



## Report of the Appeals Panel

Complaint number	<b>#60206</b>
Cited WASPA members	<b>JOKER MOBILE (1836)</b>
Notifiable WASPA members	<b>Not applicable.</b>
Appeal lodged by	<b>WASPA and JOKER MOBILE (1836)</b>
Type of appeal	<b>Written appeal</b>
Scope of appeal	<b>[X] Review of the adjudicator's decision [X] Review of the sanctions imposed by the adjudicator</b>
Applicable version of the Code	<b>17.9</b>
Clauses considered by the panel	<b>5.1; 5.4; 5.5; 8.8; 12.1; 21.3; 21.4; 21.5; 21.11</b>
Related complaints considered	<b>60453 and 60813</b>
Amended sanctions	<p><b>The following sanctions are not amended:</b></p> <p><b>A confirmed fine of R5 000 for clause 5.4, a confirmed fine of R5 000.00 for clause 5.5, a confirmed fine of R20 000.00 for clause 8.8, in conjunction with clause 21.4; and a confirmed fine of R10 000 for clause 21.3 of the WASPA Code of Conduct.</b></p> <p><b>The following sanctions are amended:</b></p>

	<b>An amended fine of R10 000.00 for clause 12.1; and an amended fine of R15 000.00 for clause 21.11 of the WASPA Code of Conduct.</b>
Appeal fee	<b>The appeal fee is to be forfeited by the Member.</b>
Is this report notable?	<b>Not notable.</b>
Summary of notability	<b>Not applicable.</b>

---

## **Initial complaint**

1. Whilst monitoring, testing and conducting compliance checks on wireless application services, the WASPA Compliance Department (“the Complainant”) identified a service which they believed did not comply with the requirements of the WASPA Code of Conduct (“The Code”).
  2. On 2024-05-17, the tester conducted two separate tests:
    - 2.1 While browsing an adult content website (URL: <https://afilmywap-new-hd.jimdosite.com/>), the tester clicked on an explicit (X18) advertisement for an adult video intending to view the content.
    - 2.2 While browsing a non-adult website (Facebook), the tester encountered an advertisement for an adult video and attempted to access it.
  3. In both instances, the tester was redirected to a confirmation page for a non-adult subscription service, with no adult content available.
  4. The advertisements were adult in nature yet failed to include the required "18+" disclaimer.
  5. Additionally, the marketing material used in the subscription acquisition process was explicit and likely to be classified as X18 by the Film and Publication Board.
  6. The Complainant submitted screenshots as evidence of the test results.
  7. Based on these findings, the Member was alleged to be in breach of the following clauses of the Code: 5.1, 5.4, 5.5, 8.8, 12.1, 21.3, 21.4, 21.5, and 21.11.
-

## Adjudicator's findings

8. The Adjudicator reviewed the complaint, the Member's response, and the evidence provided by the Complainant. The following findings were made:
  - 8.1. The Member did not dispute the Complainant's submissions or evidence.
  - 8.2. There was no evidence proving that the Member was unable to provide the advertised services, as the tester did not complete the subscription, therefore clause 5.1 of the Code was dismissed.
  - 8.3. The advertising and subscription flow misled prospective customers by redirecting them from an adult content advertisement to a non-adult subscription service. The Adjudicator stated that the evidence suggested a pattern of misleading conduct, leading to a finding that the Member breached clause 5.4 of the Code and that the Member had not been honest and fair in its dealings.
  - 8.4. The Member knowingly disseminated ambiguous and incomplete information by failing to clearly disclose the subscription nature of the service by not providing clear and prominent information relating thereto. This was found to be misleading, resulting in a breach of clause 5.5 of the Code.
  - 8.5. The advertising and subscription flow led consumers to believe they were signing up for an entirely different service or content to the customers intent or to what was actually provided to the customer. This was deemed misleading, resulting in a breach of clause 8.8 of the Code.
  - 8.6. The "Fit Me" landing page displayed pricing information in the correct format, with a link to full terms and conditions adjacent to the "call-to-action". Therefore, the complaint under clause 12.1 of the Code was dismissed.
  - 8.7. The advertisement and subscription flow failed to clearly indicate that an adult service was being promoted and did not include the required "18+" or "X18" markings. This resulted in a breach of clause 21.3 of the Code.
  - 8.8. The advertising and subscription acquisition flow would be contrary to the reasonable expectation of those responding to the advertising and subscription acquisition. Therefore, the Adjudicator found a breach of clause 21.4 of the Code, read together with clause 8.8 of the Code.
  - 8.9. There was insufficient evidence to establish breaches of clause 21.5 (ensuring access only for adults) and clause 21.11 of the Code (restrictions on marketing adult services with X18 material). These complaints were dismissed.

