



Report of the Adjudicator

Complaint number	#59181
Cited WASPA members	Twistbox Entertainment (2001)
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Adult subscription service
Date complaint lodged	2023-08-02
Date of alleged breach	2023-06-28
Applicable version of the Code	17.5
Clauses of the Code cited	5.1, 5.4, 5.5, 5.6A, 5.8(b)(c)(f)(i)(k)(l), 5.11, 8.2, 12.1, 12.2, 15.11(c), 15.18(e), 21.3, 21.5
Related complaints considered	N/A
Fines imposed	R5 000.00 fine for the breach of clauses 5.4 and 5.6A. R5 000.00 fine for breach of clause 5.8 (b)(c)(f)(i)(k)(l). R10 000.00 fine for the breach of clauses 21.3 and 21.5

	R5 000.00 fine for the breaches of clauses 5.11, 15.11(c) and 15.18 (e). R10 000.00 fine for breach of clauses 8.2, 12.1, and 12.2.
Other sanctions	N/A
Is this report notable?	Not notable
Summary of notability	Not notable

Initial complaint

1. On 2023-06-28, whilst monitoring, testing services and conducting compliance checks on WASPA members, the Complainant's tester identified a service on the Vodacom network that did not comply with the WASPA Code of Conduct ("the Code").
2. The Complainant's tester accessed the following URL on Google Chrome: <https://www.all-nude-celebrities.net/>.
3. The Complainant's tester then clicked on the "Angelina Jolie hard fucking in "Taking Lives" image of an adult nature and was redirected to the Member's service landing page. It is noteworthy to mention that the Complainant used a laptop to browse the website and hover over the image, and the following URL was displayed at the bottom of the page: <https://www.all-nude-celebrities.net/mr-skin/>.
4. The Complainant noted that when its tester interacted with the adult website, and the advertisement banner on said site, they were redirected to the Member's service landing page that did not contain the words "18+". It was further alleged that throughout the subscription acquisition flow, the Complainant's tester was not presented with a step to confirm that they are 18 years or older.
5. It is alleged that the pricing information on the Member's service landing page did not contain the words "subscription", and there was also intervening text between the pricing information and the call-to-action button.
6. The Complainant alleged that a customer support number was not easily available to its tester on the service landing page, in the full Terms and Conditions, in the confirmation step, or in the welcome message.

7. The Complainant alleged that the full Terms and Conditions of the Member's service did not state numerous requirements of the Code.
 8. It was complained that the link from the welcome message to access the Member's service did not redirect the Complainant's tester to the subscription service, and the Complainant's tester did not know how to access the service once subscribed.
 9. Lastly the Complainant alleged that its tester subscribed to the Member's service with the expectation of watching a "Angelina Jolie hard fucking in "Taking Lives" video and was instead redirected to another service called "Sex Club".
-

Member's response

10. The Member responded to the formal complaint on 15-08-2023.
11. The Member stated that it had received a complaint in April 2023 of the same nature, and upon receipt of this complaint, it paused the service in question, suspended all campaigns across all networks and implemented an internal block on all entry points to the service ("the first complaint").
12. The Member stated that existing subscribers to the service from the first complaint would still have access, but there could be no new acquisitions and the access to its landing page was no longer possible.
13. The Member therefore alleged that the access point at the center of this new complaint was not through any ad affiliate or network or campaign, but organic traffic sent to it by MrSkin with whom it has a licensing and distribution agreement with ("the access point").
14. The Member admitted that this was an accidental missed access point and technical loophole to its service.
15. The Member alleged that adult websites did not need to use the "18+" label according to the Code, and noted that the specific website's call to action was not a typical ad banner but an SEO-optimized "white label blog." The Member also stated that in partnership with MrSkin, it used mobile billing to monetize content and redirected traffic in certain countries, including South Africa, leading to location-based user experiences. Therefore, the Member alleged that the "18+" label requirement only applied to traditional ad banners in South Africa, and not in this case. The Member had requested to disable the redirection due to Code of Conduct ambiguities, a topic it had previously brought up regarding the limited representation of non-standard ad formats and user acquisition methods with WASPA.
16. The Member stated that the NHCP featured an 18+ icon, and its Terms & Conditions page was viewed before the subscription initiation. It also stated that while this did not precisely

align with WASPA's reasonable step example, the Complainant's tester accessed the Terms and Conditions page, which prominently displayed "Adults Only 18+" at the top, and also encountered the 18+ icon on the NHCP. Therefore, the Member believed it had sufficiently informed its users that its service is 18+. Notably, the Member stated that it had now updated the service to comply with the Code.

