



Report of the Adjudicator

Complaint number	#60813
Cited WASPA members	Joker Mobile Membership no: 1836
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Misleading advertising for adult subscription service
Date complaint lodged	2024-10-01
Date of alleged breach	2023-09-12
Applicable version of the Code	17.9
Clauses of the Code cited	5.5, 8.8, 21.3, 21.4, 21.11
Related complaints considered	N/A
Fines imposed	<p>The member breached clauses 5.5, 8.8; 21.3; 21.4; and 21.11 of the Code.</p> <p>Accordingly, I fine the Member:</p> <p>a) R 5 000.00 for a breach of 5.5; b) R 10 000.00 for a breach of 8.8; c) R 10 000.00 for a breach of 21.3; d) R 10 000.00 for a breach of 21.4; e) R 15 000.00 for a breach of 21.11</p>

	payable to WASPA within 7 days of receipt of this adjudication.
Other sanctions	The Member is ordered to rectify the breached clauses above before continuation of the actual service to customers.
Is this report notable?	Not Notable
Summary of notability	N/A

1. Initial complaint

1.1 This complaint was lodged by the complainant on 1 October 2024, and the member was notified of the complaint by the WASPA Secretariat on 3 October 2024.

1.2 The complainant included both comprehensive notes of its examination of the member's service, as well as attached images and screenshots in its formal complaint. The report is comprehensive but can be summarised as follows:

1.2.1 On or about the 12th of September 2024 a test was conducted on the MTN network. The tester was browsing on an adult content website and clicked on an explicit (X18) adult content video with the intention to watch the selected video.

1.2.2 This action however directed the tester to a landing page for a non-adult subscription service called 'Lifestyle TV' charged at R3.00 per day. The tester clicked the 'Subscribe' button and was directed to the subscription service confirmation page. There was no adult content available.

1.2.3 The marketing material provided as part of the subscription acquisition flow is explicit and is likely to be classified as X18 by the Film and Publication Board.

1.2.4 The complainant believes that the tester was misled to believe that they will be watching an explicit (X18) 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.

1.2.5 The tester then, on or about the 13th of September 2024, conducted another test when they were browsing on an adult content website and clicked on an explicit (X18) adult content video with the intention to watch the selected video. The exact

same sequence of events happened as again as was described in the first test above.

1.2.6 In summation, as a result of the tests conducted above, the complainant outlines the issues with the subscription acquisition flow for the Lifestyle TV subscription service. They are:

1.2.6.1 The (explicit) adult video leads to a non-adult subscription service landing page which the complainant alleges is in breach of clauses 5.5, 8.8, 21.1 and 21.4 of the WASPA Code of Conduct (“the code”)

1.2.6.2 The marketing material is explicit in nature. The complainant alleges that this leads to a breach of clause 21.11 of the code.

1.2.6.3 The complainant alleges that clauses 21.3 and 21.4 of the code have been breached due to the fact that the service doesn’t lead to a compliant adult subscription service landing page, which should clearly be indicated as such with the words 18+.

1.2.6.4 If your service is non-adult in nature, you need to use advertising/marketing/promotional material in line with the service you offer and advertise it on a non-adult platform. 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. The complainant alleges that this breaches clause 8.8 and 21.4 of the code.

2. Member’s response

2.1 Following receipt of the formal complaint from the WASPA compliance department on 3 October 2024, the member responded to the complaint on the same day. The response is summarised as follows:

2.1.1 The member never refuted the allegations of any of the alleged breaches but, instead, indicated that they are aware of the seriousness of the issues and then provided information about the various actions that they have taken to prevent these breaches from happening again. These actions include:

2.1.2 Pausing traffic coming from the source of the issue. They provided screenshots of the proof of this; and

2.1.3 Mentioning the seriousness of the offence to the responsible agency involved, both verbally via Skype as well as via email.

2.1.4 The member then reiterated that they will continue to not reuse traffic coming from these noncompliant sources and will endeavour to continually give their best efforts to prevent these issues from happening going forward.

3. Complainant's response

3.1 In response to the member's submissions in response to its initial complaint, the complainant responded as follows:

3.1.1 The complainant acknowledged that the member did not deny the alleged breaches but merely provided information about remedial measures that they have put in place to prevent the issue from happening again. The member also, tacitly, placed the blame on the third party marketing supplier. The complainant pointed out that based on clauses 3.5, 3.6 and 3.7 of the code, regardless of whether it was the third party supplier's fault, the member is responsible and liable for breaches occasioned by them.

