



Report of the Adjudicator

Complaint number	#60886
Cited WASPA members	Cookies Factory Membership no: 2037
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Subscription services targeted at children Non compliant pricing information
Date complaint lodged	2024-10-30
Date of alleged breach	October 2024
Applicable version of the Code	17.9
Clauses of the Code cited	5.4, 12.1, 12.2, 22.4
Related complaints considered	N/A
Fines imposed	<p>The member breached clauses 5.4, 12.1; 12.2 and 22.4 of the Code of Conduct.</p> <p>Accordingly, the member is fined:</p> <p>a) R 20 000.00 for a breach of 5.4 and 22.4; b) R 10 000.00 for a breach of 12.1 and 12.2;</p> <p>payable to WASPA within 7 days of receipt of this adjudication.</p>

Other sanctions	The member is ordered to, going forward, rectify the breached clauses above before continuation of the actual service to customers.
Is this report notable?	Not Notable
Summary of notability	N/A

1. Initial complaint

1.1 This complaint was lodged by the complainant on 30 October 2024, and the member was notified of the complaint by the WASPA Secretariat on 31 October 2024.

1.2 The complainant included comprehensive notes of its examination of the member's service, as well as attached screenshots in its formal complaint. The report is comprehensive but can be summarised as follows:

1.2.1 On or about the 2nd of October 2024 a test was conducted on the MTN network. The tester was browsing on a website with the following URL: Joy Games - Cartoon Video, Nursery Rhymes and Play Kids Game.

1.2.2 Based on screenshot evidence, the website content is designed for children and the website would be used by a child when engaging with the content. .

1.2.3 While browsing, the tester clicked on one of the options under the heading 'Super Car S3', with the expectation to view said selected content. The tester was however directed to an advertisement that included the following information: "FC25 Start Playing Battle+ Top game challenges, amazing competitions, join today..."

1.2.4 After clicking on this advertisement, the tester was directed to the landing page for a subscription service called 'Battle Plus' charged at R5.00 per day. The tester clicked on the subscribe button and was directed to the confirmation page.

1.2.5 The tester elected to stop the test at this point as the complainant believed there were breaches of the code during the subscription acquisition flow for the 'Battle Plus' subscription service.

1.2.6 On or about the 22nd of October 2024, a similar test was conducted on the MTN network. Essentially the same issue as per the previous test occurred as, when

selecting one of the content items, Showy Escape, with the expectation to play the game, the tester was directed to the 'Battle Plus' subscription service.

1.2.7 In summary, as a result of the tests conducted above, the complainant outlines the following issues in this matter:

1.2.7.1 The tester was engaging with a website that was designed for use by children, and when engaging with the content was directed to an advertisement for a subscription service.

1.2.8.1 The pricing information on the landing page is neither clear nor prominent. Using a grey font against a white background makes it unclear and can be overlooked by a consumer. Furthermore, the darker and larger '1 DAY FREE!' information overshadows the lighter and smaller font pricing information below.

2. Member's response

2.1 Following receipt of the formal complaint from the WASPA compliance department on 31 October 2024, the member responded to the complaint on the same day. The response is summarised as follows:

2.1.1 The member advised that they have removed the placements mentioned from their campaigns. They further advised that they always use the Google Ads filter to prevent their campaigns from being promoted on children's sites, but unfortunately, sometimes that filter doesn't work properly. For this reason, they also conduct a manual review of the campaigns every week to avoid these types of issues.

2.1.2 The member also advised, additionally, that they have made the requested changes to the pages by removing the phrase "1 day free" and modifying the text color on the confirmation page, which is now white.

2.1.3 The member never refuted the allegations of any of the alleged breaches.

3. Complainant's response

3.1 In response to the member's submissions in response to its initial complaint, the complainant responded as follows:

3.1.1 The complainant acknowledged that the member did not deny the alleged breaches but merely provided information about remedial measures that they have put in place to prevent the issue from happening again. The complainant

acknowledges these measures and undertakes to monitor future campaigns accordingly. The complainant also pointed out that the member, tacitly, placed the blame on the Google Ads filter for the non compliant advertisement. The complainant pointed out that based on clauses 3.5, 3.6 and 3.7 of the code, regardless of whether it was the third party's (Google Ads) fault, the member is responsible and liable for breaches occasioned by them.

4. Member's further response

4.1 In response to the complainants further response, the member responded as follows:

4.1.1 The member stated that they are aware of clause 3.5, 3.6 and 3.7 of the code but that, in this case, there are no intermediaries or third parties to notify, as the traffic comes directly from Google Ads, where the member purchases placements through the specific platform. Therefore they don't believe these clauses apply.

4.1.2 With regards to clause 3.7's stipulation that if a member can demonstrate reasonable steps to ensure that the third party acts in accordance with the code, then this should be mitigatory, the member asserted that they have always been proactive in implementing measures within their control to exclude placements on websites and apps targeted at children. The member asserted that they have excluded all previously flagged apps and that their media team conducts regular audits on this.

