



## Report of the Adjudicator

Complaint number	<b>#60453</b>
Cited WASPA members	<b>Joker Mobile</b>
Notifiable WASPA members	<b>N/A</b>
Source of the complaint	<b>WASPA Compliance Department</b>
Complaint short description	<b>Various Irregularities</b>
Date complaint lodged	<b>2024-08-16</b>
Date of alleged breach	<b>On or about the 18th of July 2024</b>
Applicable version of the Code	<b>17.7</b>
Clauses of the Code cited	<b>5.5; 8.8; 12.1 read with 8.9; 21.11</b>
Related complaints considered	<b>57604, 53158, 58659, 60206</b>
Fines imposed	<b>R 5 000-00 - breach of section 5.5. R 10 000-00 - breach of sections 8.8 R 5 000-00 - breach of section 12.1 read with section 8.9. R 20 000-00 - breach of section 21.11.</b>
Other sanctions	<b>N/A</b>
Is this report	<b>Not notable</b>

notable?	
Summary of notability	<b>N/A</b>

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## Initial complaint

The Complainant in this matter is of the opinion that a particular service of the Member breached various clauses of the WASPA Code of Conduct.

In the formal complaint the Complainant provided detailed tests (Test 1, 2 & 3) of the Member's service in dispute with an in-depth analysis of what it thought to be breaches of the Code. For the sake of brevity, the whole complaint will not be replicated here, as both parties are in possession of the same.

**The following abstract however, which was provided as a summary by the Complainant of its Test 1, is provided in full below, which is in substance the same as Tests 2 & 3, although referencing different links:**

- The tester was browsing on an adult content website and clicked on an adult content video with the intention to view said video. This action however triggered the confirmation page for a non-adult subscription service.
- The tester was misled to believe that he/she will be watching an adult video as advertised, however was directed to a subscription service for a non-adult subscription service that does not have anything to do with the advertised adult video.
- The video that was clicked on triggered the confirmation step, and therefore qualifies as the 'Call-to-Action'. There was no pricing information displayed as required. This resulted in a single opt-in flow.

In its conclusion the Complainant also stated the following, **copied here verbatim:**

- A complaint was lodged against the member for similar breaches of the Code during May 2024 (refer to Formal Complaint #60206). The member had advised that a third-party marketing supplier was responsible, and that corrective action had been taken.
- Unfortunately, the non-compliant marketing behaviour is still present as can be seen from this test conducted during July 2024.
- We would like to reiterate that the member remains responsible and liable for any breaches of the Code facilitated by their supplier (refer to clauses 3.5 – 3.7 of the Code).
- Furthermore, the omission of pricing information which in practice creates a single opt-in flow is a serious breach of the Code.

- The member has breached several clauses of the Code of Conduct and is required to take immediate remedial action to ensure that the Fit Me App subscription service complies with the requirements as set out in the WASPA Code of Conduct.
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## Member's response

The Member acknowledged the seriousness of the offence and provided the following response, **copied here verbatim**:

- We have paused traffic coming from all active traffic sources on the ZA Vodacom Woman fitness service (screenshot attached).
  - We have mentioned the seriousness of the infraction via Skype to each of the managers of the agencies involved. This same warning has been sent by email.
  - When we are able to detect the source that has sent this type of malicious traffic we will proceed to reactivate the campaign only with reliable sources that have not been involved in these events and we will be forceful in remembering that this type of cases cannot be repeated.
  - As you can see in the screenshots we have paused all active sources and we can assure you that we will not reuse the traffic from the source that comes from outside the terms.
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## Complainant's response

In its detailed response, the Complainant stated the following, **copied here verbatim**:

We have reviewed the original complaint as well as the Respondent's submissions in respect thereof.

We will endeavour to address the points raised by the Respondent that are relevant to the non-compliant service complained of and the correlating breaches, however, any failure to address a specific point should not be construed as an admission of any sorts.

1. There is a positive obligation on the Respondent to ensure that any client, supplier, affiliate or sub-contractor – in this case the third-party marketing supplier – promotes and markets the Respondent's services in accordance with the requirements of the Code.

2. Please refer to the following clauses as set out in the WASPA Code of Conduct (Code):

*3.5. Members must ensure that any client, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, is aware of the requirements of this Code of Conduct.*

*3.6. Members must ensure that any client, supplier, affiliate or sub-contractor who is not a member of WASPA, but is providing or marketing services covered by this Code of Conduct, provides and markets those services in a manner consistent with the requirements of this Code of Conduct.*

*3.7. A member is liable for any breaches of this Code of Conduct resulting from services offered or marketed by a client, supplier, affiliate or sub-contractor if that party is not also a member of WASPA. If the member can demonstrate that they have taken reasonable steps to ensure that that party provides and markets services in a manner consistent with the requirements of this Code of Conduct, this must be considered as a mitigating factor when determining the extent of the member's liability for any breaches.*

3. The Respondent needs to ensure that their marketing material used to promote their service, aligns with the content that is actually provided as part of the subscription service.

4. Furthermore, the use of explicit (X18) material is not only prohibited by the Code but is also prohibited by the Films and Publications Board and this type of practice must be ceased immediately.

5. The Respondent does not deny the non-compliant promotion and marketing of their service. The Respondent only refers to remedial and corrective steps taken to address the continued breaches emanating from their marketing partners. The Respondent remains liable for the breaches occasioned or facilitated by their third-party marketing suppliers.

6. The Respondent does not address the concerns raised about the omission of the pricing information which must be clearly and prominent displayed immediately adjacent to the call to action, which in practice results in a single opt-in flow, which is a serious breach of the Code.

7. We respectfully submit that the Respondent's service was in breach of several clauses of the Code on the dates of testing the service, and that our original complaint sufficiently sets this out. The Respondent should be held liable for their non-compliant service.

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## **Member's further response**

The Member was given an opportunity to respond to the Complainant's submission, however failed to do so in the time frame provided.

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## **Sections of the Code considered**

### **Provision of information to 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.

## **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

## **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.

## **Prohibited 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.

## **Decision**

In reaching a decision the Adjudicator relies on all the information provided by both the Complainant and Member in this matter.

The Member by its own submission acknowledged the seriousness of the offence and does not deny any of the Complainant’s allegations put forth.

It is however regrettable that the Member in its response failed to directly address a majority of the concerns raised by the Complainant in this matter. It is also apparent to the Adjudicator in this matter that the Member failed to study the Complaint in detail as its responses failed to take the Complainant’s detailed account of events into account.

The Member’s actions insofar it relates to the alleged breaches also seem to follow a pattern of similar behaviour whereby the Member, or its client, supplier, affiliate or sub-contractor continuously breach the Code.

Without having recourse to a proper response by the Member rebutting allegations raised by the Complainant in its Complaint, the Adjudicator, after having reviewed the allegations, has no hesitation in finding the Member in breach of all sections of the WASPA Code raised by the Complainant.

The Complaint is upheld in full.

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## **Sanctions**

In determining appropriate sanctions against the Member, the following factors have been taken into consideration:

- any previous successful complaints made against the Member in the past three years;
- any previous successful complaints of a similar nature;
- the nature and severity of the breach; and
- any efforts made by the Member to resolve the matter.

A fine of R 5 000-00 is given for breach of section 5.5.

A fine of R10 000-00 is given for breach of sections 8.8.

A fine of R 5 000-00 is given for breach of section 12.1 read with section 8.9.

A fine of R 20 000-00 is given for breach of section 21.11.

Fines are to be paid to the WASPA Secretariat within 7 (seven) days after having received notice hereof.

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## **Matters referred back to WASPA**

None

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