



Report of the Adjudicator

Complaint number	#61323
Cited WASPA members	Exceptional Rights Membership no: 2021
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Auto-subscription to a non-existent service
Date complaint lodged	02 June 2025
Date of alleged breach	29 May 2025
Applicable version of the Code	17.12
Clauses of the Code cited	3.5; 3.6; 3.7; 4.2; 4.11; 5.4; 5.5; 12.1 read with 8.9; 15.8B; 15.9; 15.10; 23A.5.
Related complaints considered	n/a
Fines imposed	<ol style="list-style-type: none"> 1. Clause 4.2: A fine of R5 000 2. Clause 4.11: A fine of R5 000 3. Clause 5.5: A fine of R5 000 4. Clause 12.1 read with 8.9: A fine of R5 000

	5. Clause 15.8B: A fine of R5 000 6. Clause 15.9: A fine of R5 000 7. Clause 15.10: A fine of R5 000 8. Clause 23A.5: A fine of R5 000 Total fines: R40 000
Other sanctions	Refund of consumers who were subscribed between 29th May 2025 and 31st May 2025.
Is this report notable?	No
Summary of notability	n/a

Initial complaint

1. The WASPA Compliance Department conducted a test on the Google Play Store where the “Easy Metal Detector” app by VIP APP Limited was located. This app was duly installed by the tester and the tester was directed to “Tap Easy Metal Detector and turn on the switch” which the tester duly did.

2. Interestingly, the tester then received the following message, which is worth reproducing in full:

“Allow Easy Metal Detector

Easy Metal Detector will be able to read all notifications, including personal information such as contact names and the text of messages you receive. This app will also be able to snooze or dismiss notifications or take action on buttons in notifications, including answering phone calls. This will also give the app the ability to turn Do not disturb on or off and change related settings.”

3. The tester duly clicked on “allow”, only to find that the icon for the app had disappeared.

4. Confirmation that the tester had activated a subscription service at R7.00 per day was then duly sent by means of SMS to the tester, provided that the first day of subscription was free.

5. The tester then received a second advertising message from “Da Vinci Kids” which read:

*“With Da Vinci Kids you get access to premium & age-appropriate content for your kid, handpicked by experts! Plus, play Tap to Win and a share of R5000 in airtime could be yours! First day FREE! Watch the safe and instructive videos here:
<http://dk.upp.st/rrDLRkniQTj>”*

6. The tester then confirmed that no money had been deducted from the tester airtime (as the first day of the subscription was free) and then successfully unsubscribed from the service.
7. As a result of the alleged breaches of the Code of Conduct, an Emergency Notification was provided by WASPA to the Member on the 03rd of June 2025 and the Member was provided with 24 hours to respond.

Member’s response to Emergency Panel notice

8. The Member responded by indicating that it had terminated the campaigns (presumably related to the app) on the 31st of May 2025 (i.e. 3 calendar days before the Emergency Panel notice) and indicated that they have identified (but did not identify to WASPA) the Demand Side Platform which was involved. It then assured WASPA that it was actively working to audit creatives and ensure that all banners, landing pages and flows are fully compliant and transparent for end users.
9. The Member further provided screenshots to prove that the UPS-ZMK_Kids_TV service by Exceptional Rights had been stopped on the MTN platform.
10. As the Member had reacted immediately to the Emergency Panel notice, no Emergency Panel was in fact convened and the complaint proceeded to through the normal WASPA complaint procedure.

Member's response

11. The Member provided a three-page response to the formal complaint in which it referenced all nine of the alleged contraventions of the WASPA Code of Conduct which had been put to it by the WASPA Compliant Department. As the response is material to this matter and each clause is addressed, it is useful to reproduce it in full:

WASPA Code of Conduct – Breach Response Statement

Service: Da Vinci Kids Azoomee

Company: Exceptional Rights

We acknowledge the findings regarding the Da Vinci Kids Azoomee subscription service charged at R7.00 per day and respectfully submit the following response to the clauses of the WASPA Code of Conduct found to be breached. At Exceptional Rights, we uphold high standards in compliance and consumer protection, and we regret the non-compliance highlighted in this instance. It is important to note that this was not intentional and resulted from actions by a third-party traffic source. We have since terminated all services related to web campaigns and have taken corrective measures to prevent future occurrences.

