



Report of the Adjudicator

Complaint number	59864
Cited WASPA members	Globocom Infotech Pvt. Ltd (1816)
Notifiable WASPA members	N/A
Source of the complaint	WASPA Compliance Department
Complaint short description	Adult Subscription Service
Date complaint lodged	10 January 2024
Date of alleged breach	10 November 2023
Applicable version of the Code	17.7
Clauses of the Code cited	5.1; 5.4; 5.5; 8.8; 21.3; 21.4; 21.11.
Related complaints considered	N/A
Fines imposed	5.1 – R5000 5.4 – R5000 5.5 – R5000 8.8 – R10000 21.4 – R10000 21.11 – R15000
Other sanctions	N/A

Is this report notable?	Not notable
Summary of notability	

Initial complaint

1. A tester for the Waspa Compliance Department browsed on an explicit adult content website (X18) and clicked on an explicit adult content video (X18), with the expectation to watch the video. The tester was directed to an adult verification page, which appeared to still relate to the explicit adult content video. The tester was however then directed to the landing page for a subscription service called Glamourzine charged at R 10.00 per day.
2. The landing page was designed in such a way as to appear to relate to non-adult content (potentially games or videos) and had no reference to any adult content.
3. The pricing information specifically stated that there was a 1 (one) day free trial period.
4. The tester clicked on the call-to-action button and was directed to the Vodacom confirmation page, where the tester completed the subscription acquisition flow.
5. Upon reviewing the actual content provided as part of the service, the content is of an adult nature (18+) however there were no explicit adult content videos (X18) similar to the video the tester originally engaged with, and furthermore there were no games or videos similar to the content promoted on the landing page.
6. Finally, upon checking the airtime balance, R 10.00 was deducted immediately upon subscribing to the service within the alleged 1 (one) day free trial period and as such no free trial period was offered.
7. Reviewing the advertising and subscription acquisition flow for the Glamourzine subscription service, the following breaches were identified:

“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.

21.11 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.”

Member's response

The member responded to state the following:

1. The campaign for the product to which the complaint relates was not live.
2. They have removed the 1 (one) day free trial from the campaign.
3. They have informed all partners to strictly follow the Waspa COC and marketing guidelines.

Specifically with regards to each code breach they responded as follows:

1. Re 5.1:
 - a. The product was under UAT and was not live. It has been removed.
 - b. They have informed all partners to strictly follow the Waspa COC and marketing guidelines.
2. Re 5.4:
 - a. All products have accurate and honest information in the landing page. This service was not live and was not set up in any marketing campaigns.
 - b. The landing page already had instructions about the 18+ service (and attached a screenshot).
 - c. The Glamourzine service campaign was stopped few months ago and campaign was not live with marketing partners.
 - d. They have strictly instructed to marketing partners to remove the campaign setup from all the promotion platforms, and have verified that it has been removed.
3. Re 5.5:
 - a. The product trail has been removed and is under their local testing. They are taking immediate action to correct the text.
 - b. The landing page already had instructions about the 18+ service (and attached a screenshot).
4. Re 8.8:
 - a. They have informed their marketing partners to remove the service from the adult service page and instructed them to follow the marketing materials.
 - b. Based on adult or non-adult advertising, promotional materials have been revalidated with the existing promotional partners and misleading landing page configurations removed.
 - c. Partners who violated this have been blocked.
5. Re 21.3:
 - a. The service is not part of a live campaign.
 - b. They have strictly instructed to marketing partners to comply with the COC and marketing materials.

6. Re 21.4:
 - a. They have informed their marketing partners to remove the service from the adult service page and instructed them to follow the marketing materials.
 - b. Based on adult or non-adult advertising, promotional materials have been revalidated with the existing promotional partners and misleading landing page configurations removed.
 7. Re 21.11
 - a. They have informed their marketing partners to remove the service from the adult service page and instructed them to follow the marketing materials.
 - b. