



Report of the Adjudicator

Complaint number	#60206
Cited WASPA members	JOKER MOBILE (Membership no: 1836)
Notifiable WASPA members	None
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-Compliant Service and Related Promotional Material
Date complaint lodged	2024-05-27
Date of alleged breach	2024-05-17
Applicable version of the Code	17.7
Clauses of the Code cited	5.1, 5.4, 5.5, 8.8, 12.1, 21.3, 21.4, 21.5, 21.11
Related complaints considered	57604, 53158, 58659
Fines imposed	<p>Alleged breach of Clauses 5.1, 12.1, 21.5 and 21.11 of the WASPA Code of Conduct in this instance is dismissed</p> <p>The Member is however found to be in breach of clauses 5.4; 5.5; 8.8, 21.3 and 21.4 of the WASPA Code of Conduct.</p> <ul style="list-style-type: none"> • Clause 5.4 a fine imposed of R 5 000.00 • Clause 5.5 a fine imposed of R 5 000.00

	<ul style="list-style-type: none"> • Clause 8.8 with Clause 21.4 a fine imposed of R20 000.00 • Clause 21.3 a fine imposed of R10 000.00
Other sanctions	n/a
Is this report notable?	Not notable
Summary of notability	n/a

Initial complaint

1. This complaint was lodged by the WASPA Compliance Department after tests conducted by the complainant on the Member's system.
2. The tester conducted two separate tests on even date 17 May 2024:
 - 2.1 The tester was browsing on an adult content website with the URL: <https://afilmywap-new-hd.jimdosite.com/> and clicked on an explicit (X18) advertisement for an adult content video with the intention to watch the selected video.
 - 2.2 The tester was browsing a non-adult website namely Facebook, and came across an advertisement for an adult content video with the intention to watch the selected video.
3. The tester on both instances was directed directly to the confirmation page for a non-adult subscription service. There was no adult content available.
4. The advertisement in both instances is adult in nature and does not contain the words "18+" as required. 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.
5. The Complainant provided screenshots showing the results of each test conducted.
6. As such, the Member is alleged to be in breach of clauses 5.1; 5.4; 5.5; 8.8; 12.1; 21.3; 21.4; 21.5; 21.11 of the WASPA Code of Conduct.

Member's response

Member steps taken to rectify the breach:

7. All campaigns with the partner that was promoting the content was “paused” based on non-compliance of the rules.
 8. All security measures with the other partners have been reinforced.
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Complainant’s response

9. The Complainant noted the Member’s response and steps to rectify the breaches and reiterated the original complaint with supporting evidence sufficiently sets out the matter in dispute and did not wish to add any additional information.
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Member’s further response

10. The Respondent noted in response the issue was raised with all their partners once again and security reinforced.
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Sections of the Code considered

11. The Complainant cited the following clauses of the WASPA Code of Conduct as the basis for their complaint

Service levels

- 5.1. Members must not offer or promise or charge for services that they are unable to provide.
- 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.

Accuracy of services and content advertised

- 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.

Display of pricing information

- 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.

Required practices

- 21.3. Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words “18+”.
 - 21.4. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.
 - 21.5. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Reasonable steps may include the customer confirming his or her age prior to or as part of initiating the service.
 - 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.
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Decision

- 12. 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.
- 13. In review:
 - 13.1 To note the submissions made and evidence provided by the Complainant has not been disputed by the Member.
 - 13.2 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, therefore the complaint in terms of Clause 5.1 of the WASPA Code of Conduct in this instance is dismissed.
 - 13.3 When reviewing the advertising and subscription acquisition flow, it is likely to mislead prospective customers by providing non intentional content. In the circumstances outlined by the Complainant, the tester, as a prospective customer, was browsing on an adult content website and clicked on an explicit advertisement for an adult content video and directed to the Member’s non-adult subscription service. The Member has thus breached clause 5.4 of the WASPA Code It is therefore reasonable to conclude 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.

- 13.4 Members must not knowingly disseminate information that is likely to mislead customers by ambiguity or omission. By not providing clear and prominent information regarding the subscription nature of the service, the member disseminated ambiguous and incomplete information to its consumers. Therefore, I am satisfied the complainant has provided sufficient information in proving the Members intent of misleading the customer and the Member is found in breach of clause 5.5 of the WASPA Code of Conduct and the complaint is upheld.
- 13.5 The advertising and subscription acquisition flow would mislead consumers into believing that it is for an entirely different service or for different content not aligned to the browser/customers intent and therefore must be the same content that is provided to the customer as part of the advertised service that is not the case in in this instance. The Member has been found in breach of clause 8.8 of the WASPA Code of Conduct and the complaint is upheld.
- 13.6 It is clear from a simple review of the "Fit Me" landing page that there is pricing information displayed in the prescribed format, including a link to the full terms and conditions of the service adjacent to the call-to-action, therefore the Member is not in breach of clause 12.1 of the WASPA Code of Conduct and the complaint therefore dismissed.
- 13.7 The advertising and subscription acquisition flow 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.
- 13.8 The advertising and subscription acquisition flow would be contrary to the reasonable expectation of those responding to the advertising and subscription acquisition. Read together with Clause 8.8 the Member has breached clause 21.4 of the WASPA Code of Conduct and the complaint is upheld.
- 13.9 The requirements of clauses 21.5 and 21.11 of The WASPA Code of Conduct requires respectively:
 - In terms of clause 21.5 requiring reasonable steps to be taken to ensure that only persons of 18 years of age or older have access to the adult content and

- In terms of clause 21.11 whereby marketing material for adult services may not make use of material classified as XX or X18,

I am not satisfied that breach of these clauses has been substantiated and therefore find that the Member is not in breach of clauses 21.5 nor 21.11 of the WASPA Code of Conduct and the complaint therefore dismissed.

14. Therefore, the alleged breach of Clauses 5.1; 12.1, 21.5 and 21.11 of the WASPA Code of Conduct in this instance is dismissed, however, the Member is found to be in breach of clauses 5.4, 8.8, 21.3 and 21.4 of the WASPA Code of Conduct.
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Sanctions

15. In determining appropriate sanctions against the Member, the following factors have been taken into consideration:
 - (a) any previous successful complaints made against the Member in the past three years;
 - (b) any previous successful complaints of a similar nature;
 - (c) the nature and severity of the breach; and
 - (d) 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. No previous complaints of this nature have been made against the Member.
 18. Minimal substantiated effort has been presented and or made by the Member to resolve or rectify this matter.
 19. Based on the aforementioned, the following sanctions are imposed:
 - 19.1 For Breach of Clause 5.4 a fine imposed of R 5 000.00
 - 19.2 For Breach of Clause 5.5 a fine imposed of R 5 000.00
 - 19.2 For Breach of Clause 8.8 read together with Clause 21.4 a fine imposed of R20 000.00
 - 19.3 For Breach of Clause 21.3 a fine imposed of R10 000.00
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Matters referred back to WASPA

20. None noted.
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