



Report of the Adjudicator

Complaint number	#57845
Cited WASPA members	GG Network LLC
Notifiable WASPA members	Mobixone
Source of the complaint	WASPA Compliance Department
Complaint short description	Adult advertising of subscription service unrelated to adult service with deceptive call to action.
Date complaint lodged	<i>31 October 2022</i>
Date of alleged breach	19 August 2022
Applicable version of the Code	17.2
Clauses of the Code cited	5.4, 5.5, 8.8, 12.1, 21.3, 21.11, 23A.5 (a)(b)(c)(d) 24.6
Related complaints considered	
Fines imposed	R22 500 imposed, R22 500 suspended
Other sanctions	None.
Is this report notable?	<i>Not notable</i>

Summary of notability	N/A
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Initial complaint

On 19th August 2022 the WASPA Compliance Department (the 'Complainant') conducted a test which resulted in this complaint regarding GG Network LLC, a WASPA affiliate member. The complaint alleged that the following sections of the WASPA Code of Conduct, (version 17.1): 5.4, 5.5, 8.8, 12.1, 21.3, 21.11, 23A.5 (a)(b)(c)(d)

Evidence in the form of a video of the test as well as a PDF document including the formal complaint was provided to the Member. Mobixone, a full WASPA member was also notified of the complaint as it was believed that Mobixone may provide services to GG Network LLC.

Turning to the test:

1. the URL of: m.porn555.com/en/ was inserted into the mobile phones' Google Chrome browser and the tester clicked on the adult content banner, [at this point it is worth noting that the only thing identifying the banner is an adult image]
2. this redirected the tester to 24porn.org/V2mt which is also an adult website [once again it is worth noting that the only thing identifying the banner is an adult image]
3. this redirected the tester again to an MTN subscription service landing page for adult content (see Annexure A) which included a "R15.00 per day" subscription pricing,
4. the tester clicked on the Terms and Conditions link which rendered successfully,
5. thereafter the next MTN hosted webpage included the R15.00 per day pricing information and requested the tester confirm their wish to be subscribed to the subscription service (which the tester did) and
6. The tester received a confirmatory message confirming that the tester was subscribed to the Redlight from GG Network R15.00 a day subscription service.
7. The tester then unsubscribed from the service and this unsubscription process was successful.

The summary provided by the WASPA Compliance Department is useful and is reproduced here:

"In summary, the tester was browsing on an adult content website and clicked on an explicit (X18) banner advertisement with the intention to view said explicit (X18) adult video. This action however triggered a MTN age verification page for subscription service called Redlight. The ad banner is adult in nature and does not contain the words "18+" as required. The ad banner has no pricing information. As per the MTN specific

requirements, subscription services must have a landing page prior to the confirmation step – a landing page was never displayed during the acquisition flow of this service. The marketing material provided as part of the subscription acquisition flow is explicit and is likely to be classified as X18 by the Film and Publication Board. There was no customer support number provided. The tester was misled to believe that he/she will be watching an explicit adult video as advertised, however was directed to a subscription service for 18+ adult content that does not have anything to do with the advertised explicit adult video.”

Kindly note that the pictures of adult content were present in the complaint but have omitted in this Report.

Member’s response

The WASPA member in this case – GG Network LLC – responded on the 01 November 2022 with a response so terse that the entire message is reproduced below:

“The test was conducted quite a long time ago, the date of the click on 19.08.2022 , contacted the partner - this type of traffic was turned off 04.10.2022 and will no longer be filled. If you have any questions, please feel free to contact us.”

Despite being reminded that this is a formal process, the Member did not augment the above response.

Complainant’s response

The WASPA Compliance Department then provided a further comprehensive response (notwithstanding the brevity of the response by the Member) in which it noted:

- Clause 24.6 of the WASPA Code of Conduct allows for a complaint to be lodged within 6 months of the alleged breach of the WASPA code of conduct,
- The service was tested on the 19th August 2022 and the complaint was lodged on the 01st November 2022 (i.e. within 6 months)
- The breaches of the Code of Conduct set out in the original complaint have not been addressed by the Member and remain apposite.