17. The Member alleged that the "intervening text" was entirely relevant and provides the user with comprehensive information about the subscription, including its cost and rate. It asserted that there was no "filler" text to cause confusion or mislead the customer. Furthermore the Member stated that the Complainant was being "picky" by not accepting its use of "subscribe" instead of "subscription". Nevertheless, the Member stated that it was committed to making the required adjustments to ensure strict compliance with the precise wording of the Code.
18. The Member also alleged that it had provided a customer support number in compliance with the Code and provided examples to this effect.
19. The Member confirmed that the missing requirements as per the Code have been added to the full Terms and Conditions.
20. The Member alleged that Vodacom incorrectly configured the link in the welcome message and clarified that it was not responsible for this message. It also alleged that Vodacom confirmed they would rectify the URL, and the Member included Vodacom's confirmation from 08-08-2023.
21. The Member further claimed that no service errors occurred, and after the successful subscription the Complainant's tester was redirected to the service homepage labeled "MR SKIN ZA" which is its service home page. The Member alleged that the Complainant's tester was just not aware of this fact and had gained access to its service, and that there was in fact no redirection to another service called "Sex Club". The Member concluded that the Complainant's tester had encountered a universal error page, during a subsequent service access attempt due to a configuration issue by Vodacom. The Member stated that this issue had been resolved by updating the error page.
22. The Member concluded by stating it had stopped traffic redirection to its service and that it had signed up for an additional ad-monitoring solution with Evina.

Complainant's response

23. The Complainant alleged that the Member's service in this complaint was not paused or suspended, and as per the Member's own admission, it was accessed due to a "technical loophole" or a "missed access point" on its system. The Complainant stated that it is unlikely that the Member was unaware of this mistake for 2 months while new sales were generated from its service, and this places doubt on whether it paused the service subject to the first complaint.
24. The Complainant addressed the allegation that the Member received organic traffic from "Mr Skin" through their content licensing and distribution agreement and that the Member operates globally. The Complainant put forward that it is the responsibility of the Member to adhere to the Code's requirements for services in South Africa as per clause 1.6 of the Code which states that the Code applies to all mobile application services provided by WASPA members to South African customers. Furthermore, the Complainant stated that as per clause 3.1 to 3.7 of the Code, there is a positive obligation on the Member to ensure that any client, supplier, affiliate, or sub-contractor must promote and market its services in accordance with requirements of the Code.
25. It was respectfully submitted by the Complainant that the promotional material used to lure users into accessing nude celebrity content, in this case, Angelina Jolie, lacked the required "18+" label, mandated by clause 21.1 of the Code. The Complainant stated that regardless of where one clicked on the adult website, the promotional material leading to the Member's adult service did not include the "18+" label, and thus, the Member should be held accountable for breaching Clause 21.3 of the Code
26. The Complainant stated that the "+18" label on the Member's NHCP, and its full Terms and Conditions did not meet the reasonable steps required by the Code to prevent under 18s from accessing the service, as anyone could access the service. It was further alleged that during the subscription acquisition flow, the Complainant's tester was able to see a naked Angelina Jolie and naked woman in a bathtub, both without a "18+" label displayed.
27. The Complainant noted that the term "subscription" was not present. Instead, there was intervening text ("You are about to subscribe to Mr Skin. This will be charged to your Vodacom account at") situated between the cost (R10.99 per day) and the call-to-action button ("CONTINUE"), which had the potential to be missed by consumers.
28. The Complainant maintained that the Member failed to provide a customer support number where a potential consumer may call and ask about the service before they subscribe to it, unlike the USSD number that was provided to merely unsubscribe.

29. As per the Member's acknowledgment that Vodacom incorrectly configured the link in the welcome message, the Complainant emphasised that clauses 3.1 to 3.7 of the Code impose a clear obligation on the Member to ensure that all clients, suppliers, affiliates, or sub-contractors promote and market their services in strict accordance with the Code's requirements.
 30. Lastly, the Complainant stated that after subscribing to the Member's service its tester must be able to close all the tabs (even after redirecting to the service) and have access to information on how to access the service they subscribed to.
-

Member's further response

31. The Member responded that there was no directive from WASPA to halt its campaigns, rather, it was a voluntary measure taken by the Member in good faith to address potential non-compliance issues proactively. While there were "new sales generated," the Member alleged these amounted to only 25 in a span of almost four months, which, in its view, was not of significant concern when compared to the more serious and misleading campaigns that have hundreds of daily sales, as reported in the WASPA complaints archives. Furthermore, the Member confirmed it had already deactivated all campaigns, particularly with MTN, and Vodacom.
32. The Member stated that its partners sole role was that it directed organic users to its service and that the Member was responsible for adhering to the Code. The Member reiterated that it promptly communicated these issues and suspended traffic due to the oversight loophole.
33. The Member alleged that there was no formal code governing various advertising formats in the advertising sector, and it acknowledged the absence of an "18+" label on the link the Complainant's tester accessed but reiterated that it wasn't a display ad banner.
34. The Member admitted that there was no "18+" page or icon on its landing page, but this issue was promptly resolved. Furthermore, it emphasized its lack of control over all internet pages and pointed out the consumer's prior exposure to adult content while browsing an adult site before even arriving at its hosted landing page, by clicking a picture/link sourced from a random internet website.
35. The Member reiterated its customer support number was on all its relevant pages, and that the Code did not specify the reasoning for a customer to get in contact with customer support, it simply required there to be a number and means to contact the Member, and for it be accessible and available.
36. The Member asserted that it had no control over the SMS sent by Vodacom, and that its service functioned correctly before going live. Furthermore it alleged that Vodacom would not have approved the service launch without passing the relevant tests.

