



## Report of the Adjudicator

Complaint number	# 60812
Cited WASPA members	U2OPIA MOBILE / Collective Networks (1962)
Notifiable WASPA members	Akinga (1944)
Source of the complaint	WASPA Compliance Department
Complaint short description	Misleading advertising Pricing information Adult services
Date complaint lodged	2024-10-01
Date of alleged breach	2024-09-09
Applicable version of the Code	17.9
Clauses of the Code cited	5.5; 8.8; 12.1 read with 8.9; 21.3; 21.4; 21.11
Related complaints considered	60461, 60462, and 60463
Fines imposed	R5 000 for breach of clause 5.5 of the Code; R5 000 for breach of clause 8.8 of the Code; R10 000 for breach of clause 12.1 of the Code read with 8.9. R10 000 for breach of clauses 21.3 and 21.4 of the Code; and R10 000 for breach of clause 21.11 of the Code.

Other sanctions	Not applicable.
Is this report notable?	Not notable.
Summary of notability	Not notable.

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## Initial complaint

### Annexure A

1. On or about 2024-09-09, the WASPA tester ("the tester") conducted compliance checks on the Vodacom network, and while browsing a Facebook page, the tester clicked on a link for an advertisement for an adult content movie.
2. Subsequently, the tester was redirected to an adult content website and selected an explicit "X18" adult content video, with the expectation of watching same.
3. The tester confirmed that they were an adult on the age verification page. This action, however, triggered the confirmation page as a "call-to-action", for an unrelated non-adult subscription service, instead of the advertised adult content.
4. The complainant alleged that the marketing material used by the member was explicit but led to unrelated non-adult service, misleading customers.
5. It was further complained that there was no pricing information displayed, and this resulted in a single opt-in flow.

### Annexure B

6. On or about 2024-09-09, the WASPA tester ("the tester") conducted compliance checks on the Vodacom network, and while browsing an adult content website and clicked on an explicit "X18" adult content video with the intention to watch the selected video.
  7. The tester confirmed that they were an adult on the age verification page. This action, however, triggered the confirmation page as a "call-to-action", for an unrelated non-adult subscription service, instead of the advertised adult content.
  8. The complainant alleged that the marketing material used by the member was explicit but led to unrelated non-adult service, misleading customers.
  9. It was further complained that there was no pricing information displayed, and this resulted in a single opt-in flow.
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## Member's response

10. The member acknowledged the issue, identified the source, and took proactive measures to address the compliance breaches.
  11. The member also confirmed that they terminated the partner responsible for promoting the services and implemented strict guidelines prohibiting promotions on adult traffic and ensuring appropriate creatives are used.
  12. Furthermore, the member stated that all promotions were paused until a reliable source could be identified to proceed.
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## Complainant's response

13. The complainant acknowledged the member's submission and emphasised the member's positive obligation to ensure compliance by any third-party marketers, citing clauses 3.5, 3.6, and 3.7 of the WASPA Code of Conduct ("the Code"), which hold members liable for breaches by affiliates unless reasonable steps are demonstrated as mitigation.
  14. The complainant highlighted that marketing materials must align with the actual service provided and noted the prohibition of explicit "X18" content by both the Code and the Films and Publications Board.
  15. The complainant stated that the member admitted to the non-compliant promotion but only addressed corrective actions, without mitigating liability for breaches, facilitated by third-party marketers. It was also pointed out that the omission of pricing information, leading to a single opt-in flow, was a serious breach that remained unaddressed.
  16. The complainant concluded that the member's service was in breach of multiple clauses of the Code on the date of testing and the member should be held liable.
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## Sections of the Code considered

17. The following clauses of the Code are 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.

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.

21.3. 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.

21.11. 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

18. The decision herein relates to both Annexure A and B of the formal complaint. With regard to the specific clauses of the Code that the complainant alleged have been breached and after carefully reviewing the complaint and supporting evidence, I have made the following findings:

18.1. The Member has acknowledged that the promotional campaign that was the subject of this complaint were not compliant with the requirements of the Code. It is common cause between the parties that this promotional campaign was conducted by a third-party marketing partner/supplier.

