



Report of the Adjudicator

Complaint number	#60814
Cited WASPA members	Ndoto Media Membership no: 1948
Notifiable WASPA members	Akinga Membership no: 1944
Source of the complaint	WASPA Compliance Department
Complaint short description	Using adult promotional material to promote non-adult services - deception, failure to correctly label adult service with "X18", use of X18 material in marketing material.
Date complaint lodged	01 October 2024
Date of alleged breach	11 September 2024
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	<ul style="list-style-type: none"> • R4000 for the breaches of clause 5.5, 8.8 and 21.4, of which R2000 is suspended provided the Member is not found to have breached these sections again on or before the 30th April 2025. • R2000 for the breach of 21.3, of which R1000 is suspended provided the Member is not found to have breached these sections again on or before the 30th April 2025.

	<ul style="list-style-type: none"> R4000 for the breach of 21.11, of which R2000 is suspended provided the Member is not found to have breached these sections again on or before the 30th April 2025. <p>This amounts to a total fine of R10 000, of which R5000 is suspended as set out above.</p>
Other sanctions	none
Is this report notable?	No
Summary of notability	. n/a

Initial complaint

The WASPA Compliance Department conducted two investigations into services as provided by the Member. In the first instance the tester clicked on an adult content website where the image was an explicit sexual image (X18) and was redirected to a non-adult subscription service named “Beauty TV” where a subscriber would pay R3.00 per day for subscribing to the service.

In a like manner the second service was also an adult image (X18) which redirected to a service named “Faith First TV” instead of an adult service.

The WASPA Compliance Department then alleged that the following clauses of the WASPA Code of Conduct were contravened:

1. *“The (explicit) adult video leads to a non-adult subscription service landing page.*
 - *Refer to Clause 5.5, 8.8, 21.1 and 21.4.*
 - *Services should be in context with the advertising material promoting them. The content of a service (non-adult service) should not be contrary to the reasonable expectation of those responding to the promotion (adult content).*
2. *The marketing material is explicit in nature.*
 - *Refer to Clause 21.11.*
3. *If you use a compliant adult banner (18+) on an adult platform, it should lead to a compliant adult subscription service landing page, which should clearly be indicated as such with the words 18+.*

- *Refer to Clause 21.3 and 21.4.*
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.*
- *Refer to Clause 8.8 and 21.4.*
 - *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.”*

Thus, the following clauses were alleged to have been breached: 5.5; 8.8; 21.3; 21.4; 21.11.

Member’s response

The Member responded 5 days later and essentially accepted all the points made by the WASPA Compliance Department. The Member further indicated that:

- 1) Immediate action was taken to correct the acquisition flow from the adult content,
- 2) It conceded that the marketing is misleading,
- 3) It blocked any leads that would emanate from the adult content advertisements,
- 4) It indicated that it had enhanced its monitoring procedures to prevent similar problems reoccurring.

Complainant response

The WASPA Compliance Department acknowledged the reply of the Member and pointed out that clauses 3.5, 3.6 and 3.7 indicate that the WASPA member is responsible for the actions of any non-WASPA member that is allowed to use their services.

The WASPA Compliance Department also pointed out that the use of X18 material was not only a breach of the WASPA Code of Conduct but is also prohibited by the Films and Publication Act.

Finally, it acknowledged that the Member had not denied breaching any of the sections that were alleged to have been breached.

Member's response

The Member responded by essentially taking responsibility for the breaches of the WASPA Code of Conduct by its third-party marketing suppliers and sub-contractors and repeated the action it had taken to remove the material and ensure that this would not reoccur.

Sections of the Code 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.

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.

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.

