



Report of the Adjudicator

Complaint number	#59781
Cited WASPA members	Globocom Infotech Pvt. Ltd Membership Number: 1816
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Adult advertising of subscription service unrelated to adult service with deceptive call to action.
Date complaint lodged	<i>07 December 2023</i>
Date of alleged breach	8 th , 20 th , 22 nd November 2024
Applicable version of the Code	17.7
Clauses of the Code cited	5.1, 5.4, 5.5, 8.8, 21.3, 21.4, 21.5, 21.11
Related complaints considered	58647
Fines imposed	1) R10 000 for the breach of clauses 5.1, 5.4 and 5.5, 2) R10 000 for the breach of clauses 8.8 and 21.3, 3) R10 000 for the breach of clauses 21.4 and 21.11.
Other sanctions	None
Is this report	Yes

notable?	
Summary of notability	<i>The definition of “Adult Service” includes a situation where the actual subscription service is not sexual in nature but the promotional material advertising the subscription service is sexual in nature.</i>

Initial complaint

This adjudication is a result of a complaint by the WASPA Compliance Department. Three tests were conducted with the following details:

TEST #1

- Date: 20th November 2023
- URL: <https://cutly4u.wordpress.com/>
- Description: Clicked on adult video and was redirected to age verification page and thereafter to landing page for “Humour Bucket” subscription service at R10.00 per day and thereafter to Vodacom confirmation page.

TEST #2

- Date: 8th November 2023
- URL: <https://xvideos325.wordpress.com/>
- Description: Clicked on adult video and was redirected to another adult content website and thereafter to landing page for “G-Ling” subscription service at R39.99 per week and thereafter to MTN confirmation page.

TEST #3

- Date: 22nd November 2023
- URL: <http://red-movies.com/>
- Description: Clicked on adult video and was redirected to another adult content website and thereafter to landing page for “Apps box” subscription service at R30.00 per week and thereafter to MTN confirmation page.

The WASPA Compliance Department ended its test in each case once reaching the confirmation page of the various Mobile Network Operators (MNO). The following helpful summary of clauses that were alleged to have been breached was provided:

“In summary:

- a. *The (adult) banner advertisement is non-compliant:*
 - i. *The banner is displayed on an adult website with references to multiple adult content items, and then leads to a non-adult subscription service landing page.*

- ii. It is explicit in nature – X18.
 - iii. It is misleading – adult to non-adult.
 - iv. Refer to Clause 5.1, 5.4, 21.11.
- b. The adult banner leads to a non-adult subscription service landing page:
- i. Refer to Clause 5.5, 8.8 and 21.4
 - ii. 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).
- c. If you use a compliant adult banner 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+;
- i. Refer to Clause 21.3, 21.4, 21.5
- d. 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;
- i. Refer to Clause 8.8 and 21.4
 - ii. 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."

Member’s response

The WASPA member responded twice, and each response was barely intelligible. To illustrate this the responses are reproduced hereunder:

From the WASPA member on 13 December 2023:

*“Good Evening !
 As we have checked the mentioned Humour Bucket, G-Ling and Apps Box services WASPA compliance and it is actioned.
 1. Specifically, our service campaign assigned and non-compliance materials will be strictly followed, informed to marketing suppliers.
 2. As per the WASPA COC, Misleading advertisers have been blocked.
 Kindly check and let us know if there any concerns.”*

From the WASPA member on 03 January 2024:

*“Good day !
 As discussed in Skype, WASPA Complaint has been reverted on 13-Dec-2023 with the action points (Email attached for your reference) and we are waiting for WASAP team's ticker closer confirmation.
 Could you please check and let me know, if any details are required from our side and do the needful.”*

Complainant's response

The WASPA Compliance Department provided no further comment.

Sections of the Code considered

5.1. Members must not offer or promise or charge for services that they are unable to provide.

5.4. Members must have honest and fair dealings with their customers.

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.

21.3. 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.

21.5. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Reasonable steps may include the customer confirming his or her age prior to or as part of initiating the service.

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

While a WASPA Member is not obliged to provide a response to a complaint, when it does provide a response, it can reasonably be expected that the response will be intelligible. In this case the response to the allegations by the WASPA Compliance Department do not advance

the case of the WASPA member at all as they are so unclear as to be irrelevant. The WASPA Member would do well to remember that clause 4.2 of the WASPA Code of Conduct requires the WASPA member deal with public, customers, other service providers and WASPA in a “professional manner” and clear communication with the WASPA secretariat is part of professional conduct.

Turning to the current case, in all three instances advertising content which was clearly adult in nature were linked to non-adult subscription services. It is worth noting that these allegations by the WASPA Compliance Department were not refuted by the WASPA Member and so remain unchallenged. Such conduct is deceptive and likely to mislead (clause 5.5), is not the same content as promoted in the advertising (clause 8.8) and misleads the consumer that the service will be different (clause 8.8). As a result, clauses 5.5 and 8.8 are found to have been breached by the Member.

