



Report of the Appeals Panel

Complaint number	#57603
Cited WASPA members	TECHMOBI
Notifiable WASPA members	N/A
Appeal lodged by	The Member
Type of appeal	Written appeal
Scope of appeal	<input checked="" type="checkbox"/> Review of the adjudicator's decision <input checked="" type="checkbox"/> Review of the sanctions imposed by the adjudicator
Applicable version of the Code	17.1
Clauses considered by the panel	5.4, 5.5, 5.11, 5.12, 8.2, 12.1, 21.3, 21.10, 21.11, 23A.5 (a)(b)(c)
Related complaints considered	#57604
Amended sanctions	None
Appeal fee	Appeal fee not to be refunded
Is this report notable?	Not notable
Summary of notability	N/A

Initial complaint

1. Whilst monitoring and conducting manual tests on the MTN network, the WASPA Compliance Department (“the Complainant”) came across the Member’s subscription service on 2022-06-15, which did not comply with the requirements of the WASPA Code of Conduct (“the Code”).
2. The complaint instituted by the Complainant related to a URL on Google Chrome: sassytwinks.com/. The webpage canvassed an explicit X18 banner advertisement which promoted the Member’s adult subscription service called MILFTUBE charged at R15/per day (“the service”).
3. The Complainant alleged that the promotional material, landing page, pricing information, customer support number and content provided for the service did not comply with the following requirements as set out in the Code:
 - 3.1. There was no ‘18+’ on the banner advertisement and it was explicit X18 in nature;
 - 3.2. The landing page did not state that the service being promoted was a subscription service;
 - 3.3. There was no pricing information displayed adjacent to the call-to-action on the landing page;
 - 3.4. The video displayed on the landing page was explicit in nature and would likely be classified as X18 by the Film and Publication Board;
 - 3.5. The customer was misled into believing that the service was free and readily available with the call-to-action displaying the words ‘watch now’, but was in fact led to a subscription service charged at R15/per day;
 - 3.6. The content provided as part of the service was explicit in nature and would likely be classified as X18 by the Film and Publication Board; and
 - 3.7. There was no customer support number on the landing page or anywhere else throughout the subscription acquisition flow.
4. The Complainant also provided further evidence of numerous other URLs, banner advertisements and landing pages belonging to the Member, which were not compliant with the Code on the same, or similar grounds.

5. The Member responded that it had 'paused traffic' and that its marketing department was 'still working on this new content, banners and landing page' in response to the complaint. The Member provided no further response thereafter.
 6. The adjudication was published on 2022-10-17.
 7. The Member requested an appeal of the adjudication on 2022-11-02.
 8. The adjudication was assigned to the Appeal Panel on 2022-09-01.
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Adjudicator's findings

9. The Adjudicator found that the overall subscription flow of the promotion of the service and the subsequent subscription process was likely to mislead prospective customers by inaccuracy, ambiguity, and omission. The Adjudicator held that the customer was reasonably led to believe that they were able to watch free video content and were instead directed to the Member's service for R15/per day. Therefore, the Adjudicator found the Member to be in breach of clause 5.5 of the Code.
10. The Adjudicator found that the numerous URLs referred to by the Complainant, and the accompanying supporting evidence provided by the Complainant, revealed the non-compliant promotion of the service was not a once-off. Therefore, it was held that the Member breached clause 5.4 of the Code.
11. The Adjudicator further established that the Member had failed to provide any customer support mechanism, and the Adjudicator further dismissed clause 5.12 of the Code, as there was no telephone number provided and it was therefore not applicable. The Adjudicator subsequently found the Member in breach of clause 5.11 of the Code.
12. The Adjudicator ruled that the banner advertisement used by the Member to promote the service did not direct consumers to a compliant landing page before the subscription confirmation step, and had no pricing information or Terms and Conditions displayed. Therefore, the Member had breached clause 8.2, 12.1 and 23A.5 of the Code.
13. Lastly, the Adjudicator found that the content of the service was X18 in nature, including the advertising thereof, and this was both prohibited and not reasonably labelled '18+' to ensure that the consumer was aware of the content therein. Therefore, the Adjudicator found the Member in breach of clauses 21.3, 21.10 and 21.11.
14. To summarize the Adjudicator's findings, the Member was found to have breached clauses 5.4, 5.5, 5.11, 8.2 [sic], 12.1, 21.3, 21.10, 21.11 and 23A.5 of the Code. The complaint in terms of clause 5.12 of the code was dismissed.

15. It is noteworthy that the Adjudicator erred in his quotation of clause 8.8 of the Code in paragraph 14 above, and in fact intended to make reference to clause 8.2 of the Code in his findings.