9. In conclusion, the adjudicator dismissed complaints under clauses 5.1, 12.1, 21.5, and 21.11 but found the Member in breach of clauses 5.4, 8.8, 21.3, and 21.4 of the Code. Therefore, the complainant was partially upheld.
  10. The Adjudicator imposed the following sanctions:
    - 10.1. Clause 5.4 a fine imposed of R 5 000.00;
    - 10.2. Clause 5.5 a fine imposed of R 5 000.00;
    - 10.3. Clause 8.8 with clause 21.4, a fine imposed of R20 000.00; and
    - 10.4. Clause 21.3 a fine imposed of R10 000.00.
- 

### **Member Appeal submissions**

11. The Member acknowledged the breaches of clauses 5.4, 5.5, 8.8, 21.3, and 21.4 of the Code and affirmed its commitment to ethical business practices and consumer protection. The Member accepted responsibility for the violations and implemented corrective measures to prevent recurrence. However, the Member requested a reconsideration of the imposed fines, arguing that a more lenient approach would better reflect both the nature of the infractions and their commitment to compliance.
12. To strengthen its compliance, the Member confirmed it took the following steps:
  - 12.1. Suspended problematic traffic sources and shared details with partners to prevent future violations.
  - 12.2. Terminated relationships with non-compliant Digital Service Providers and provided documented evidence of these actions.
  - 12.3. Prioritised reputable advertising sources like Google to ensure transparency and compliance.
  - 12.4. Invested in internal training to educate teams on WASPA's standards and industry best practices.
13. The Member emphasised its commitment to restoring WASPA's trust through measurable actions and accountability. They sought an opportunity to further discuss the matter and reach a resolution that aligned with transparent, consumer-focused digital services.

---

## **WASPA Appeal submissions**

14. WASPA challenged the dismissal of breaches under clauses 5.1, 12.1, and 21.11 of the Code.

### Clause 12.1 – Pricing Information:

15. WASPA argued that pricing was not displayed adjacent to the call-to-action in the subscription flow, and that the Adjudicator mistakenly referred to the Vodacom confirmation page as a "landing page."

### Clause 21.11 – Use of X18 Content for Marketing:

16. WASPA argued that the marketing material used in the subscription process contained explicit adult content (X18), and the Adjudicator failed to recognise this as a breach, even though the content would likely be classified as X18 under the Film and Publication Board's guidelines.

### Clause 5.1 – Offering a Service That Cannot Be Provided:

17. WASPA submitted that the Adjudicator erred in dismissing the breach of clause 5.1 of the Code, which prohibited offering or advertising services that could not be provided. The Fit Me App was promoted using explicit X18-rated content, creating the expectation that such material would be available, yet the actual service was a non-adult fitness subscription. Under Clause 22.10 of the Code, members are prohibited from supplying or promoting X18 content unless legally permitted and appropriately licensed, as required by South African law and regulated by the Film and Publication Board. Since the Member lacked the necessary license, it could not have lawfully provided the advertised content. The Adjudicator dismissed the breach on the basis that the tester did not complete the subscription, but the violation lay in the misleading nature of the marketing itself, regardless of whether a user subscribed.

### Sanctions

18. WASPA agreed with the Adjudicator's findings on the upheld breaches and sanctions but insisted that the dismissed breaches should be reconsidered.

