



Report of the Adjudicator

Complaint number	#61079
Cited WASPA members	PM Connect Africa (Pty) Ltd Membership no: 1763
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Subscription services targeted at children Members having dishonest and unfair dealings with their customers
Date complaint lodged	2025-02-04
Date of alleged breach	2025-01-17
Applicable version of the Code	17.9
Clauses of the Code cited	5.4; 22.4 read with 22.1
Related complaints considered	N/A
Fines imposed	<p>The member breached clauses 5.4 and 22.4 (read with 22.1) of the Code of Conduct.</p> <p>Accordingly, the member is fined:</p> <p>a) R 10 000.00 for a breach of clause 5.4; and b) R 10 000.00 for a breach of clause 22.4 (read with 22.1);</p>

	payable to WASPA within 7 days of receipt of this adjudication.
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 4 February 2025, and the member was notified of the complaint by the WASPA Secretariat on 6 February 2025.

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 17 January a test was conducted on the Vodacom network. The tester was engaging with an application called "ABC Flash Cards for Kids – Teachers Paradise".

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

1.2.3 While browsing, the tester clicked on a banner advertisement for 'League Pass' displayed at the bottom of the app page. The tester was directed to the Vodacom Network Hosted Confirmation Page for a subscription service called 'NBA League Pass' charged at R9.00 per day.

1.2.4 The tester elected to stop the test at this point as there were breaches of the Code during the subscription acquisition flow for the 'NBA League Pass' subscription service.

1.2.5 In summary, the complainant alleges that the tester was engaging with an application that was designed for use by very young children, where an advertisement was placed for a subscription service. They assert that the member needs to ensure that the promotional material used to market their subscription services does not intentionally target children and should take the necessary

precautions to ensure that the promotional material is placed on platforms which are not designed for use by children.

2. Member's response

2.1 Following receipt of the formal complaint from the WASPA compliance department on 6 February 2025, the member responded to the complaint on 10 February 2025. The response is summarised as follows:

2.1.1 The member advised that they do their marketing for this campaign via Google. They further assert that they always try to filter out 'kids placements' but unfortunately Google is not 100% accurate with this and can let anomalies slip through the net. They then provide a screenshot showing that they always try to exclude "content suitable for families" and show the 'line' from Google which reads: "While content exclusions are done to the best of our ability, we can't guarantee that all related content will be excluded".

2.1.2 The member never refuted the allegations of any of the alleged breaches but merely passed off the fault and responsibility thereof to Google, their third party service provider.

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 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.

3.1.2 The complainant reiterated that the member needs to ensure that the promotional material used to market their subscription services does not intentionally target children and should take the necessary precautions to ensure that the promotional material is placed on platforms which are not designed for use by children.

3.1.3 They further reiterate and allege that the member is guilty of the breaches alleged in the initial complaint.

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 their marketing material is clearly not being targeted at children and that they undertake the only possible precaution they can to make sure the advert does not appear to children within Google.

4.1.2 They further opine and assert that apps designed for children are typically downloaded onto a parents device and, therefore, the data held by Google would identify the phone user as an adult.

5. Sections of the Code considered

5.1 As the conduct complained of took place on or around 17 January 2025, 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 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.

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. I am unconvinced by the member's assertion that the children's app usually being downloaded on their parents phones means that the ad for subscription services is not targeted at children

(according to Google's ads filter). The fact that children will be the users is clear evidence that the subscription service is being promoted to children.

6.3 Regarding the member's liability, I am in agreement with the complainant that, based on clauses 3.5, 3.6 and 3.7 of the code, the member ultimately holds responsibility for the actions of their service providers (if these service providers are not also WASPA members, which Google is not). I would like to further point out that the member's assertion that they "take every possible precaution they can" is not sufficient. They could also conduct a manual review of the campaigns to avoid these types of issues.

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 always filter properly. 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.

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 no previously upheld complaints against the member. Accordingly, I find that this needs to be mitigatory when it comes to sanctions.

7.3 Regarding further mitigating factors, 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 Regarding aggravating factors, I find that the member's lack of remorse as well as the fact that they have not put further proactive steps in place (like a manual check, for example) should be considered somewhat aggravating in nature.

7.4 I find that the Member breached clauses 5.4 and 22.4 (read with 22.1) 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 consistently to ensure compliance with the code at all times.

7.6 Accordingly, I fine the Member:

- a) R 10 000.00 for a breach of 5.4; and
- b) R 10 000.00 for a breach of 22.4 (read with 22.1);

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
