landing page in the respective test results appeared to be part of one causally linked consumer journey flow, in both wording and design. The connected steps were outlined for each consumer journey in screenshots provided.
68. The Complainant also took note of the Member's submission that the TikTok accounts and promotional materials were not created, endorsed, or distributed by the Member.
69. The Complainant submitted that, as stated above, the advertisements that triggered the Member's landing page, alternatively directed consumers to the landing page, formed part of a linked consumer journey, which included promotional material that was non-compliant. It is unclear why any traffic would be directed to the Member's landing page if there is no benefit or commercial relationship present occasioning such action.
70. The Complainant submitted that there is a positive obligation on the Member to ensure that any client, supplier, affiliate or sub-contractor promotes and markets the Respondent's services in accordance with the requirements of the Code and referred to clauses 3.5, 3.6 and 3.7 of the Code.
71. The Complainant took note of the Member's submission that the Member did not require or condition customers to subscribe to "*My Arcade*" or any other service to claim any

reward, incentive or prize. Unfortunately, the test results showcase how such exact marketing and promotional materials were utilised to direct consumers to the Member's service.

72. The Complainant took note of the Member's contractual relationship with Evina and the corrective and remedial action taken upon receipt of the Evina tickets. By the Member's own admission, after the investigation their publisher confirmed that the sources had been detected and were immediately paused and blocked. However, at the date of testing, the Member's service was linked to non-compliant marketing practises.
73. The Complainant submitted that WASPA has its own contractual relationship with Evina which operates independently of any member relationship with them. WASPA utilises their platform for various purposes, including as a digital discovery tool. Any relationship between a member and Evina does not prevent or preclude WASPA from utilising the platform and findings.
74. The Complainant submitted that WASPA is mandated to monitor member activity and to apply the provisions of the Code to services tested and analysed. Remedial steps taken by any Member does not negate any breaches of the Code identified as at the date of testing.
75. With reference to **Annexures E** the Complainant submitted that they use information from various test results and digital discovery tools to identify potential platforms or channels that contain advertisements, which may or may not link with or direct to member's services. In the manual test video provided, the tester utilised the details for a source where they frequently see advertisements. In this specific case, following the prompts and completing the consumer journey, led to the Member's My Arcade service and the actual link used was provided.
76. The Complainant noted the Member's submission regarding the actual content of the subscription service, as well as the statement that the adverts for My Arcade that are created and published by the Member do not promise any prizes, rewards or incentives to join My Arcade.
77. However, the Complainant submitted that, as clearly demonstrated by in the manual test video, the promotional material that leads up to and directs consumers to the Member's landing page did contain prize, reward or incentive elements. Furthermore, the steps immediately preceding the landing page in the manual video test results appeared to be

part of one causally linked consumer journey flow, in both wording and design. The connected steps were outlined in screenshots provided.

78. With reference to the denial of any breaches of Clauses 5.4, 5.5, 8.8, 15.4, or 15.5 of the Code by the Member, the Complainant submitted that, in summary, the Member alleges that the non-compliant promotional materials, for five respective and independent test results, were not associated with them and therefore they deny any responsibility or liability.
79. The Complainant noted the Member's submission that the Member ensures that all advertising for My Arcade is clear, honest and complies with the provisions of the Code. However, the Complainant submitted that they respectfully disagreed with this statement, as they had provided five respective examples where the promotional material that leads a consumer to the Member's service was non-compliant.
80. The Complainant submitted that the Member is responsible for the marketing and promotion of their campaigns, which includes any actions by suppliers.
81. The Complainant submitted that it is unclear why any affiliate marketing supplier would direct traffic to the Member's page if there was no commercial relationship, especially when there are linked elements (for example the service's image used in the steps leading up to the landing page) between the promotional material and the Member's service, which create a clear causal link between the parties.
82. The Complainant respectfully submitted that the Member's service was in breach of several clauses of the Code on the dates of testing the service and that the original complaint sufficiently set this out and that the Member should be held liable for their non-compliant service.

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### **Member's further response**

83. The Member thanked the Complainant for the detailed response and clarification of the complaint regarding the My Arcade service.
84. The Member submitted that, with the clarification provided, they now understand and acknowledge that the non-compliant advertisements referenced in Annexures A-D and Annexure E were published by a publisher engaged by the Member and the Member takes full responsibility for the oversight in monitoring this publisher's practises.