18.2. The complainant has correctly stated that the member has a positive obligation, in terms of clauses 3.6 of the Code, to ensure that such suppliers, who are not members of WASPA, market the Member’s services in a manner consistent with the requirements of the Code. Clause 3.7 of the Code also states that the member is liable for any breaches of the Code resulting from services marketed by such suppliers.

#### Misrepresentation of Content:

- 18.3. The Member knowingly disseminated deceptive advertising material. Customers were led to believe that they would receive explicit “X18” adult content, but instead, they were directed to a non-adult subscription service. Therefore, the member is found in breach of clause 5.5 of the Code.
- 18.4. The content of the service provided—a non-adult subscription—did not align with the content advertised, which was explicit “18X” adult content. 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. Therefore, the member is found in breach of clause 8.8 of the Code.
- 18.5. By advertising explicit adult content and delivering a non-adult service, the Member created a misalignment between the advertising and the service offered. Customers responding to the promotion would reasonably expect that the advertised service would align with the explicit adult content portrayed in the promotional material. The promotional material’s sexual nature, explicit imagery, and implication of “X18” content clearly suggested that the service offered was of an adult nature. This creates a legitimate expectation that the service being subscribed to matches the nature and type of content advertised. The Member’s failure to deliver a service consistent with these advertised expectations misled customers and violated their reasonable belief that they were subscribing to the explicit adult content promoted. Therefore, the member is found in breach of clause 21.4 of the Code.

#### Explicit Marketing Material:

- 18.6. The marketing material included explicit content that would be classified as “X18” by the Film and Publication Board, which is prohibited under clause 21.11 of the Code. By using such material, the member disregarded the strict prohibition against employing highly explicit content in advertising, failing to ensure compliance with regulatory standards. Therefore, the member is found in breach of clause 21.11 of the Code.
- 18.7. The promotional material employed by the member did not contain the words “18+” as per the requirements of clause 21.3 of the Code, and the member is found in breach of clause 21.3 of the Code as a result.

#### Omission of Pricing Information:

- 18.8. The member failed to display clear and prominent pricing information adjacent to the call-to-action button, resulting in a single opt-in flow, which is prohibited under the Code. Therefore, the member is found in breach of clause 12.1 read with clause 8.9 of the Code.
19. The member did not deny non-compliance with the Code.
20. The member is found liable for breaches of clauses 5.5, 8.8, 12.1, 21.3, 21.4, and 21.11 of the Code.

21. These breaches represent a serious failure to adhere to the obligations under the Code, including the responsibility to ensure that all third-party marketing affiliates comply with the Code's requirements.
  22. Therefore, the complaint is upheld.
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## **Sanctions**

23. The Member acknowledged the compliance issues, and allegedly identified the source, and took steps to address them. The member reportedly terminated the partner involved, implemented stricter advertising guidelines, and paused promotions until a compliant source could be secured. These would be considered mitigating factors.
  24. However, the repeated use of non-compliant promotional campaigns by the Member's marketing partners or suppliers raises concerns about whether the Member takes adequate steps to ensure compliance with the Code. The Member has not sufficiently demonstrated that reasonable measures are in place to prevent such breaches. Additionally, the Member has been found in breach of the same clauses within the past six months (refer to formal complaints 60461, 60462, and 60463), which serves as an aggravating factor.
  25. Furthermore, the use of deceptive marketing and the failure to display pricing information when promoting a subscription service must be viewed in a serious light, based on the potential risk of harm to consumers. This is considered as another aggravating factor.
  26. Considering all of the foregoing factors, the following fines are to be paid by the member within 7 days of publication of this adjudication:
    - 26.1. R5 000 for breach of clause 5.5 of the Code;
    - 26.2. R5 000 for breach of clause 8.8 of the Code;
    - 26.3. R10 000 for breach of clause 12.1 of the Code read with 8.9.
    - 26.4. R10 000 for breach of clauses 21.3 and 21.4 of the Code; and
    - 26.5. R10 000 for breach of clause 21.11 of the Code.
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## **Matters referred back to WASPA**

27. Not applicable.
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