



Report of the Adjudicator

Complaint number	#57604
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	2022-06-27
Applicable version of the Code	v17.1
Clauses of the Code cited	5.4, 5.5, 5.11, 5.12, 8.8, 12.1, 21.3, 21.4, 21.5, 21.10, 23A.5(a)(b)(c)(d), and 23A.6.
Related complaints considered	57603
Fines imposed	Member fined 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 8.8; R15 000 for breach of clause 21.3;

	R15 000 for breach of clause 21.4; R20 000 for breach of clause 21.5; R10 000 for breach of clause 23.A.5; and R10 000 for breach of clause 23.A.6.
Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

Initial complaint

1. On 27 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: 10starhd.lol, which redirected to another URL: 10starhd.mom. The website is referred to as an 'exclusive movie store' and offered movie downloads.
4. The tester clicked on a banner advert for a movie called "*Shanghai (2012) Hindi BluRay X264 AAC 1080p 720p 480p Download*", which was a non-adult movie.
5. The tester was then directly sent to the MTN confirmation page for an adult subscription service called MILF TUBE from xTV at a cost of R15.00 per day.
6. The tester clicked on the "Confirm" button on the MTN NHCP (Network Hosted Confirmation Page) and the acquisition process was completed. The tester also received a welcome message.
7. The tester clicked on the "Continue" button and was directed to the MILF TUBE subscription service homepage. The tester reviewed the content of the service and concluded that it was a subscription service for explicit (X18) adult content.

8. 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.
 9. 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:
 - 9.1 The banner advert promoted non-adult content but the tester was directed to the MTN confirmation page for an adult subscription service called MILF TUBE when clicking on the advert.
 - 9.2 The tester was directed to the confirmation step after clicking on the banner advert. As per the MTN specific requirements, subscription services must have a landing page prior to the confirmation step. No landing page was displayed during the acquisition flow of this service.
 - 9.3 The MTN confirmation page was the only step where pricing information was displayed.
 - 9.4 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.
 - 9.5 The tester did not go through any age verification step for the adult service.
 - 9.6 There was no customer support number given anywhere throughout the subscription acquisition flow.
 - 9.7 The tester was misled to believe that they would be watching a non-adult movie as advertised, however they were directed to a confirmation page for a subscription service for X18 adult content.
 10. 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, 8.8, 12.1, 21.3, 21.4, 21.5, 21.10, 23A.5(a)(b)(c)(d), and 23A.6.
 11. 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

12. 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".
 13. 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

14. Clauses 5.4, 5.5, 5.11, 5.12, 8.8, 12.1, 21.3, 21.4, 21.5, 21.10, 23A.5(a)(b)(c)(d), and 23A.6 of the WASPA Code of Conduct were cited in the formal complaint and considered.
 15. No other relevant clauses were assigned by WASPA.
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Decision

16. 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:
 - 16.1 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 directed to the Member's adult subscription service when they responded to a banner advert that referred to video content of a non-adult nature. The Member has breached clause 5.5 of the WASPA Code and the complaint is upheld in this regard.
 - 16.2 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.

- 16.3 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.
- 16.4 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.
- 16.5 The content that was promoted in the banner advert clicked on by the tester was not of an adult nature and is therefore not the same content or type of content that is provided to customers as part of the advertised MILF TUBE service. The banner advertising would mislead consumers into believing that it is for an entirely different service or for different content. The Member has breached clause 8.8 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 16.6 Since there was no landing page provided at all, the requirements of clause 12.1 of the WASPA Code are not relevant here and the complaint in this regard is dismissed.
- 16.7 The banner advert in question did not clearly indicate that an adult service was being promoted. The advert also did 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.
- 16.8 The promotion of the MILF TUBE content service was not in the context of the banner advert used to promote it. The banner advert was for a non-adult movie and the content of the MILF TUBE service would be contrary to the reasonable expectation of those responding to the banner advert. The Member has breached clause 21.4 of the WASPA Code of Conduct and the complaint is upheld in this regard.
- 16.9 The tester was able to subscribe to the MILF TUBE subscription service without being required to verify their age and that they were 18 years or older. The Member has failed to take reasonable steps to ensure that only persons of 18 years or older have access to its adult content services. The Member has breached clause 21.5 of the WASPA Code of Conduct and the complaint is upheld in this regard.

- 16.10 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.
- 16.11 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. The Member has breached clause 23A.5 of the WASPA Code and the complaint is upheld in this regard.
- 16.12 This is an adult service operating on MTN's platforms. It was not labelled as age restricted so that MTN can perform age verification of the users of those services. The Member has breached clause 23.A.6 of the WASPA Code of Conduct and the complaint is upheld in this regard.
17. To summarize the findings, the Member is found to have breached clauses 5.4, 5.5, 5.11, 8.8, 21.3, 21.4, 21.5, 21.10, 23A.5 and 23.A.6. The complaint in respect to clauses 5.12 and 12.1 is dismissed.
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Sanctions

18. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
- 18.1 any previous successful complaints made against the Member in the past three years;
- 18.2 any previous successful complaints of a similar nature;
- 18.3 the nature and severity of the breach; and
- 18.4 any efforts made by the Member to resolve the matter.
19. 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.
20. No previous complaints have been made against the Member, except for complaint #57603 which was lodged at the same time as this complaint and which has been considered in conjunction with this complaint by this adjudicator.

21. The Member has promoted and published adult content that is explicit (X18) and is likely to be classified as such by the Films and Publications Board. This is prohibited under the WASPA Code and a breach of these requirements must be viewed and have been viewed in previous adjudications and appeals in a very serious light and pose substantial risk of harm to consumers, especially children under the age of 18 years.
22. Breaches of the Code of Conduct relating to the misleading or deceptive promotion of an adult content subscription service must be viewed and have been viewed in previous adjudications and appeals in a very serious light.
23. 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 new content, banners and landing pages. I am not satisfied that this constitutes an adequate response by the Member and, in particular, that steps have or will be taken to remove the potential risk of harm to consumers.
24. It is also evident from the sheer number of other URLs and non-compliant promotional material that there is a pattern of conduct on the part of the Member in the manner in which it is promoting its MILF TUBE service.
25. 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:
 - 25.1 R5000 for breach of clause 5.4;
 - 25.2 R5000 for breach of clause 5.5;
 - 25.3 R5 000 for breach of clause 5.11;
 - 25.4 R10 000 for breach of clause 8.8;
 - 25.5 R15 000 for breach of clause 21.3;
 - 25.6 R15 000 for breach of clause 21.4;
 - 25.7 R20 000 for breach of clause 21.5;
 - 25.8 R10 000 for breach of clause 23.A.5;
 - 25.9 R10 000 for breach of clause 23.A.6

26. The appropriate sanction for the Member's breach of clause 21.10 is that the Member is required to terminate its MILF TUBE service with immediate effect. However, since this sanction was already imposed in respect to complaint #57603, there is no need to apply it again to this adjudication.
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