85. The Member wished to emphasise that they do not condone or permit misleading or non-compliant advertising.
86. The Member submitted that, upon becoming aware of the issue through Evina's fraud detection system, they immediately investigated the matter and blocked the sources involved.
87. The Member submitted further that, as an additional precautionary measure, they have since ended their relationship with this publisher.
88. The Member reiterated that there were no successful customer acquisitions from the flows identified in the complaint and, as such, no customers were negatively affected. This was verified through their internal systems, which confirmed that no subscriptions were processed from these traffic sources.
89. The Member indicated that they would like to accordingly amend their response to the alleged breaches under the Code.
90. Clause 3.5, 3.6 and 3.7 of the Code - Liability for Breaches by Third Parties:
  - a. The Member recognised that it was their obligation to ensure that all publishers engaged to promote their services are aware of the Code.
  - b. The Member accepted that the publisher in question failed to market their My Arcade service in a compliant manner.
  - c. Upon discovering the non-compliant advertising, the Member immediately ended their relationship with the publisher as a precautionary measure and implemented additional safeguards to prevent a recurrence.
  - d. While the Member relied on contractual terms requiring publishers to adhere to the Code and on Evina's anti-fraud technology to identify non-compliant traffic, they accept that additional proactive measures should have been in place to monitor the advertiser's practises.
91. Clause 5.4 – Honest and Fair Dealings:
  - a. The Member submitted that it ensures that all advertising under their direct control is honest and fair. While they acknowledge the shortcomings of the said publisher's advertising practises, they acted promptly to block the offending sources and ended their relationship with the publisher to prevent a recurrence.

92. Clause 5.5 – No False or Deceptive Information:
- a. The Member submitted that it did not knowingly disseminate false or deceptive information. Upon learning of the non-compliant advertising, they took immediate action to mitigate any potential impact.
93. Clause 8.8 – Consistency in Advertised and Provided Content:
- a. The Member submitted that My Arcade is a gaming subscription service offering access to a variety of arcade, adventure, strategy, and action games. The advertising content at issue misrepresented the service, and while the Member did not produce this content, they accept responsibility for ensuring that all publishers promoting their service comply with this clause.
94. Clause 15.4 – No Subscription Requirement for Rewards:
- a. The Member submitted that My Arcade does not require customers to subscribe to claim rewards or prizes. The referenced advertising falsely suggested otherwise, and the Member does not condone this practise.
95. Clause 15.5 – Incentives for Subscriptions:
- a. The Member submitted that it transparently advertises incentives where applicable. The non-compliant promotional material was unauthorised and steps have been taken to ensure that this does not happen again.

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## Sections of the Code considered

96. The following sections of the Code were considered:
- “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.*
  - 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**

97. After an initial denial of any contravention of the Code the Member conceded in their further response that they did in fact, for the reasons and explanation given above, contravene the Code as indicated in the original complaint.
98. I am satisfied that the Member contravened the Code as set out and the complaint is accordingly upheld.
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## **Sanctions**

99. In determining appropriate sanctions against the Member for its breach of the WASPA Code of Conduct, the following has been taken into consideration:
- 99.1. any previous successful complaints made against the Member in the past three years;
  - 99.2. any previous successful complaints of a similar nature;
  - 99.3. the nature and severity of the breach; and
  - 99.4. any efforts made by the Member to resolve the matter.
100. The fact that the Member immediately investigated the matter and blocked the sources involved is taken into account as a mitigating factor.
101. The fact that there were no successful customer acquisitions from the flows identified in the complaint and that no customers were negatively affected is also taken into account as a mitigating factor.
102. Taking all factors into account the Member is fined as follows:
- 102.1. R7 500.00 for the breach of clauses 5.4 and 5.5 of the Code;

102.2. R5 000.00 for the breach of clause 8.8 of the Code;

102.3. R7 500.00 for the breach of clauses 15.4 and 15.5 of the Code.

103. Consequently the Member is to pay an amount of R20 000 within the timeframe as set out in clause 24.41 of the Code.

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**Matters referred back to WASPA**

N/A

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