



## Report of the Adjudicator

Complaint number	#57603
Cited WASPA members	TECHMOBI
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant adult content subscription service
Date complaint lodged	2022-09-30
Date of alleged breach	2022-06-15
Applicable version of the Code	v17.1
Clauses of the Code cited	5.4, 5.5, 5.11, 5.12, 8.2, 12.1, 21.3, 21.10, 21.11, and 23A.5(a)(b)(c)(d).
Related complaints considered	57604
Fines imposed	Member is fined the following amounts:  R5 000 for breach of clause 5.4; R5 000 for breach of clause 5.5; R5 000 for breach of clause 5.11;

	R10 000 for breach of clause 8.2; R10 000 for breach of clause 12.1; R15 000 for breach of clause 21.3; R15 000 for breach of clause 21.11; and R10 000 for breach of clause 23.A.5.
Other sanctions	For its breach of clause 21.10, the Member is required to terminate MILF TUBE service with immediate effect.
Is this report notable?	n/a
Summary of notability	n/a

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## Initial complaint

1. On 15 June 2022, whilst monitoring and conducting manual tests on the MTN network, a tester from the WASPA Compliance Department came across a service which allegedly does not comply with the requirements as set out in the WASPA Code of Conduct (Code).
2. In support of the complaint, the Complainant provided a video, screenshots and an outline of the tester's experience when interacting with the Member's service.
3. The tester typed in the URL: sassytwinks.com. An adult website loaded successfully and the tester started scrolling through the website. The tester came across and clicked on an explicit (X18) adult banner advertisement promoting 'MILF TUBE'.
4. The tester was directed to a service landing page for MILF TUBE where an explicit adult video was automatically playing in the background, the text "Big Ass" was displayed and below that the text "Only for 18+" was displayed and below that a "Watch now" call-to-action button.
5. The tester clicked on the "Watch now" call-to-action button and was directed to the MTN age verification step. The tester clicked on the link to view the full terms and conditions.
6. The tester clicked on the "Yes" button provided from the age verification step and was directed to the MTN confirmation page. The tester clicked on the "Confirm" button on the MTN NHCP (Network Hosted Confirmation Page) to confirm the subscription to MILF TUBE from xTV at a cost of R15.00 per day.

7. The tester was directed to a MTN page to increase the limit for entertainment services.
8. The tester clicked on the “Accept” button and the subscription acquisition process was completed.
9. The tester clicked on the “Continue” button and was directed to the MILF TUBE adult subscription service. The tester also received a welcome message.
10. The tester then browsed the content of the service and concluded that the content was provided as part of an adult subscription service. The content was explicit (X18) in nature.
11. The tester used the self-help USSD menu to successfully unsubscribe from the service. The process to unsubscribe from the service was successfully completed and the tester received the termination confirmation message.
12. The Complainant alleges that the promotional material, landing page, pricing information, customer support number and content provided for the Member's MILF TUBE subscription service does not comply with the following requirements as set out in the WASPA Code of Conduct:
  - 12.1 There was no ‘18+’ on the banner advertisement and it was explicit (X18) in nature.
  - 12.2 The landing page which the tester was directed to did not state that the service being promoted was a subscription service.
  - 12.3 There was no pricing information displayed adjacent to the ‘call-to-action’ button on the landing page.
  - 12.4 The video displayed on the landing page was explicit (X18) in nature and would likely be classified as X18 by the Film and Publication Board.
  - 12.5 The tester was misled and deceived by any reference to the service being a subscription service when they intended to watch an item of content that they were led to believe would be available by clicking on the call-to-action button provided. They were also misled and deceived into thinking that the video could be viewed at no charge when they were actually being subscribed to a service at R15/per day.
  - 12.6 The content provided as part of the MILF TUBE subscription service was explicit (X18) in nature and would likely be classified as X18 by the Film and Publication Board.

- 12.7 There was no customer support number on the landing page or anywhere else throughout the subscription acquisition flow.
13. Based on the foregoing, the Complainant alleges that the Member has breached the following clauses of the WASPA Code of Conduct: 5.4, 5.5, 5.11, 5.12, 8.2, 12.1, 21.3, 21.10, 21.11, and 23A.5(a)(b)(c)(d).
14. The Complainant also provided further evidence of a number of other URLs, banner adverts and landing pages which are not compliant with the WASPA Code of Conduct on the same or similar grounds.
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### **Member's response**

15. The Member responded to the formal complaint by advising that it had "paused traffic" and that its marketing department was "still working on this new content, banners and landing page".
16. Thereafter, the Member did not give any further response to the complaint within the prescribed time period or at all. It must be assumed then that the Member does not wish to respond any further to this complaint (see clause 24.26 of the WASPA Code of Conduct).
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### **Sections of the Code considered**

17. Clauses 5.4, 5.5, 5.11, 5.12, 8.2, 12.1, 21.3, 21.10, 21.11, and 23A.5(a)(b)(c)(d) of the WASPA Code of Conduct were cited in the formal complaint and considered.
18. No other relevant clauses were assigned by WASPA.
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### **Decision**

19. After carefully reviewing the complaint and the brief response from the Member, and on the basis of the evidence presented by the Complainant, I have made the following findings:
- 19.1 When the overall flow of the promotion of the MILF TUBE subscription service and subsequent subscription process is viewed in its totality, it is likely to mislead prospective customers by inaccuracy, ambiguity and omission. In the

circumstances outlined by the Complainant, the tester, as a prospective customer, was reasonably led to believe that they were able to watch free video content and were instead directed to the Member's adult subscription service. The Member has breached clause 5.5 of the WASPA Code and the complaint is upheld in this regard.