Member’s response

The Member responded again on the 28th November 2022 noting that:

- the ‘misleading source’ was blocked on the 04 October 2022, and
- *“In accordance with the rules, work has been done to correct all the deficiencies. A screenshot of the Landing Page is attached.”*

Sections of the Code considered

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.*

8.8. *Content that is promoted in advertising, must be the same content that is provided to the customer as part of the advertised service. Advertising must not mislead consumers into believing that it is for an entirely different service or for different content.*

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.*

21.3. *Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words "18+".*

21.11. *Marketing material for any adult services may not make use of material which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.*

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 not have a misleading call-to-action (such as "download" instead of "subscribe" or "join")*
- (d) must not mislead by presenting examples of content not available as part of the service.*

24.6. *A complaint must be made within six months of the date of alleged breach of the Code. WASPA may, at its discretion, accept a complaint after this six month window, if the complainant provides a compelling reason for the delay in lodging the complaint. For matters referred back to WASPA by an adjudicator for further review, the date of the original complaint is also treated as the date for any subsequent matters for the purpose of the six month window.*

Decision

From a factual perspective there are clear allegations of the contravention of the WASPA Code of Conduct by the WASPA Complaints Department which are not disputed by the Member. Indeed, the Member has implicitly agreed that there were substantial breaches of the WASPA Code of Conduct by terminating the source on the 4th October 2022 and by stating on the 28th November 2022 that '*In accordance with the rules, work has been done to correct all the deficiencies*'.

The only defence that advanced by the Member was that the complaint in question was based on an investigation that was conducted some time ago. This defence was refuted by the WASPA Compliance Department that noted – quite correctly – that rule 24.6 of the WASPA Code of Conduct version 17.2 only requires that a complaint be lodged within 6 months of the alleged breach of the WASPA Code of Conduct. As a result, this defence is dismissed.

In addition - as set out in the video provided by the WASPA compliance department and their PDF complaint - it is clear that there is absolutely no indication of the type of service that would have resulted from clicking the banner. Indeed, the banner itself is merely a picture with no additional information at all and so the user would have no idea as to what may result from clicking on the banner.

Based on the uncontroverted evidence the Member is hereby found to have breached:

- (a) Clause 5.4 in that it was unclear that there was any service (paid or otherwise) that could be accessed by clicking on the banner,
- (b) Clause 5.5 in that the Member (or in the alternative its partner) knowingly disseminated information which was false or deceptive,¹
- (c) Clause 8.8 in that the content of the banner did not suggest that there was a paid subscription service if clicked upon,
- (d) Clause 12.1 for failing to provide prominent and clear pricing information,
- (e) Clause 21.3 by failing to provide a prominent "18+" sign,
- (f) Clause 21.11 in that the content (as provided by the WASPA Compliance Department but intentionally omitted here) was likely to be classified as 'X18' as set out in the Film and Publications Board Classification Guidelines, section 4-2(12) as found at <https://www.fpb.org.za/wp-content/uploads/2022/07/Classification-Guidelines-Effective-1-August-2022.pdf>.
- (g) Clause 23A.5 in that there was no landing page prior to the confirmation step.

¹ It is trite that the WASPA member is liable for the conduct of the partner (clause 3.4 of the WASPA Code of Conduct).

Sanctions

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.

A potential mitigating factor is that the Member in question terminated 'this source' on the 4th October 2022 which was before the Member was informed of the complaint by WASPA on the 1st November 2022.

An aggravating factor is that the contravention of the WASPA Code of Conduct is likely to have been present from the testing date of the 19th August 2022 and – on the Member's own version – would have been live until the 4th October 2022 (a period of 46 calendar days).

It does not appear that the Member has had any previous findings against it, which is a mitigating factor.²

On balance – and despite the mitigating factors referred to above – the following sanctions are imposed on the Member:

- 1) R5 000 for the breach of clauses 5.4 and 5.5, (R2500 suspended)
- 2) R10 000 for the breach of clauses 8.8 and 21.3, (R5000 suspended)
- 3) R10 000 for the breach of clauses 12.1, (R5000 suspended)
- 4) R5 000 for the breach of clause 21.3, (R2500 suspended)
- 5) R10 000 for the breach of clause 21.11, (R5000 suspended)
- 6) R5 000 for the breach of clause 23A.5. (R2500 suspended)

This translates as a total fine of R45 000. As this is the Member's first offence, 50% of each fine is suspended for a period of 6 months, on condition that the Member is not found guilty of contravening the same clause within the Code of Conduct within a 6 month period from the date of publication of this report. For the sake of clarity if the Member is found to have contravened the same section of the WASPA Code of Conduct in the 6 months following the publication of this report then the suspended sanction should be imposed by the adjudicator in the subsequent matter.

Consequently the Member is to pay an amount of R22 500 within the timeframe set out in clause 24.41 of the WASPA Code of Conduct.

Matters referred back to WASPA

None.

² <https://reports.waspa.org.za/?page=search>

Annexure A

