



Report of the Adjudicator

Complaint number	#60143
Cited WASPA members	T-MOB International
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant adult subscription service
Date complaint lodged	2024-05-03
Date of alleged breach	2024-04-19; 2024-04-24
Applicable version of the Code	v17.7
Clauses of the Code cited	5.1, 5.4, 5.5, 8.8, 21.3, 21.4, 21.5, and 21.11
Related complaints considered	n/a
Fines imposed	Member fined following amounts: R5 000 for breach of clause 8.8; R5 000 for breach of clause 21.3; R5 000 for breach of clause 21.4; and R5 000 for breach of clause 21.11.

Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

Initial complaint

1. On two separate occasions (on 19 April 2024 and 24 April 2024), a tester from the WASPA Compliance Department detected alleged non-compliance with the requirements of the WASPA Code of Conduct in relation to the advertising of the Member's subscription services.
2. In the first instance, the test results provided by the Complainant showed that the tester responded to an advertisement for free games and then free video downloads. Instead they were directed to a landing page for the Member's subscription service, 'House of Comics', charged at R7.00 per day, which was totally unrelated to games or video downloads, and was not free.
3. The Complainant alleges that the Member has breached clauses 5.1, 5.4, 5.5 and 8.8 of the WASPA Code of Conduct.
4. In the second instance, the test results provided by the Complainant showed that the tester was browsing on a non-adult website and was presented with a banner advert for an adult content video. After clicking on the banner advert, the tester was directed to a website with various explicit (X18) adult content videos. The tester clicked on one of the explicit (X18) adult content videos, with the intention to watch the video. However, the tester was then directed to the landing page for the Member's non-adult subscription service called 'House of Comics', charged at R7.00 per day. The tester clicked on the "Subscribe" call-to-action button.
5. The Complainant alleges that the adult advertisements used and the manner in which the Member's non-adult related service has been promoted using adult content advertising is not compliant with clauses 5.1, 5.4, 8.8, 21.3, 21.4, 21.5 and 21.11 of the WASPA Code of Conduct.

6. In support of the complaint, the Complainant provided an outline of the tester's experience when interacting with the relevant websites and banner adverts, together with screenshots of the banner adverts and pages visited.
 7. The tester elected to stop both tests before actually subscribing to the Member's service as it alleged that there were multiple breaches of the Code detected already.
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Member's response

8. After receiving the formal complaint, the Member stated that it had identified the source of the breach and that it had immediately blocked it.
 9. The Member did not provide any further response to the complaint.
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Sections of the Code considered

10. Clauses 5.1, 5.4, 5.5, 8.8, 21.3, 21.4, 21.5 and 21.11 of the WASPA Code of Conduct were cited in the formal complaint and considered.
 11. No other relevant clauses were assigned by WASPA.
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Decision

12. The submissions made and evidence provided by the Complainant has not been disputed by the Member.
13. After reviewing the complaint, I am able to make the following findings:
 - 13.1 *Alleged breach of clause 5.1* – There was no evidence presented that supports a finding that the Member was not able to provide the services that were advertised. The complainant's tester stopped the test before subscribing to the service.
 - 13.2 *Alleged breach of clause 5.4* – There is no evidence presented that supports a finding that the Member has, itself, been dishonest or unfair in its dealings with its customers. The complaint in this regard is dismissed.
 - 13.3 *Alleged breach of clause 5.5* - There is no evidence presented that supports a finding that the Member had knowledge of these non-compliant campaigns or

that it knowingly engaged in the false, deceptive and/or misleading advertising of its services. The complaint in this regard is dismissed.

- 13.4 *Alleged breach of clause 8.8* – I am satisfied from the submissions made and evidence presented by the Complainant that the content that is promoted in the advertising in question was not the same content that is provided to a customer as part of the advertised service. The banner advertising used in both instances are misleading in that consumers would be misled into believing that the advertising presented to them was for an entirely different service or for different content. The complaint in this regard is upheld.
- 13.5 *Alleged breach of clause 21.3* - I am satisfied from the submissions made and evidence presented by the Complainant that the banner advertising used which is of an adult nature did not contain the words "18+" as required. The complaint in this regard is upheld.
- 13.6 *Alleged breach of clause 21.4* - I am satisfied from the submissions made and evidence presented by the Complainant that the banner advertising used, which was adult in nature, was not in context with the non-adult related websites on which it appeared and/or that the non-adult related service being promoted was not in context with the adult banner advertising used; and/or that the non-adult content of the service was contrary to the reasonable expectation of those responding to the promotion. The complaint in this regard is upheld.
- 13.7 *Alleged breach of clause 21.5* – There is no evidence to support a finding that the Member did not take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. The complaint is dismissed in this regard.
- 13.8 *Alleged breach of clause 21.11* - I am satisfied from the submissions made and evidence presented by the Complainant that marketing material has been used 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. The complaint is upheld in this regard.
14. In terms of clause 3.7 of the Code of Conduct, even if it is found that a third party created these non-compliant campaigns, the Member is still responsible for the advertising of its services and for any breach of the WASPA Code of Conduct by such third party.

Sanctions

15. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
 - 15.1 any previous successful complaints made against the Member in the past three years;
 - 15.2 any previous successful complaints of a similar nature;
 - 15.3 the nature and severity of the breach; and
 - 15.4 any efforts made by the Member to resolve the matter.
 16. 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.
 17. Firstly, in mitigation it is noted that there have been no other formal complaints made or upheld against the Member, i.e. this is the first formal complaint made against the Member. Secondly, the Member immediately took steps to block these non-compliant promotional campaigns.
 18. However, the misleading way in which the Member's subscription service has been promoted and the explicit adult advertising used on non-adult platforms must be viewed (and have been viewed in previous adjudications and appeals) in a very serious light, based on the potential risk of harm to consumers.
 19. Furthermore, no evidence was provided by the Member of any step taken by it to ensure that third parties who market their services do so in a manner consistent with the requirements of the WASPA Code of Conduct.
 20. Therefore, based on the nature and severity of the various breaches of the WASPA Code of Conduct in this complaint, the Member is fined the following amounts:
 - 20.1 R5 000 for breach of clause 8.8;
 - 20.2 R5 000 for breach of clause 21.3;
 - 20.3 R5 000 for breach of clause 21.4; and
 - 20.4 R5 000 for breach of clause 21.11.
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