- 19.2 Based on the number of other URLs referred to by the Complainant in its complaint and in the supporting evidence provided, there are large number of other instances of the non-compliant promotion of the Member's MILF TUBE service. It is therefore reasonable to conclude that the URL and promotional flow that was the subject of this complaint was not a once-off mistake. Instead, the Complainant has shown, in the evidence provided, a pattern of conduct by the Member. I am therefore satisfied that the Member has not been honest and fair in its dealings with its customers. The Member has breached clause 5.4 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 19.1 The Member has failed to provide any customer support mechanism, whether telephonic or via email (or via any other accessible medium) for the MILF TUBE subscription service. The Member has breached clause 5.11 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 19.2 Although clause 5.12 of the Code was also cited by the Complainant, this clause sets out the requirements for telephonic customer support if same was provided. Since no telephonic support was provided at all, this clause is not relevant and the complaint is dismissed in this regard.
- 19.3 The Member has failed to provide pricing information in accordance with the requirements of the Code. In particular, no reference was made to the word 'subscription' or to the cost to the customer and frequency of the billing for the MILF TUBE service. The Member has breached clause 8.2 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 19.4 The MILF TUBE service is not a free service and is not billed at standard rates. Despite there being a clear call-to-action on the landing page, no pricing information was displayed. The Member has breached clause 12.1 of the WASPA Code and the complaint is upheld in this regard.
- 19.5 The banner advert and landing page do not clearly indicate that an adult service is being promoted. They also do not contain the words "18+" or "X18". The Member has breached clause 21.3 of the WASPA Code of Conduct and the complaint is upheld in this regard.

- 19.6 The content offered by the Member to subscribers to the MILF TUBE subscription service is likely to be classified as explicit (X18) by the Film and Publication Board. The Member is prohibited from offering such adult content and is therefore in breach of clause 21.10 of the WASPA Code of Conduct. The complaint is upheld in this regard.
- 19.7 The Member has also made use of marketing material which would be likely to be classified as explicit (X18) by the Film and Publication Board. The Member has breached clause 21.11 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 19.8 The banner advert used by the Member to promote the MILF subscription service does not direct consumers to a compliant landing page before the subscription confirmation step. In particular, the landing page used by the Member does not clearly show the pricing information for the service, does not contain a link to or the URL for the terms and conditions for the service; and contains a misleading call-to-action button (i.e. 'watch now'). The Member has breached clause 23A.5 of the WASPA Code and the complaint is upheld in this regard.
20. To summarize the findings, the Member is found to have breached clauses 5.4, 5.5, 5.11, 8.8, 12.1, 21.3, 21.10, 21.11 and 23A.5. The complaint in terms of clause 5.12 is dismissed.
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## Sanctions

21. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
- 21.1 any previous successful complaints made against the Member in the past three years;
  - 21.2 any previous successful complaints of a similar nature;
  - 21.3 the nature and severity of the breach; and
  - 21.4 any efforts made by the Member to resolve the matter.
22. I have also taken account previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions when determining appropriate sanctions.
23. No previous complaints have been made against the Member.

24. However, the relevant breaches of the Code by the Member either relate to the promotion and publication of explicit adult content, which is strictly prohibited under the WASPA Code; or to the misleading or deceptive promotion of an adult content subscription service.
  25. These types of breach are of a serious nature and pose a substantial risk of harm to consumers, especially children under the age of 18 years.
  26. The Member was given an opportunity to respond to the alleged breach of each clause cited in the complaint. In a brief and somewhat ambiguous response, the Member stated that traffic had been paused and that its marketing department was still working on the content and promotional material. I am not satisfied that this constitutes an adequate response by the Member and specifically that the potential risk of harm to consumers has been removed.
  27. It is also clear from the other supporting evidence provided by the Complainant that there are a number of other non-compliant URLs, banner adverts and landing pages used by the Member to promote its MILF TUBE subscription service.
  28. Based on the nature and severity of the Member's various breaches of the WASPA Code of Conduct in this complaint, the Member is fined the following amounts:
    - 28.1 R5 000 for breach of clause 5.4;
    - 28.2 R5 000 for breach of clause 5.5;
    - 28.3 R5 000 for breach of clause 5.11;
    - 28.4 R10 000 for breach of clause 8.2;
    - 28.5 R10 000 for breach of clause 12.1;
    - 28.6 R15 000 for breach of clause 21.3;
    - 28.7 R15 000 for breach of clause 21.11; and
    - 28.8 R10 000 for breach of clause 23.A.5.
  29. In respect of the Member's breach of clause 21.10, the Member is required to terminate its MILF TUBE service with immediate effect.
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