Appeal submissions

16. The Member's appeal submission can be summarised as follows:

16.1. Their marketing team was overseas, they had no control or oversight over their campaigns, and the team received the Code and was told to refrain from misleading marketing;

16.2. Their customer support number was correctly configured on the MTN platform, and they thought having it there, and in their Terms and Conditions, was sufficient;

16.3. All MTN services had pricing as per the regulation, and they configured the pricing information on MTN's platform, therefore it should have been displayed correctly;

16.4. Regarding the omission of the 18+ symbol, the Member stated that everything was configured on their end, and they did not know what happened. However, the error was rectified as soon as it was brought to their attention;

16.5. They felt that adult content was lucrative and that there was a demand in South Africa that needed to be fulfilled, as their company was struggling financially, and they wanted to improve their finances;

16.6. The service's Terms and Conditions were provided at the bottom of the advertisement banner;

16.7. They did not realise they were misleading customers when they used more indirect marketing strategies and they fixed it when they were notified; and

16.8. The content of the service they provided matched what they advertised.

17. The Complainant opted to not respond to the Member's appeal submission.

Deliberations and findings

18. Reference is made to the abovementioned complaint and the Adjudicator's report.

19. The acquisition flow for the service was misleading and ambiguous, and led the customer to believe that they were going to watch a free video, and not subscribe to the Member's service at R15/per day. The fact that the Member's marketing team was overseas, and the Member had no oversight of the advertisements for its service is irrelevant herein. The Member cannot simply employ third parties to manage their advertising and relinquish all control and responsibility regarding their own service. Subscription services should be properly managed by the Member as they can cause recurrent prejudice towards unknowing consumers. Therefore, the Member is held in breach of clause 5.5 of the Code.
20. Furthermore, the Member had committed the same breach in a plethora of cases provided to the Adjudicator herein, therefore it was apparent that this was not merely an act of negligence but a pattern of dealings with their customers. Therefore, the Member had not acted fairly and honestly with its customers and is also held in breach of clause 5.4 of the Code.
21. The Member had failed to provide any customer support details and the fact that these were set up on the MTN platform but did not reflect on the Member's service was not a sufficient excuse to bypass the Member's responsibility to ensure that their own service was properly compliant with the Code. Furthermore, the Member was made aware that customer support must be easily available and must not be limited to a medium that the customer is unlikely to have access to. It is common knowledge that most customers do not read the service's Terms and Conditions and having a customer support number reflected therein contravenes clause 5.11 of the Code, as it was not easily available to the customer. Therefore, the Member is in breach of clause 5.11 of the Code.
22. In line with the ruling of the Adjudicator, clause 5.12 of the Code set out the requirements for telephonic customer support if same was provided. No telephonic support was provided herein, and clause 5.12 of the Code is subsequently irrelevant and dismissed.
23. The Member failed to provide pricing information in accordance with the requirements of the Code, and no reference was made to the word 'subscription', to the cost to the customer or to the frequency of the billing for the service. The Member cannot rely on the fact that MTN did not allegedly display the pricing information correctly and avoid any accountability, as they were aware of the requirements of the Code and should have viewed their service's advertising in light thereof. Once again, they are the owners of the service and the Members of WASPA, therefore they should be held reasonably accountable for their service and its associated advertising. Therefore, the Member has breached clause 8.2 of the Code.
24. The Member's banner advertisement and landing page did not clearly indicate that the service was an adult service and omitted to display '18+' or 'X18'. This omission was serious in nature, as customers could have been underage and subjected to content that was damaging to their psychological well-being. The Member has breached clause 21.3 of the Code.

25. The service itself, and the marketing material used to promote the service was X18 in nature and would be deemed X18 by the Film and Publication Board. The Member is prohibited from offering and marketing such adult content and is therefore in breach of clauses 21.10 and 21.11 of the Code.
 26. There was no compliant landing page before the MTN subscription confirmation step, and the Member consequently failed to provide clear pricing information, Terms and Conditions, and a call-to-action button that was not misleading. Therefore, the Member has also breached clause 23A.5 of the Code.
 27. The Member had not provided any appeal admissions of substance and had let their financial constraints take precedent over their duty to act responsibly when administering adult subscription services to the public. The Member stated that the traffic had been paused and that its marketing department was still working on the content and promotional material. However, this response was not appropriate or sufficient in proportion to the risk the Member had created to consumers, especially to minors. Therefore, the Member must immediately terminate its service to prevent further and future harm.
 28. In conclusion, the Member is found to have breached clauses 5.4, 5.5, 5.11, 8.2, 12.1, 21.3, 21.10, 21.11 and 23A.5 of the Code. The complaint in terms of clause 5.12 of the Code is dismissed.
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Amendment of sanctions

29. The sanctions applied by the Adjudicator remain unchanged and are noted below for ease of reference:
 - 29.1. R5 000 for breach of clause 5.4;
 - 29.2. R5 000 for breach of clause 5.5;
 - 29.3. R5 000 for breach of clause 5.11;
 - 29.4. R10 000 for breach of clause 8.2;
 - 29.5. R10 000 for breach of clause 12.1;
 - 29.6. R15 000 for breach of clause 21.3;
 - 29.7. R15 000 for breach of clause 21.11; and
 - 29.8. R10 000 for breach of clause 23.A.5.

30. In respect of the Member's breach of clause 21.10 of the Code, the Member is required to terminate its service with immediate effect, until it has demonstrated its compliance with the Code to the WASPA Compliance Department.

Appeal fee

31. The appeal fee is to be forfeited by the Member.
