



Report of the Appeals Panel

Complaint number	#57604
Cited WASPA members	TECHMOBI
Notifiable WASPA members	N/A
Appeal lodged by	The Member
Type of appeal	Written appeal
Scope of appeal	Indicate the scope of the 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, 8.8, 12.1, 21.3, 21.4, 21.5, 21.10, 23A.5(a)(b)(c)(d), 23A.6
Related complaints considered	#57603
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 2022-06-27, 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: 10starhd.lol. The website offered movie downloads and displayed a banner advertisement for a non-adult movie called ‘Shanghai (2012) Hindi BluRay X264 AAC 1080p 720p 480p Download’.
3. The banner advertisement led customers directly to a MTN confirmation page for the Member’s adult subscription service called MILF TUBE which was charged at R15.00 per day (“the service”).
4. 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:
 - 4.1. The banner advertisement promoted non-adult content, but the content provided was for the Member’s X18 adult subscription service;
 - 4.2. The banner advertisement led the customer directly to the confirmation step and as per MTN’s requirements, subscription services must have a landing page prior to the confirmation step;
 - 4.3. There was no landing page during the acquisition flow of the service;
 - 4.4. The MTN confirmation page was the only step where pricing information was displayed;
 - 4.5. 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;
 - 4.6. There was no age verification step for the service; and
 - 4.7. There was no customer support number given anywhere throughout the subscription acquisition flow.
5. 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.

6. 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.
 7. The adjudication was published on 2022-10-17.
 8. The Member requested an appeal of the adjudication on 2022-11-02.
 9. The adjudication was assigned to the Appeal Panel on 2022-09-01.
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Adjudicator's findings

10. 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 Member had breached clause 5.5 of the Code.
11. 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.
12. The Adjudicator further established that the Member had failed to provide any customer support mechanism, and he 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.
13. The Adjudicator ruled that the content that was promoted by the Member's banner advertisement was of a non-adult nature, which was in contradiction with the content that the Member was providing, which was an X18 adult subscription service. The Adjudicator found that the advertisement was misleading, and that the Member had contravened clause 8.8 of the Code.
14. The Adjudicator found that the fact that there was no landing page, meant that the requirements of clause 12.1 of the Code were not relevant to the complaint and dismissed clause 12.1 of the Code accordingly.
15. The Adjudicator found that the Member's banner advertisement had not clearly indicate an adult service was being advertised and did not exhibit the words 'X18' or '18+'. Therefore, the Adjudicator found the Member breached clause 21.3 of the Code. The Adjudicator also found that the promotion of the Member's service was not in the context of the banner

advertisement used to promote the service and the Member consequently breached clause 21.4 of the Code.

16. The Adjudicator found that the Member's service had no age verification for its service on the MTN platform and therefore breached clause 21.5 and 23.A.6 of the Code.
 17. The Adjudicator also found that the Member's service was likely to be classified as 'X18' and that the Member was prohibited from providing such services and breached clause 21.10 of the Code.
 18. Lastly, it was held that the Member's banner advertisement did not direct customers to a compliant landing page before the subscription confirmation step and the Member had breached clause 23A.5 of the Code.
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Appeal submissions

19. The Member's appeal submission can be summarised as follows:
 - 19.1. Their marketing team was overseas, they had no control or oversight over their campaigns, and the team had the Code and was told to refrain from misleading marketing;
 - 19.2. 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;
 - 19.3. 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;
 - 19.4. 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;
 - 19.5. 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;
 - 19.6. The service's Terms and Conditions were provided at the bottom of the advertisement banner;
 - 19.7. They did not realise they were misleading customers when they used more indirect marketing strategies and they fixed it when they were notified;
 - 19.8. The content they provided matched what they advertised; and

- 19.9. The omission of the age verification for the service was a technical glitch and this was rectified as soon as they were notified.
20. The Complainant opted to not respond to the Member's appeal submission.
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Deliberations and findings

21. Reference is made to the abovementioned complaint and the Adjudicator's report.
22. 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.
23. 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.
24. 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.
25. 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.
26. The content the Member promoted on their banner advertisement was non-adult in nature and came across as a non-adult movie rather than the actual adult service it was promoting. Therefore, the content of the service and its promotional advertisement did not correlate, and the Member is found in breach of clause 8.8 of the Code.

27. The Adjudicator erred in his findings that the clause 12.1 of the Code did not apply to the facts of the complaint. The Member may not have had a landing page, however clause 12.1 of the Code also related to a call-to-action, which was present on the MTN confirmation page the consumer would be directed to before subscribing to the service. For subscription services, where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action. The Member failed to comply with the requirements of the Code for its pricing information, as the pricing information was in small faint grey font which would take close examination and was not prominent in comparison to the colourful homepage. The pricing information adjacent to the call-to-action was neither clear nor prominent. Therefore, the Member is also found in breach of clause 12.1 of the Code.
28. 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. The Member has also breached clause 23A.5 of the Code.
29. The Member's banner advertisement did not display the words '18+' or 'X18', and therefore did not adequately inform the customer that the service was not non-adult. Therefore, the Member has breached clause 21.3 of the Code.
30. The promotion of the adult service was not in the context of the non-adult banner advertisement that was used by the Member to promote it. The banner advertisement was for a non-adult movie which was not the content the consumer would have received when they subscribed to the service which offered adult content. The Member has accordingly breached clause 21.4 of Code.
31. There was no age verification process in place when a customer signed up for the service, and the Member took no reasonable steps to prevent customers who were under the age of 18 from accessing their adult service. The Member is consequently in breach of clause 21.5 of the Code.
32. The service was X18 in nature and would be deemed X18 by the Film and Publication Board. The Member is prohibited from offering such adult content and is therefore in breach of clauses 21.10 of the Code. Furthermore, the service was operating on MTN's platforms and was not marked 'X18' or '18+', so that MTN could verify the age of the customer. The Member has also breached clause 23.A.6 of the WASPA Code of Conduct.
33. 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.

34. In summary, the Member is found to have breached clauses 5.4, 5.5, 5.11, 8.8, 12.1, 21.3, 21.4, 21.5, 21.10, 23A.5 and 23.A.6 of the Code. The complaint in respect to clause 5.12 of the Code is dismissed.

Amendment of sanctions

35. The sanctions applied by the Adjudicator remain unchanged and are noted below for ease of reference:

- 35.1. R5000 for breach of clause 5.4;
- 35.2. R5000 for breach of clause 5.5;
- 35.3. R5 000 for breach of clause 5.11;
- 35.4. R10 000 for breach of clause 8.8;
- 35.5. R15 000 for breach of clause 21.3;
- 35.6. R15 000 for breach of clause 21.4;
- 35.7. R20 000 for breach of clause 21.5;
- 35.8. R10 000 for breach of clause 23.A.5; and
- 35.9. R10 000 for breach of clause 23.A.6

36. The appropriate sanction for the Member's breach of clause 21.10 is that 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. However, since this sanction was already imposed in respect to complaint #57603, there is no need to apply it again to this adjudication.

Appeal fee

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