



Report of the Adjudicator

Complaint number	#60825
Cited WASPA members	Inspiritum LTD (1808)
Notifiable WASPA members	Not applicable
Source of the complaint	WASPA Compliance Department
Complaint short description	Adult services
Date complaint lodged	2024-10-03
Date of alleged breach	2024-09-24
Applicable version of the Code	17.9
Clauses of the Code cited	21.3, 21.11
Related complaints considered	#57302
Fines imposed	The member is fined R 10 000.00 for the breach of clause 21.3 of the Code, and R10 000.00 for the breach of clause 21.11 of the Code.
Other sanctions	Not applicable
Is this report notable?	Not notable
Summary of notability	Not applicable

Initial complaint

1. Whilst monitoring, testing, and conducting compliance checks on wireless application services, the WASPA Compliance Department (“the complainant”) identified a service that they believed did not comply with the requirements of the WASPA Code of Conduct (“the Code”).
2. A WASPA tester (“the tester”) conducted three manual tests on the Vodacom network while browsing an adult content website. These tests were detailed in Annexures A, B, and C.
3. In these tests, the tester was directed to a landing page for the member’s subscription service called "House of Glamour," which contained age verification prompts (“the service”). However, it was alleged that the promotional material displayed was explicit and included imagery that would be classified as X18 by the Film and Publication Board. This type of content is prohibited in the marketing of adult services under Clause 21.11 of the Code.
4. The complainant further highlighted that the marketing material used in all three tests failed to clearly indicate that the service was intended for adult audiences and that the service did not include the mandatory "18+" age restriction label, as required by Clause 21.3 of the Code.
5. In summary, the complainant argued that the service consistently used inappropriate and non-compliant marketing tactics across all three tests. The complainant called for immediate remedial action to ensure that the service adhered to the regulatory standards set forth in the Code.

Member’s response

6. The member maintained that the marketing material triggering the customer journey included a fully compliant image, the service name, and the mandatory “18+” mark. The member stated that the first non-compliant page was not part of the customer's journey or marketing materials related to their service.
7. The member also emphasised their commitment to resolving the issue, noting that they had immediately halted the promotion of the service and began discussions with Vodacom and their aggregator to address the differing interpretations of the marketing flow.
8. The member clarified that they had not received prior communication from the complainant regarding the case before the formal complaint was filed.

9. Furthermore, the member stated that they also did not receive preliminary tickets from the MCP scanner regarding the issue.
 10. Finally, the member pointed out the challenges in promoting adult services, noting that major platforms like Google and Facebook did not allow such advertisements, which led to reliance on adult websites and advertisement networks that often did not comply with WASPA and mobile operator requirements. They believed clearer guidelines for promoting adult services, considering the realities of the market, would benefit the industry. They expressed a desire to work with WASPA to clarify any misunderstandings.
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Complainant's response

11. The complainant disagreed with the member's interpretation of where the subscription acquisition flow began, stating that the first page (which contained an explicit adult video) directed the tester to the member's landing page, forming a linked and uninterrupted marketing flow that must comply with the Code.
 12. The complainant emphasised that the member was responsible for ensuring that all parties involved in marketing their service follow the Code, including third-party suppliers. The complainant also pointed out that while the landing page contained the necessary "18+" wording, the confirmation page should also comply with this requirement.
 13. The complainant also highlighted that WASPA had the discretion to use the formal complaint procedure and did not need to issue a "Heads-Up" first, as stated in the Code. They further emphasised that WASPA uses various tools to monitor compliance, and there is no restriction on how it fulfils its mandate.
 14. Lastly, the complainant acknowledged the challenges of promoting adult services but reiterated that the member must comply with the Code, which is aligned with the law and mobile operator business rules. They maintained that the member's service was non-compliant and should be held accountable for the violation.
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Member's further response

15. The member thanked the complainant for their comments and clarifications, acknowledging and accepting all the points raised without dispute.
16. They further supplemented their response by noting that, upon receiving the tickets from Evina, they had immediately halted all traffic acquisition, even before receiving the formal complaint from WASPA. Additionally, they decided to discontinue their relationship with the partner supplying the traffic.

17. To prevent future compliance issues, they chose to suspend the promotion of all 18+ services until they could work with WASPA, their aggregator, and the operator to develop promotion mechanics that fully comply with market requirements. The member expressed their commitment to ensuring compliance moving forward.
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Sections of the Code considered

18. The following sections of the Code are considered herein, and read as follows:
 - 21.3. Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words "18+".
 - 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

19. The service in question was an adult service as it was of a clearly sexual nature, and was associated with promotional material that was of a clearly sexual nature as defined in clause 21.1 of the Code.
20. The service contained age verification prompts to confirm that the user was an adult. Nonetheless, the marketing material did not contain the words "18+" in all three of the tests provided by the complainant, nor did it clearly indicate that the service was intended for adult audiences. In addition, the member has acknowledged that it has failed to comply with these requirements in its response to this formal complaint. Therefore, the member is found in breach of clause 21.3 of the Code.
21. The promotional material displayed to lead the user to the service was explicit and included imagery that would be classified as X18 by the Film and Publication Board as there was explicit sexual conduct. This type of promotional material is prohibited in the marketing of adult services under clause 21.11 of the Code. In addition, the member has acknowledged that it has failed to comply with this requirement in its response to this formal complaint. Therefore, the member is found in breach of clause 21.11 of the Code.
22. Furthermore, WASPA had the discretion to use the formal complaint procedure in dealing with these complaints, and did not need to issue a "Heads-Up" first and follow an informal procedure, as stated in clause 24.15 of the Code.

23. Therefore, the complaint is upheld.

Sanctions

24. It is noteworthy that upon becoming aware of the non-compliance of their service, the member immediately halted all traffic acquisition, before receiving the formal complaint from WASPA. Additionally, the member made the decision to discontinue their relationship with the partner supplying the traffic. The member also expressed their commitment to ensuring compliance moving forward. These are deemed mitigating factors.
25. However, the member was found in breach of clause 21.11 previously on 2023-07-21, as per adjudication complaint number 57302. Therefore, this is an aggravating factor as the member has been alerted to the fact that promotional material cannot be used in advertising its service if it is classified as X18.
26. The member is fined R 10 000.00 for the breach of clause 21.3 of the Code, and R10 000.00 for the breach of clause 21.11 of the Code.
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Matters referred back to WASPA

27. Not applicable.
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