Clause 4.2 – Professional Conduct

WASPA Clause: Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

Response: Exceptional Rights maintains a strict policy of professionalism and transparency in all our engagements. Unfortunately, in this instance, a third-party advertising partner failed to meet these standards in their campaign delivery. We have since terminated our partnership with the implicated source and blocked them from accessing any of our campaigns.

Clause 4.11 – Fraud Prevention

WASPA Clause: Members must take reasonable steps to prevent their networks and systems from being used in a fraudulent manner and must comply with WASPA's published best practices for fraud prevention.

Response: While we have fraud detection and monitoring systems in place, the third-party advertising partner exploited a gap in verification on a specific web campaign. We acknowledge the lapse and have now disabled all web-based subscription services

while improving our fraud prevention protocols, including whitelisting approved traffic sources only.

Clause 5.4 – Honest and Fair Dealings

WASPA Clause: Members must have honest and fair dealings with their customers.

Response: It is our policy to offer full transparency in consumer interactions. The misleading aspects of the landing page used by the third-party partner were never approved by Exceptional Rights. Immediate action was taken to remove the campaign and cease dealings with the source involved.

Clause 5.5 – Misleading or Deceptive Information

WASPA Clause: Members must not knowingly disseminate information that is false or deceptive or likely to mislead by inaccuracy, ambiguity, exaggeration, or omission.

Response: The content and design of the campaign in question were not vetted as per our internal compliance checks. We recognise that the omission of critical pricing and service details misled customers. This was not our intention, and as a result, all current and future campaigns now undergo enhanced pre-publication scrutiny.

Clause 12.1 – Display of Pricing Information

WASPA Clause: For all chargeable services with a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action.

Response: The third-party failed to implement the appropriate pricing visibility. Our internal audit has confirmed the absence of clear pricing adjacent to the call-to-action. This breach prompted us to terminate all web-based campaigns and review our onboarding policies for any external media partners.

Clause 15.8B – Subscription without Consent

WASPA Clause: A customer must not be subscribed to any service without completing a confirmation step.

Response: We understand the importance of customer consent. The journey implemented by the third-party source circumvented the correct confirmation step. We are working to ensure technical restrictions are in place to prevent any subscription without explicit user interaction.

Clause 15.9 – Explicit Confirmation

WASPA Clause: The confirmation step must require an explicit response from the customer and may not be automated or hidden.

Response: In this case, the required explicit confirmation process was bypassed. This breach was made possible through deceptive external ad routing, which is no longer

permitted. All web subscription flows have been halted to avoid recurrence.

Clause 15.10 – Web-Based Confirmation Requirements

WASPA Clause: All subscription services initiated via a web page must include a clear confirmation step by one of the permitted methods.

Response: The campaign in question did not follow this critical compliance requirement. We have since enforced a zero-tolerance policy on auto-subscription mechanisms and removed all non-compliant flows from our systems.

Clause 23A.5 – Landing Page Requirements

WASPA Clause: Subscription services must have a compliant landing page prior to confirmation, meeting specific content and clarity standards.

Response: The campaign bypassed the compliant landing page stage and sent users directly to a confirmation flow. We acknowledge this contravenes the Code. Immediate steps have been taken to ensure that no campaign is allowed to bypass a compliant landing page. We have ceased all similar web campaigns as a further preventative measure.

Conclusion

Exceptional Rights deeply regrets this breach of the WASPA Code. The actions that led to this incident were unintentional and not representative of our commitment to ethical conduct. We have discontinued all web campaign services indefinitely and have reviewed and reinforced our compliance, monitoring, and partner approval processes. We welcome further engagement with WASPA to demonstrate our commitment to full compliance going forward.

Complainant response

12. The WASPA Compliance Department duly responded to the above response by the Member and indicated that:

- 12.1. The Member has acknowledged the breaches of the Code of Conduct, but attributes them to a third party, rather than to its own actions.
- 12.2. The Member has a positive obligation to ensure that any client, supplier, affiliate or sub-contractor complies with the WASPA Code of Conduct and this is supported by clauses 3.5-3.7 of the WASPA Code of Conduct.