Turning to clauses 21.3, 21.4, 21.5 and 21.11, it is common cause that none of the three subscription services actually offered were sexual in nature. This, however, is not the end of the matter as the definition of adult service and adult content service needs to be investigated to determine whether having promotional material which is adult in nature is sufficient to render the service an “adult service” despite the actual subscription service not being sexual in nature. The WASPA Code of Conduct helpfully defines both Adult Services and Adult Content Services as follows:

*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. (Our emphasis)*

21.2. An “adult content service” is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified.

From the definitions above we can conclude that if the promotional material for the services are:

- sexual in nature, or
- imply that the service is sexual in nature,

then the service can be classified as an “Adult Service”.

In contrast the definition of “Adult Content Service” does not refer to promotional material nor to any implication that the service may be sexual and so none of the services detailed above would qualify as an “Adult Content Service”.

Turning to clause 21.3 of the WASPA Code of Conduct, all three of the above subscription services are deemed to fall within the definition of “adult services” due to the use of 18+ promotional material and the implication that an adult subscription service would be offered.

Clause 21.3 requires that the words “18+” must be included, despite the ultimate subscription service not being sexual in nature and so the failure to include these words is a breach of clause 21.3.

Clause 21.4 requires that “...the content of a service should not be contrary to the reasonable expectation of those responding to the promotion” and the clause has also been breached by the Member. It is worth noting that the content of this clause and clause 8.8 are similar and so have been considered together for the purposes of sanctions.

When considering the allegation of a breach of clause 21.5, as previously indicated the subscription service provided does not fit within the definition of an “Adult Content Service” and so no breach of clause 21.5 has occurred and this complaint is dismissed.

As regards clause 21.11, this clause requires that WASPA members do not use marketing material which is classified as XX or X18 by the Film and Publication Board or would be likely to be classified as such. This begs the question as to what is likely to be classified as XX or X18? The answer to this question lies in the latest [Classification Guidelines for the Classification of Films, Games and Certain Publications](#).

In this publication “Restricted Distribution Content – XX” is content as described in section 4.2 (11) and contains:

- (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;*
- (ii) bestiality, incest, rape, conduct or an act which is degrading of human beings;*
- (iii) explicit infliction of domestic violence; or*
- (iv) explicit visual presentations of extreme violence,*

In a like manner “Restricted Distribution Content – X18” is content as described in section 4.2 (12) and contains:

“explicit sexual conduct, unless, judged within context, the film is a bona fide documentary or is of scientific, dramatic or artistic merit, in which event the film shall be classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age inappropriate materials.”

Thus we can conclude that pictures of adults having sex would be classified as “X-18” in terms of the said Guidelines.

This in turn requires us to revert back to the pictures that were provided to us by the WASPA Complaints Department. While the actual pictures promoting the various subscription services are intentionally not included as annexures to this adjudication, a description of their nature is necessary in order to provide context to this matter. Five pages of images were provided which were used to market the subscription services, of which 4 of the pages contained images of

naked adults engaged in sexual activity. The remaining page was of a scantily clad topless female. Thus - based on the classification guidelines - we can conclude that 4 of the 5 pages contained material that was or was likely to be classified as "X-18".

Returning to clause 21.11 of the WASPA Code of Conduct, it is necessary to provide a clear distinction between:

- a subscription service from providing X18 material to a consenting adult customer, and
- the use of X18 material to market the adult subscription service.

While the former is permitted, the latter breaches clause 21.11 of the WASPA Code of Conduct. As it has already been determined that that 4 of the 5 pages/images used to market the subscription services were either classified or likely to be classified as X18, the Member is hereby found to have breached clause 21.11 in the use of X18 material to market subscription services.

In summary:

- the Member has been found to have breached the following clauses: 5.1, 5.4, 5.5, 8.8, 21.3, 21.4, 21.11
- The complaint in terms of clause 21.5 is dismissed.

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.

The Member has had two previous complaints against it, the most recent of which was on the 10th July 2023 in complaint [58647](#) where the complaint was upheld and the Member was fined:

- an amount of R5000 for the breach of clause 5.1, 5.4 and 5.5 and
- R5 000 for the breach of clause 8.8 and
- a further fine of R5000 was suspended provided that the Member did not breach clause 23A.5(c) within 6 months of the adjudication.

The content of adjudication 58647 is remarkably similar to the current complaint in that a consumer was misled by the advertising banner to click on a link to a subscription service which was unexpected based on the marketing material. As such this is a repeat of an earlier and highly similar transgression. Moreover, the Member behaved in a similar way in that matter by not disputing that the breach of the WASPA Code of Conduct had occurred as well as the manner in which the Member communicated with the WASPA secretariat. Consequently, this conduct by the Member is considered to be an aggravating factor.

In the result, the Member is hereby fined as follows:

- 4) R10 000 fine for the breach of clauses 5.1, 5.4 and 5.5,
- 5) R10 000 fine for the breach of clauses 8.8 and 21.3,
- 6) R10 000 fine for the breach of clauses 21.4 and 21.11.

This translates as a total fine of R30 000 which must be paid within 5 working days of receipt of an invoice (clause 24.41) unless the matter is appealed.

Kindly note that the Member has 10 working days to notify the WASPA Secretariat if it wishes to appeal this adjudication.

Matters referred back to WASPA

None.