Decision

The Member has not denied contravening clauses 5.5; 8.8; 21.3; 21.4; 21.11 of the WASPA Code of Conduct. Despite the lack of denial, it is still appropriate to confirm the breach of each clause of the WASPA Code of Conduct:

- While it is true that the banner advertising the service advertised an adult service and the ultimate service was not an adult service, this deceptive practice is contrary to both clause 5.5 and clause 8.8 of the WASPA Code of Conduct. However, for the purposes of sanctions this breach will be treated as a single breach of the WASPA Code of Conduct in order to avoid penalising the Member for the same actions.
- Clause 21.3 of the WASPA Code of Conduct requires that any promotional material for adult services must contain the words “18+”. The screenshots provided by the WASPA Compliance Department show that the words “18+” were not inserted on the banners and as a result the Member is found to have breached clause 21.3.
- Clause 21.4 of the WASPA Code of Conduct requires that promotions of services must be in the context of the publication that they appear and further that the services provided must not be contrary to the reasonable expectation of the person responding to them. As regards the first requirement of clause 21.4 (the promotion) the tester from the WASPA Compliance Department was browsing adult websites when he discovered the promotions and as a result seeing an advertisement for an adult service is consistent with the content the tester was viewing. While it is undoubtedly true that the service that was ultimately provided was contrary to what the reasonable expectation would have been, finding the Member guilty of contravening this section would result in the Member being found guilty of the same deceptive practice – or cause of action - in terms of clauses 5.5, 8.8 and 21.4. As a result, the breach of clauses 5.5, 8.8 and 21.4 are all treated as a breach of a single clause of the WASPA Code of Conduct for the purposes of sanctions.

- Clause 21.11 prohibits the Member from using material that is classified as X18 / XX or likely to be classified as X18 / XX. Unfortunately, the WASPA Code of Conduct does not define what X18 is and the website of the Film and Publications Board (www.fpb.org.za) was inoperative and even the Film and Publications Act or its Regulations did not define this classification. Despite this, it is possible to glean what is meant by X18 from the [Regulations](#) as being content that shows “explicit sexual conduct”. As the images in question explicitly show penetrative heterosexual sex there is little doubt that the banners in question would be classified as X18 and as a result cannot be used by WASPA Members to promote their services. Consequently, the Member is found to have breached clause 21.11.
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Sanctions

Before the question of sanctions is considered it is necessary to consider the prior conduct of the Member in the form of any prior contraventions of the WASPA Code of Conduct and any mitigating or aggravating circumstances.

From a mitigation standpoint, the Member immediately acknowledged the breaches, removed the links from the adult content and instigated measures (which were not defined) which would apparently ensure that this type of breach would not reoccur. Surprisingly fairly few Members are willing to accept accountability in as unequivocal a manner as the Member in this matter. The fact that the actions by the Member were timely and appropriate and are considered to be substantially mitigating factors in the sanction to be imposed.

On the aggravation standpoint – and by its own admission – the Member had not put in place appropriate measures to monitor the actions of sub-contractors / third-party marketing suppliers and further the use of X18 material – which should never be used by a WASPA Member – is considered to be an aggravating factor.

Ndoto Media has been found to have breached clause 5.14 in five separate WASPA complaints all being lodged on the 21 July 2023 and there are other pending cases against the Member. However bearing in mind that the above complaints dealt with a different section of the WASPA

Code of Conduct and the other cases are not yet decided, these complaints cannot be taken into consideration from either a mitigation or aggravation standpoint.

Consequently, the following sanctions are imposed on the Member:

- R4000 for the breaches of clause 5.5, 8.8 and 21.4, of which R2000 is suspended provided the Member is not found to have breached these sections again on or before the 30th April 2025.
- R2000 for the breach of 21.3, of which R1000 is suspended provided the Member is not found to have breached these sections again on or before the 30th April 2025.
- R4000 for the breach of 21.11, of which R2000 is suspended provided the Member is not found to have breached these sections again on or before the 30th April 2025.

This amounts to a total fine of R10 000, of which R5000 is suspended as set out above.

In terms of clause 24.37, the Member may appeal this decision within 10 days of the release of this adjudication.

Matters referred back to WASPA

None.