4.13 The member further states that that the promotional material used to market their subscription service is never intentionally targeted at children.

5. Sections of the Code considered

5.1 *As the conduct complained of took place on or around 12 September 2024, version 17.9 of the WASPA Code of Conduct applies to this complaint.*

5.2 *It is alleged that the member has infringed clauses **5.4, 12.1, 12.2, and 22.4 read with 22.1**, of the code. The clauses read as follows:*

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

12.1. *For any web page, pricing information does not need to be displayed for services which are free or which are billed at standard rates, provided that the mobile network operator does not prescribe any specific advice of charge requirements. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action.*

12.2. *There must not be any intervening text or images between the call-to-action and the pricing information. Pricing information must be legible, horizontal and presented in a*

way that does not require close examination. Pricing information must not be obscured by any other information. Pricing information must not be animated. It must not be a requirement that the viewer of an advert has additional software installed in order to see pricing information in the advert.

22.1. A “child” refers to a natural person under 18 years of age.

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

6. Decision

6.1 Having reviewed the complaint and responses from the complainant and member, I have reached the conclusions set out below wherein I deal with the relevant clauses of the code in order.

Clause 5.4 and 22.4

6.2 Clauses 5.4 and 22.4 require members to have “honest and fair dealings with their customers” and “Subscription services must not be intentionally targeted at children”. Regarding breach of these clauses, I look at clause 22.4 first as the result thereof informs my decision on clause 5.4. The member’s responses indicated that they always use the Google Ads filter to prevent their campaigns from being promoted on children’s sites, but unfortunately, sometimes that filter doesn’t work properly. For this reason, they advised that they also conduct a manual review of the campaigns every week to avoid these types of issues. This manual review assertion does not hold water in this case as the error of the subscription service being located on a children’s site occurred for least 20 days in this instance.

6.3 Regarding their liability, the member doesn’t believe that Google Ads is an intermediary or third party as referred to in clauses 3.5, 3.6 and 3.7 but I am unconvinced of this as Google Ads is a third party service provider that assists the member in marketing the services and, as such, as a non-member, the member is liable for the breaches that may have been occasioned by Google Ads.

6.4 With regards to whether the member intentionally targeted the ads at children, one must consider the laws of delict and delictual liability. Intention (*dolus*) considers the actor’s state of mind. The test for intention is subjective. One must a) intend to injure and b) know that it is wrongful. It is important to note that intention is present not only in the case that the member intentionally targets children but also in the case where the ads could target children and the member resigned themselves to that possibility. In our law this type of intention is termed “*dolus eventualis*”. The member, by their own admission, knew that Google’s filter sometimes doesn’t filter properly and, as a result, they conduct manual reviews weekly. They also don’t deny that what actually resulted was a

subscription service targeted at children. Intent is thus demonstrated and this further shows unfair and dishonest dealings with customers.

6.5 Accordingly, I find a breach of clauses 5.4 and 22.4.

Clause 12.1 and 12.2

6.6 Based on the evidence provided by the complainant, it is clear that the darker and larger “1 day free” text can be construed as overshadowing and “other information that obscures” the pricing information and the dark background, in my opinion, makes the pricing information unclear and requiring close examination. By their own admission, the member does not dispute these facts and even goes on to rectify them as a result.

6.7 Accordingly, I find a breach of clause 12.1 and 12.2

7. Sanctions

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct and intent of the member in the form of any prior contraventions of the code and any mitigating or aggravating circumstances.

7.2. There have been 2 previously upheld complaints against the member and both contain some of the clauses in question in this matter. Accordingly, I find that the previous complaints are slightly aggravating when it comes to sanctions.

7.3 Regarding mitigating factors, I am convinced that the member was proactive in putting steps in place to eliminate the future breaches of all of the clauses. Also, whilst they still bear ultimate responsibility, I still note the fact that the breaches of clauses 5.4 and 22.4 were occasioned by the member’s third party marketing supplier (Google Ads) and thus am convinced that the member showed no direct ill intent when it came to these breaches. There are, thus, some mitigating factors present in this case.

7.4 I find that the Member breached clauses 5.4, 12.1, 12.2 and 22.4 of the code.

7.5 I have reviewed cases previously adjudicated on the same breaches and have considered a lower end of fines previously given, taking into consideration the mitigating factors in this case (that outway the aggravating factors). The transgressions are, however, still sufficiently serious to warrant a fine that is sufficiently harsh to ensure that this transgression does not occur again. The necessary checks and balances need to be implemented by the member at all times to ensure compliance with the code at all times.

7.6 Accordingly, I fine the Member:

- a) R 20 000.00 for a breach of 5.4 and 22.4;
- b) R 10 000.00 for a breach of 12.1 and 12.2;

payable to WASPA within 7 days of receipt of this adjudication.

7.7 Furthermore, the Member is ordered to, going forward, rectify the breached clauses above before continuation of the actual service to customers.

8. Matters referred back to WASPA

N/a