12.3. The Member had failed to provide any evidence that they had taken steps to prevent their networks and systems from being used in a fraudulent manner, nor does the Member provide evidence that they have complied with WASPA's published best practices for fraud prevention and attached the WASPA best practices for reference.

12.4. The auto-subscription by the "Easy Metal Detector", "contravened the core principles of informed consumer consent and transparency, thereby undermining public trust".

13. The Member was given an opportunity to address the issues raised by the WASPA Compliance Department as set out above but chose not to do so.

Clauses of the Code considered

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.

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

4.11. Members must take reasonable steps to prevent their networks and systems from being used in a fraudulent manner, and must comply with WASPA's published best practices for fraud prevention.

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.

8.9. A “call-to-action” is any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service. In the case where a mobile network operator provides a two-stage confirmation process for the service, the first page of this confirmation process may be considered to be the call-to-action.

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.

15.8B. A customer must not be subscribed to any subscription or notification service without completing a confirmation step.

15.9. The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

15.10. For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can provide the customer with a “confirmation page”
- (iii) The member can send a “confirmation message” to the customer. The customer must not be charged for the confirmation message.

23A.5. Subscription services must have a landing page prior to the confirmation step. An advert for a subscription service may not send a customer directly to a confirmation page but must link the customer to a landing page for the service. A landing page:

- (a) must clearly show the pricing information for the service;
- (b) must contain a link to, or the URL of, the Ts&Cs for the service;
- (c) must use only “subscribe” or “join” as the call-to-action, and may include additional words following “subscribe” or “join” which are not considered to be “intervening text” for the purpose of displaying pricing information;
- (d) must not mislead by presenting examples of content not available as part of the service.
- (e) must state the name of the service; and
- (f) must include a description that makes the nature of the service clear to the customer.

This clause does not apply to adverts delivered via MTN's platform or managed by MTN.

Decision

14. The Member has been accused of contravening 9 separate clauses of the WASPA Code of Conduct, namely clauses: 4.2; 4.11; 5.4; 5.5; 12.1 read with 8.9; 15.8B; 15.9; 15.10 and 23A.5.

THIRD PARTY

15. In its response on the 6th of June 2025, the Member essentially conceded the breach of the clauses set out above but implicated the unnamed “third party” as being responsible for the breaches. This aspect was then responded to by the complainant which drew the Member’s attention to clauses 3.5-3.7 of the WASPA Code of Conduct, and in particular clause 3.7 which indicates that the Member is responsible for any breaches of the WASPA Code of Conduct by a non-member. The Member did not respond to this point.

IMPUTING INTENTION TO THE MEMBER: CLAUSE 5.5

16. After consideration of all the clauses – and the concession by the Member that these clauses had indeed being contravened – there are two clauses of the WASPA Code of Conduct that need to be discussed, one of which is clause 5.5 which requires that the Member must not “knowingly” disseminate information that is false or deceptive or likely to

mislead by inaccuracy, ambiguity, exaggeration or omission. Clearly clause 5.5 has an element of “intention” which is required for clause 5.5 to be contravened. The question that arises is whether this clause is referring to whether the Member “knowingly” allowed the service to continue, or alternatively whether it is sufficient for a third party to “knowingly” contravene clause 5.5 for the Member to be found guilty of contravening clause 5.5? Clause 3.7 makes it clear that the Member is strictly liable for the breaches of the WASPA Code of Conduct by a third party that uses its systems if that third party is not a member of WASPA. As we do not know the identity of the third party, the actions of the third party are – in terms of clause 3.7 – imputed to be those of the Member. Thus, the question becomes whether the third party “knowingly” disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission? In the Members own words: *“We recognise that the omission of critical pricing and service details misled customers.”* On the balance of probabilities, and due to the wholesale breach of the WASPA Code of Conduct, it is held that such actions were intentionally done and as a result clause 5.5 of the Code of Conduct was also breached.

17. It is also worth noting that the permissions requested by the app for the use of personal information were themselves a flashing red light as to the nature of the app itself. Why on earth should an “Easy Metal Detector” app be able to:

- 17.1. read all notifications, including personal information such as contact names and the text of messages you receive,
- 17.2. snooze or dismiss notifications,
- 17.3. take action on buttons in notifications, including answering phone calls,
- 17.4. turn Do not disturb on or off and change related settings?

