



Report of the Appeals Panel

Complaint number	#60453
Cited WASPA members	Avatar World Group 2024 T/A Joker Mobile South Africa BH (Pty) Ltd Membership no: 1836
Appeal lodged by	Avatar World Group 2024 T/A Joker Mobile South Africa BH (Pty) Ltd Membership no: 1836
<i>Type of appeal</i>	Written appeal
Scope of appeal	<input type="checkbox"/> Review of the adjudicator's decision <input checked="" type="checkbox"/> Review of the sanctions imposed by the adjudicator
Applicable version of the Code	17.7
Clauses considered by the panel	5.5; 8.8; 12.1 read with 8.9; 21.11
Related complaints	57604, 53158, 58659, 60206

considered	
Amended sanctions	N/A
Appeal fee	Appeal fee of R10 000 forfeited to WASPA
Is this report notable?	Not notable
Summary of notability	N/A

1. Initial complaint

The initial complaint was lodged by the WASPA compliance department and involved three separate causes of action (tests).

The first test involved the browsing of an adult website, clicking on a link which resulted in the tester being immediately directed to the Vodacom Network Hosted Confirmation Page (NHCP) for a “Fit Me App” at R3.00 per day.

The second test was another link which appeared to refer the tester to a Tibetan music site and in turn resolved to a X18 adult content site. When a content video was selected, the tester was again directed to a Vodacom Network Hosted Confirmation Page (NHCP) for a “Fit Me App” at R3.00 per day.

The third and final test involved another link on an adult content website and again the tester was immediately directed to the Vodacom Network Hosted Confirmation Page (NHCP) for a “Fit Me App” at R3.00 per day.

The WASPA Compliance department then alleged that sections 5.5, 8.8, 12.1 read with 8.9 had been contravened in the first test and that, additionally, section 21.11 had been contravened in the second and third test.

2. Sections of the Code of Conduct considered

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.*

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.*

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.*

• *Read with clause 12.1*

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.*

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.*

3. Adjudicator's findings

The adjudicator in the matter found that all the clauses had been breached as alleged by the WASPA Compliance department and issued the following 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."

It is worth noting that:

- 1) The Member acknowledged the seriousness of the offences,
- 2) The Member failed to address the substantive portion of the allegations, but only provided evidence in mitigation,
- 3) The Adjudicator noted that the actions by the Member, "seem to follow a pattern of similar behaviour whereby the Member, or its client, supplier, affiliate or sub-contractor continuously breach the Code."

4. Appeal submissions

The Member then elected to appeal this adjudication on the basis that the "fine" (sic) imposed by the Adjudicator were too harsh and provided various factors that the Member alleged should be considered in mitigation of the sanctions. Notably the Member did not attempt to appeal the contravention of any section that was found to be breached by the Member, only the size of the sanction imposed by the Adjudicator for each of the breaches.

In short, the Member provided the following points which the Member wished for this Appeal Panel to consider in mitigation of the fines imposed:

- The Member promptly suspended traffic from the responsible Data Service Provider (DSP),
- Revised Partner Onboarding Requirements to include stricter compliance reviews and enforcing adherence to WASPA Guidelines,
- Enhanced Monitoring Systems to implement and detect similar breaches at an early stage,
- Engaged in training and awareness to comply with the WASPA Code of Conduct.

The Member also listed the following as a mitigating factor:

- Complaints #60206 and #60452 (the present appeal) involved “overlapping themes” and so the fines imposed for breaches of a similar nature “may not adequately reflect the corrective actions already undertaken to address the issues”.

Further points made by the Member were either a repeat of earlier submissions or a commitment to ensuring compliance with the WASPA Code of Conduct and so are not reproduced here.

5. Complainant response

In reply to the Member’s appeal, the WASPA Compliance Department noted that the Member had not appealed the breach of the various clauses cited, but only the size/value of the sanction imposed by the Adjudicator.

The Complainant noted that complaint #60206 was lodged against the Member in May 2024 and the present complaint was lodged in July 2024. The Complainant then submitted that – despite the Member’s allegations that it had taken swift action for similar breaches of the code in as a result of complaint #60206 - these actions had not resulted in a change of behaviour by the Member or preventing the same contraventions two months later.

The Complainant then considered the size of the sanctions imposed by the Adjudicator and provided various fines that were imposed for breaches of the various sections as set out below:

FORMAL COMPLAINT	BREACHES UPHELD	SANCTION IMPOSED
#59781	5.1, 5.4, 5.5	R10000.00
	8.8, 21.3	R10000.00
	21.4, 21.11	R10000.00
#59864	5.1	R5000.00
	5.4	R5000.00
	5.5	R5000.00
	8.8	R10000.00
	21.4	R10000.00
	21.11	R15000.00
#60143	8.8	R5000.00
	21.3	R5000.00
	21.4	R5000.00
	21.11	R5000.00
#60328	5.5	R20000.00
	8.8	R10000.00
	21.11	R20000.00
#60462	5.5	R5000.00
	8.8	R5000.00
	12.1	R10000.00
	21.11	R15000.00

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.”