---

## **Sections of the Code considered**

19. The following clauses of the Code are considered herein:

### 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.

---

## **Deliberations and findings**

20. The Appeal Panel will consider only the merits of clauses of the Code that have been appealed by WASPA, being clauses 5.1, 12.1, and 21.11.
21. In addition, the Appeal Panel will consider clauses 5.4, 5.5, 8.8, 21.3, and 21.4 of the Code, only regarding the sanctions imposed.
22. While browsing an adult content website (URL: <https://afilmywap-new-hd.jimdosite.com/>), the tester clicked on an explicit (X18) advertisement for an adult video intending to view the content.
23. While browsing a non-adult website (Facebook), the tester encountered an advertisement for an adult video and attempted to access it.
24. In both instances, the tester was redirected to a confirmation page for a non-adult subscription service by the Member, with no adult content available. The tester elected to stop the test at this point, and never subscribed to the Member's service.
25. The X18 marketing material image used by the Member was an image of the graphic act of double sexual penetration, involving two men and one woman. There was no text on the marketing material image, besides "Built with JIMDO". Specifically, there was no pricing information. The marketing material image merely had a play button which the tester proceeded to click on. A call-to-action is an interactive element, such as a clickable image or link, that prompts users to take a specific action, such as subscribing to a service or making a purchase. In this instance, the play button on the marketing material image functioned as a call-to-action by directly triggering the Vodacom confirmation page when clicked, thereby initiating the subscription process. The Vodacom confirmation page was displayed after a user clicked on the marketing material image, verifying their intent to subscribe to a service. This page served as the final step before completing the subscription process, ensuring that the tester acknowledged and consented to the transaction. When the tester clicked on the play button, it directly triggered the Vodacom confirmation page, and therefore qualified as the call-to-action.
26. As per clause 12.1 of the Code, where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action.
27. The Adjudicator mistakenly referred to the Vodacom confirmation page as a "landing page". The Adjudicator overlooked the requirement that pricing information must be clearly visible before a consumer even reaches the confirmation step, specifically, at the point where they first interact with the marketing material leading to the subscription. There was no pricing information adjacent to the call-to-action play button on the Member's marketing material. Therefore, the Member breached clause 12.1 of the Code, and the Adjudicator's dismissal of this breach was incorrect.

28. Clause 21.11 of the Code prohibits the use of marketing material classified as XX or X18 , or likely to be classified as XX or X18 by the Film and Publication Board.

29. Below are excerpts from *The Film and Publication Board Classification Guidelines for the Classification of Films, Games, and Certain Publications*:

**“Definitions from the Classification Guidelines**

a. **Explicit sexual conduct** refers to graphic and detailed visual presentations or descriptions of any conduct contemplated in the definition of "sexual conduct" in the Act.

b. **Sexual conduct** includes:

- Genitals in a state of arousal or stimulation, real or simulated;
- Undue display of genitals or the anal region;
- Masturbation;
- Bestiality;
- Sexual intercourse with a person or a human corpse, including anal or oral intercourse;
- Sexual contact involving the direct or indirect fondling or touching of intimate body parts (breasts, anus, vagina, testicles, or penis), with or without an object;
- Penetration of the vagina or anus with any object;
- Oral-genital contact; or
- Oral-anal contact.

c. **Simulated sexual intercourse** refers to the explicit depiction of sexual conduct that creates the appearance of actual sexual activity, where any uncovered portion of the breasts, genitals, or buttocks is exhibited.

d. **Restricted Distribution Content** – XX includes content as per section 4.2(11) that contains:

- Explicit sexual conduct violating or showing disrespect for human dignity;
- Bestiality, incest, rape, or degrading acts towards human beings;
- Explicit infliction of domestic violence; or
- Explicit visual presentations of extreme violence.

e. **Restricted Distribution Content** – X18 includes content as per section 4.2(12) that contains:

- Explicit sexual conduct, unless, within context, the material is a bona fide documentary or has scientific, dramatic, or artistic merit, in which case classification is determined by child protection guidelines”.