This was a clear indication to the Member that the app was not to be trusted, and suitable caution should have been exercised by the Member.

THE GENERALIST CLAUSE 5.4

18. In the WASPA Appeal Panel #61079 the appeal panel indicated that clause 5.4 was a generalist clause that should only be resorted to when there was a breach of the Code of Conduct by the Member and where no other clause would adequately deal with such conduct. Specifically, the panel held:

“Moreover, when the Member's conduct is addressed by a clause other than clause 5.4, then adjudicators should avoid finding that the Member also breached clause 5.4 as a finding that the Member also breached clause 5.4 in such a situation would amount to the imposition of a double penalty for the same conduct.”

19. In the present case the Member's conduct has been adequately encapsulated by clauses 4.2; 4.11; 5.5; 12.1 read with 8.9; 15.8B; 15.9; 15.10 and 23A.5 and so the reliance on clause 5.4 is unnecessary. For this reason, only – and not because the Member's conduct was "fair" or "honest" – the complaint against the Member in terms of clause 5.4 is dismissed.

CONCLUSION

20. Consequently, the Member is hereby found to have breached clauses 4.2; 4.11; 5.5; 12.1 read with 8.9; 15.8B; 15.9; 15.10 and 23A.5.

Sanctions

21. Before the question of sanctions is considered it is necessary to consider the prior conduct of the Member in the form of any prior contraventions of the WASPA Code of Conduct and any mitigating or aggravating circumstances.

MITIGATION

22. From a mitigation standpoint, the Member immediately acknowledged the breaches and took quick action - admittedly as a result of an Emergency Notice. Moreover, the Member provided proof thereof.

23. In addition, clause 3.7 enjoins the Adjudicator to consider whether the Member had taken, "reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct" and, if so, to consider these steps as mitigating factors. Unfortunately, in this case – and by the Member's own admission – it had not taken reasonable steps to mitigate the harm and as a result the fact that the service was marketed by a third party is not a mitigating factor.

AGGRAVATION

24. On the aggravation standpoint - and by its own admission - the Member had not put in place appropriate measures and allowed multiple contraventions of the WASPA Code of Conduct to occur under its proverbial watch. Indeed, the contraventions of the WASPA Code of Conduct were so serious that WASPA felt, justifiably, that immediate action was necessary to curb the harm to the public.

25. It is also worth noting that the Member did not provide the name of the third party who created the "service" and also did not provide evidence that its fraud detection measures had been implemented.
26. Turning to the Member's record at WASPA, the Member has been found to have breached the WASPA Code of Conduct in five complaints prior to this adjudication, although the breaches of the WASPA Code of Conduct were mainly due to poor customer support (clause 5.14).

REFUNDS

27. All consumers subscribed to the member's service between the dates of 2025-05-29, being the date on which the WASPA compliance department lodged the complaint, and 2025-05-31, being the date on which the service was stopped must be unsubscribed and refunded. The member must provide WASPA with a report detailing the total number of subscribers during the affected period and evidence of the refunds issued to those consumers identified as affected.

Consequently, the following sanctions are imposed on the Member for a breach of the following clauses:

- 9. Clause 4.2: A fine of R5 000
- 10. Clause 4.11: A fine of R5 000
- 11. Clause 5.5: A fine of R5 000
- 12. Clause 12.1 read with 8.9: A fine of R5 000
- 13. Clause 15.8B: A fine of R5 000
- 14. Clause 15.9: A fine of R5 000
- 15. Clause 15.10: A fine of R5 000
- 16. Clause 23A.5: A fine of R5 000, and
- 17. The Member is directed to refund all subscribers between the dates of the 29th May 2025 and the 31st May 2025 who were subscribed to the service.

This amounts to a total fine of R40 000.00 and is the largest fine against the Member to date. Notwithstanding this, it is worth noting that WASPA has a duty to protect the public against auto-subscription models such as these which are, as the complainant rightly notes, against the "core principles of informed consumer consent and transparency, thereby undermining consumer

trust". The Member is cautioned that future breaches of this nature are likely to be considered extremely seriously by WASPA Adjudicators as these auto-subscription models place the entire WASPA industry in jeopardy.

In terms of clause 24.37, the Member may appeal this decision within 10 days of the release of this adjudication.

Matters referred back to WASPA

None.