4. Member's further response

N/A

5. Sections of the Code considered

5.1 As the conduct complained of took place on or around 12 September 2024, version 17.9 of the WASPA Code of Conduct applies to this complaint.

*5.2 It is alleged that the member has infringed clauses **5.5, 8.8, 21.3, 21.4 and 21.11**, of the Code of Conduct. The clauses read as follows:*

***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.*

***21.1.** An "adult service" is any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.*

• Read with clause 21.3 and 21.4

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.

6. Decision

6.1 Having reviewed the complaint and responses from the complainant and member, I have reached the conclusions set out below wherein I deal with the relevant clauses of the code in order.

Clause 5.5

6.2 With regards to whether the member or, by extension, the member’s service provider ‘knowingly’ disseminated false, inaccurate, omitted or deceptive information, there was no argument against this. As such, I can only assume and adjudicate that it was done knowingly and, as the information provided was clearly false, inaccurate, omitted and/or deceptive, this clause is thus clearly breached.

6.3 Accordingly, I do find a breach of this clause.

Clause 8.8

6.4 Based on the evidence provided by the complainant, it is clear that the content advertised for (that being adult in nature) was not provided to the customer when subscribing as the service provided was a completely different one with far different content.

6.5 Accordingly, I find a breach of this clause.

Clause 21.1 read with clause 21.3

6.6 In this case, in both instances of testing, the service being advertised was clearly sexual in nature and therefore clearly an “adult service”. Based on the evidence of the attached screenshots, in both testing instances, neither of the promoted services (which I have established were “adult services”) contained the words (18+) in the promotional material. This is a clear violation of clause 21.3.

6.7 Accordingly, I find a breach of clause 21.3.

Clause 21.1 read with clause 21.4

6.8 As has been established, in both instances of testing, the service being advertised was clearly an adult service and the service provided when clicking on the advert (“Lifestyle TV”) was clearly not an adult service. Therefore, it is clear that the content of the service was contrary to the reasonable expectation of those responding to the promotion.

6.9 Accordingly, I find a breach of clause 21.4

Clause 21.11

6.10 I am convinced, from the screenshots provided as evidence, that the images utilised as marketing material were clearly pornographic in nature and are thus classified or would be likely to be classified as XX18 or XX by the Films and Publications Board. This is in clear violation of clause 21.11 of the code.

6.11 Accordingly, I find a breach of this clause.

7. Sanctions

7.1. Before I consider the sanctions, it is necessary to consider the prior conduct and intent of the member in the form of any prior contraventions of the code and any mitigating or aggravating circumstances.

7.2. There have been 2 previously upheld and 1 partially upheld complaints against the member although they don't concern any of the clauses in question in this matter. There is a matter currently in the appeal stage against the member that concerns all the clauses in question. Accordingly, I don't find that the previous complaints are particularly aggravating when it comes to sanctions.

7.3 Regarding mitigating factors, I am convinced that the member displayed remorse and was proactive in putting some steps in place to prevent these breaches from happening again in the future. Whilst they still bear ultimate responsibility, I still note the fact that these breaches were occasioned by the member's third party marketing supplier and thus am convinced that the member showed no ill intent when it came to the breaches. There are, thus, some mitigating factors present in this case.

7.4 I find that the Member breached clauses 5.5, 8.8; 21.3; 21.4 and 21.11 of the code.

7.5 I have reviewed cases previously adjudicated on the same breaches and have taken the lower of the fines awarded, bearing in mind the mitigating factors present in this case. The

transgressions are, however, still sufficiently serious to warrant a fine that is sufficiently harsh to ensure that this transgression does not occur again. The necessary checks and balances need to be implemented by the member at all times to ensure compliance with the code at all times.

7.6 Accordingly, I fine the Member:

- a) R 5 000.00 for a breach of 5.5;
- b) R 10 000.00 for a breach of 8.8;
- c) R 10 000.00 for a breach of 21.3;
- d) R 10 000.00 for a breach of 21.4;
- e) R 15 000.00 for a breach of 21.11

payable to WASPA within 7 days of receipt of this adjudication.

7.7 Furthermore, the Member is ordered to rectify the breached clauses above before continuation of the actual service to customers.

8. Matters referred back to WASPA

N/a
