



## Report of the Adjudicator

Complaint number	<b>#60414</b>	
Cited WASPA members	<b>NDOTO MEDIA (Membership no: 1948)</b>	
Notifiable WASPA members	<b>None</b>	
Source of the complaint	<b>WASPA Compliance Department</b>	
Complaint short description	<b>Non-Compliant Service and Related Promotional Material</b>	
Date complaint lodged	<b>2024-08-07</b>	
Date of alleged breach	<b>2024-07-24</b>	
Applicable version of the Code	<b>17.9</b>	
Clauses of the Code cited	<b>5.5; 8.8; 8.9; 12.1 and 21.11</b>	
Related complaints considered	<b>59864; 60143</b>	
Fines imposed	<b>For Breach of Clause 5.5</b> <b>For Breach of Clause 8.8</b> <b>For Breach of Clause 12.1 &amp; 8.9</b> <b>For Breach of Clause 21.11</b>	<b>a fine imposed of R15 000.00</b> <b>a fine imposed of R 5 000.00</b> <b>a fine imposed of R10 000.00</b> <b>a fine imposed of R15 000.00</b>
Other sanctions	<b>n/a</b>	
Is this report	<b>Not notable</b>	

notable?	
Summary of notability	n/a

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## 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 a test on 24 July 2024 on the Telkom network.
    - 2.1 The tester was browsing on an adult content website with on a link on an explicit (X18) adult content video with the expectation to watch same.
    - 2.2 Whereafter, the tester was directed to a page with a pop-up notification and when it was clicked continued to the explicit (X18) adult content video, however, was directed to a confirmation page for a non-adult subscription service called 'Woman of Honour' charged at R3.00 per day.
  3. The tester elected to stop the test at this point as there were multiple breaches of the Code during the subscription acquisition flow for the 'Cash Hub subscription service.
  4. In Summary:
    - a. The tester was engaging with an explicit (X18) adult content video and clicked on it with the expectation to watch the video but was directed to the Telkom Confirmation Page for a totally unrelated non-adult subscription service.
    - b. The pop-up notification, which when clicked on triggers the Telkom Confirmation Page, and therefore qualifies as the 'call-to-action', does not display any pricing information.
  5. The Complainant provided screenshots showing each landing page.
  6. As such, the Member is alleged to be in breach of clauses 5.5; 8.8; 8.9; 12.1 and 21.11 of the WASPA Code of Conduct.
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## Member's response

7. The Member reviewed and investigated the complaint upon receipt of complaint.
  8. The Member instructed the Publisher responsible for their marketing to cease all traffic indefinitely to ensure no future reoccurrence.
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### **Complainant's response**

9. The Complainant responded to the Member's response by reiterating the positive obligation on the Member to ensure any client, supplier, affiliate or sub-contractor – in this instance the third-party marketing supplier – promotes and market's the Member's services in accordance with the requirements of WASPA Code.
  10. The Complainant referred to the relevant clauses set out in the WASPA Code of Conduct and reiterated the Member does not deny noncompliance, and therefore the Member remains liable for breaches occasioned or facilitated by their third-party marketing suppliers.
  11. Furthermore, the Complainant was advised that the pricing information issue was not addressed which in practice resulted in a single opt-in flow, which is considered a serious breach of the Code.
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### **Member's further response**

12. The Member acknowledged the obligations as outlined in clauses 3.5 to 3.7 of the WASPA Code of Conduct and advised that they have made every effort to ensure all third-party suppliers, affiliates, and sub-contractors are aware of the Code's requirements, and therefore opted to cease using this marketer for their services to mitigate receiving further complaints.
  13. The Member promptly undertook corrective action by engaging with the third-party supplier to rectify the breaches.
  14. The member acknowledged their responsibilities and liability for Third-Party breaches.
  15. The Member addressed the Pricing Information issue and undertook to take immediate remedial action to ensure pricing information is clearly presented to clients in compliance with the Code.
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## Sections of the Code considered

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

### Service levels

- 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.

Read with Clause 8.9:

### Definition of call-to-action

- 8.9. A “call-to-action” is any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service. In the case where a mobile network operator provides a two-stage confirmation process for the service, the first page of this confirmation process may be considered to be the call-to-action.
- 8.9A. A call-to-action must require an explicit action by the consumer in order to trigger the confirmation step. The call-to-action may not be automatically triggered such that the consumer reaches the confirmation step without taking any action.

### Required practices

- 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

17. After review of the complaint and on the basis of the evidence presented by the Complainant and the submissions made by the Member I have made the following findings.
18. In review:
- 18.1 It is evident from the complaint and the Member's responses that the Member did not give consideration to the positive obligations stemming from the Code of Conduct as the remedial action flows from date of complaint.
- 18.2 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. The member lured consumers in with the promise of explicit adult videos when in fact the actual content was for a subscription service called 'Woman of Honour' which contained no explicit adult videos. Therefore, I am satisfied the complainant has provided sufficient information in proving the Member's 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.
- 18.3 The content promoted in advertising and subscription acquisition flow should not mislead consumers and should be aligned to the browser/customer's intent that is not the case 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.
- 18.4 No Display of pricing information was displayed nor any of the prescribed opt-in flow requirements was met as is evident from the submissions by the Complainant. Therefore, the Member is in breach of clause 12.1 read together with Clause 8.9 of the WASPA Code of Conduct and the complaint therefore upheld.
- 18.5 Breach of Clause 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. The service in question was an adult service but the marketing material used was an explicit adult video which is considered an X18 service. In addition, the landing page does not relate to adult content at all, but rather seems to promote non-adult subscription service.
19. The Member is found to be in breach of clauses 5.4; 5.5; 8.8 and 12.1 read together with Clause 8.9 and of Clause 21.11 of the WASPA Code of Conduct
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## Sanctions

20. 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.
21. 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.
22. To note aggravating circumstances taken into account based on the number of complaints lodged against the Member during three months preceding this complaint as well as no substantiation of remedial action taken by the Member in response to this complaint.
19. Based on the aforementioned, the following sanctions are imposed:
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|------|---------------------------------|------------------------------|
| 19.1 | For Breach of Clause 5.5        | a fine imposed of R15 000.00 |
| 19.2 | For Breach of Clause 8.8        | a fine imposed of R 5 000.00 |
| 19.3 | For Breach of Clause 12.1 & 8.9 | a fine imposed of R10 000.00 |
| 19.4 | For Breach of Clause 21.11      | a fine imposed of R15 000.00 |

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## Matters referred back to WASPA

20. None noted.
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