37. The Member confirmed that the Complainant's tester was never redirected to another service and accessed the Member's service home page without realizing it. Instead, the "Sex Club" service was a universal error page which was a result of the tester using the service link, from the welcome message, incorrectly configured by Vodacom.

Sections of the Code considered

38. The following sections of the Code are considered: 5.1, 5.4, 5.5, 5.6A, 5.8((b)(c)(f)(i)(k)(l)), 5.11, 8.2, 12.1, 12.2, 15.11(c), 15.18(e), 21.3, and 21.5.

Decision

39. The Member advertised and charged for a subscription service it could provide, as the Complainant's tester did not experience redirection to an alternate "Sex Club" service, but instead was redirected to an error page which was displayed when the tester revisited the service post-subscription. Subscribers to the Member's service could in fact access the service post-subscription, although this was not necessarily straightforward nor apparent to its users. Therefore, the Member is not found in breach of clause 5.1 and 5.5 of the Code.

40. However, the Complainant's tester was unaware that they had accessed the Member's homepage and could not easily and readily access the Member's service post-subscription contravenes clause 5.6A of the Code which states that customers should have ready access to information on how to access and use the services.

41. As per the Member's own admission, the full Terms and Conditions did not contain all the necessary requirements as stipulated by the Code. Therefore, the Member is found in breach of clause 5.8 (b)(c)(f)(i)(k)(l) of the Code.

42. The Member did not have a customer support number available to its customers accessible across its service, and only provided a USSD code for those who wished to unsubscribe from its services. A "customer support number" is a phone number that customers can call to receive assistance, guidance, or help with their inquiries or issues related to a company's products or services. The Code does not provide a definition, as this is the general use for a customer support number. Therefore, the Member is found in breach of clauses 5.11, 15.11(c) and 15.18 (e) of the Code.

43. The Code is specific as to the way the Member should format its pricing information for its service and provides numerous examples to ensure that the Member is compliant. The pricing information is a material term for a subscription service, as it can prejudice the customer by influencing their purchasing decisions, potentially impacting their overall satisfaction with the service, and setting clear expectations for the cost of their subscription. Therefore, the Code's detailed guidelines and examples play a crucial role in ensuring transparency and fairness in the subscription service industry, protecting both the Member's reputation and the customer's trust. The Member also included interfering text that detracted from the pricing information and was not clear as per the requirements due to the additional distracting information in between the pricing information and the call-to-action. Therefore, the Member is found in breach of clauses 8.2, 12.1, and 12.2 of the Code.
44. Any adult service must be clearly indicated as "18+" in any promotional material and advertisement by the Member. The Complainant's assertion that the promotional material used to attract users into accessing nude celebrity content, lacked the required "18+" label is confirmed. Regardless of where one clicked on the adult website, the promotional material leading to the Member's adult service did not include the "18+" label. Furthermore, the Member admitted that there was no "18+" page or icon on its landing page. Consequently, the Member is held accountable for breaching clause 21.3 of the Code.
45. Throughout the subscription acquisition flow, the Complainant's tester was not presented with a step to confirm that they are 18 years or older, or provide for any further checks to ensure the customer was not underage. Therefore, the Member did not take reasonable steps to ensure that only persons of 18 years of age or older had access to its adult content service. Any persons under the age of 18 could access the Member's service. Furthermore, during the subscription acquisition flow, the Complainant's tester was able to see a naked Angelina Jolie and naked woman in a bathtub, both without a "18+" label displayed. Therefore, the Member is found in breach of clause 21.5 of the Code.
46. Lastly, Members must have fair and honest dealings with their customers. The fact that the Member had a previous complaint against it regarding its service, and allegedly blocked its services from being accessed by future customers and failed to do so raises concern. The missed access point that led to 25 new users acquiring the Member's non-compliant service is neither honest nor fair to the new customers. In maintaining fair and honest dealings with customers, it is imperative for members to proactively monitor its systems for any vulnerabilities or irregularities and take swift corrective action. The Member acquired new customers over a period of 2 months, which indicates that it did not take instant corrective action. Therefore, the Member is found in breach of clause 5.4 of the Code.

Sanctions

47. This is the third complaint against the Member in the last 5 months which acts as an aggravating factor.
48. The Member's proactive actions taken on its own accord regarding pausing its service and amending its service to reflect the Code's requirement is considered a mitigating factor.
49. In conclusion, the following sanctions are imposed on the Member:
- 49.1 A R5 000.00 fine for the breach of clauses 5.4 and 5.6A.
- 49.2 A R5 000.00 fine for breach of clause 5.8(b)(c)(f)(i)(k)(l).
- 49.3 A R10 000.00 fine for the breach of clauses 21.3 and 21.5
- 49.4 A R5 000.00 fine for the breach of clauses 5.11, 15.11(c) and 15.18 (e).
- 49.5 A R10 000.00 fine for breach of clauses 8.2, 12.1, and 12.2.

Matters referred back to WASPA

50. N/A.
-