30. The marketing material image used by the Member contained a graphic depiction of double sexual penetration, involving two men and one woman. This act, by its very nature, constitutes explicit sexual conduct as defined in the *Film and Publication Board Classification Guidelines*.
31. In both test instances, the material displayed graphic and detailed visual presentations of sexual conduct, meeting multiple elements of the definitions outlined in the Classification Guidelines:
  - 31.1. Genitals in a state of arousal or stimulation;
  - 31.2. Penetration of a vagina or anus with an object or body part;
  - 31.3. Undue display of genitals or the anal region; and
  - 31.4. Sexual intercourse involving multiple participants.
32. This level of explicitness exceeds what is permissible for marketing purposes and aligns with X18 Restricted Distribution Content, which is subject to stringent age-restriction and access control measures. The Code prohibits Members from using marketing material classified as X18 or likely to be classified as such.
33. Furthermore, a distinction must be made between the marketing of an adult service (or in this case, what was purported to be an adult service but was actually a non-adult fitness service) and the actual content that can be provided to a subscriber once they have subscribed. Marketing material for adult services must be less explicit than the content available to verified subscribers, as it is public-facing. This restriction serves an important protective function, ensuring that highly explicit content is not inadvertently exposed to children or individuals who have not consented to view it. Once a consumer subscribes, it is presumed that age-verification measures are in place, ensuring controlled access to adult material.
34. The Adjudicator's dismissal of the breach of clause 21.11 of the Code suggests a failure to correctly assess whether the nature of the Member's marketing material complained of met the X18 classification threshold set by the Film and Publication Board, despite the visual evidence provided by the Complainant.
35. Therefore, the Member is found in breach of clause 21.11 of the Code for using marketing material classified as XX or X18, or likely to be classified as XX or X18 by the Film and Publication Board.
36. The Member used prohibited and unlicensed X18 marketing material to advertise their non-adult fitness service. Clause 5.1 of the Code prohibits offering or advertising services that cannot be provided. The X18 marketing material image used by the Member had no pricing information, and merely had a play button which was a call-to-action, therefore it did not constitute an offer the tester could accept. The tester did

not complete the subscription flow nor successfully subscribe to the Member's non-adult service. Consequently, the Appeal Panel has insufficient evidence to determine whether the Member's service could be provided by the Member or not. Therefore, the Appeal Panel is in agreement with the Adjudicator, and the complaint of a breach of clause 5.1 of the Code is dismissed.

37. Therefore, the member is found in breach of clauses 12.1 and 21.11 of the Code, and the complaint of a breach of clause 5.1 of the Code is dismissed.

38. In conclusion, the appeal by the Member is dismissed and the appeal by WASPA is partially upheld.

---

### **Amendment of sanctions**

39. The Appeal Panel takes note that the Member has provided a list of corrective and remedial actions taken to prevent or mitigate the reoccurrence of the breaches. This is not seen as a mitigating factor, as no tangible evidence has been provided to the Appeal Panel to verify these allegations.

40. However, the Member has shown a repeated pattern of non-compliance with key consumer protection and advertising regulations, particularly in relation to misleading marketing (clause 5.5), improper pricing disclosure (clause 8.8), and the use of prohibited adult content (clause 21.11). The recurrence of these breaches across 3 formal complaints in the past 3 years indicates a failure to implement adequate corrective measures, suggesting the need for stricter sanctions to ensure future compliance.

41. Additionally, clause 22.10 of the Code expressly prohibits the supply or promotion of XX or X18 content unless legally permitted and appropriately licensed by the Film and Publication Board. As the Member did not hold the required license, it could not have lawfully provided the adult content implied in its marketing.

42. It is important to emphasise that no member shall use unlawful marketing material to promote their services. The use of such material constitutes a serious regulatory violation and reflects a reprehensible and unacceptable business practice by the Member that will not be tolerated.

43. Subsequently, the following sanctions are applicable, and have been amended as below:

43.1. A confirmed fine of R5 000.00 for clause 5.4;

43.2. A confirmed fine of R5 000.00 for clause 5.5;

43.3. A confirmed fine of R20 000.00 for clause 8.8, in conjunction with clause 21.4;

43.4. A confirmed fine of R10 000.00 for clause 21.3;

43.5. An additional fine of R10 000.00 for clause 12.1; and

43.6. An additional fine of R15 000.00 for clause 21.11.

---

### **Appeal fee**

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

---