The Complainant concluded by requesting that the appeal panel uphold the sanctions imposed by the Adjudicator.

6. Member response

The Member then provided its final response. Before considering this response, it is worthwhile to note that the emails and formal (PDF) submissions were either addressed to “WASPA” or the “Compliance Department”. While nothing turns on this point, it does suggest that the Member is unaware that neither WASPA nor the WASPA Compliance Department is entitled in terms of the WASPA Code of Conduct to vary the sanctions imposed by the Adjudicator. Indeed, both the Adjudicators and this Appeal Panel have been specifically appointed as independent contractors who are not employed by WASPA in order to preserve the independence of the Adjudicators and Appeal Panellists. As a party to the proceedings (in this case the complainant) it would be clearly inappropriate if WASPA or its Compliance Department were to be able to vary the sanctions imposed by the Adjudicator and as a result any attempt by the Member to “reach out directly (to WASPA) to request your reconsideration of the sanctions imposed” as set out in the email sent on the 17th December 2024 is misconstrued. It is this Appeal Panel, and only this Appeal Panel, that has the power to vary the sanctions imposed by the Adjudicator.

Turning to the final submission by the Member, the Member repeated the actions it noted in its original appeal submission. It is worth noting further that these remedial steps were couched in general terms and no proof nor substantiation of these steps having been taken was provided to the Appeal Panel.

7. Deliberations and findings

As the Member has elected not to contest the substantive findings that sections 5.5, 8.8, 12.1 read with 8.9 and section 21.11 had been breached, the breach of these clauses is hereby confirmed.

Turning to the sanctions imposed by the Adjudicator for the breach of each of the sections, the sanctions list provided by the Complainant has been augmented in the table below to include the sanctions by the Adjudicator in this matter in order to enable this Appeal Panel to compare the sanctions imposed in this case with the sanctions imposed in other matters and each section has been colour coded to further assist in the evaluating of the size of the sanction:

FORMAL COMPLAINT	BREACHES UPHELD	SANCTION IMPOSED
#59781	5.1, 5.4, 5.5	R10000.00
	8.8, 21.3	R10000.00
	21.4, 21.11	R10000.00
#59864	5.1	R5000.00
	5.4	R5000.00
	5.5	R5000.00
	8.8	R10000.00
	21.4	R10000.00
	21.11	R15000.00
#60143	8.8	R5000.00
	21.3	R5000.00
	21.4	R5000.00
	21.11	R5000.00
#60328	5.5	R20000.00
	8.8	R10000.00
	21.11	R20000.00
#60462	5.5	R5000.00
	8.8	R5000.00
	12.1	R10000.00
	21.11	R15000.00
#60453	5.5	R5000
	8.8	R10000
	12.1	R5000
	21.11	R20000

It is clear from the table above that the fines imposed by the Adjudicator are consistent with prior decisions for the breach of similar sections.

However, this does not end the matter. While this Appeal Panel has the discretion to reduce the fines imposed by the Adjudicator, it also retains a discretion to increase the fines imposed

by the Adjudicator and any Appellant runs the risk of the Appeal Panel increasing the size of the sanction or imposing additional sanctions on the Member during this appeal process.

Of particular concern in this matter is that the Member merely makes bald allegations of changes it has made to its process without providing any proof of what precisely these changes were and, consequently, how effective these changes in systems were in order to prevent a reoccurrence of a breach of the WASPA Code of Conduct. Certainly, the fact that the same Member has been found to have breached the same sections of the WASPA Code of Conduct first in May 2024 and then again two months later in July 2024 – far from being a mitigating factor - suggests that the changes the Member has made have either not been implemented or are ineffective. It further suggests a pattern of behaviour on the part of the Member which should be deprecated.

In its final submission, the Member alleges that, “The total fines imposed across both complaints represent a significant financial burden that could impact our ability to further invest in compliance measures.” This submission is misconstrued for two reasons:

- It is standard practice for Members to contractually bind all third parties engaging with its services to indemnify it from any fines imposed by WASPA for a breach of the WASPA Code of Conduct due to the conduct of the third party. The Member has not indicated whether it has or has not inserted this provision in its contract, but the fines imposed by the Appeal Panel ought to be fully recoverable from the third party. In the event that the Member has failed to obtain an indemnity of this nature from all third parties then it is the author of its own misfortune.
- No information has been provided to the Appeal Panel as to why any fines imposed by the Appeal Panel would have the effect of reducing the Member’s compliance functions. On the contrary this submission suggests that the Member is attempting to transfer the culpability for future breaches of the WASPA Code of Conduct on to WASPA or this Appeal Panel which should also be deprecated.

8. Appeal results

While this Appeal Panel gave serious consideration to increasing the fines imposed upon the Member, it ultimately elected not to do so, but rather to direct that the Member forfeit its

Appeal Fee of R10 000 to WASPA, thus effectively increasing the fine imposed on the Member from R40 000 to R50 000.

In the event the final result of this appeal is:

The Appeal is dismissed and the Member's Appeal fee is forfeited to WASPA.

9. Appeal fee

The Appeal Panel hereby directs that the appeal fee by the Member should be forfeited to WASPA.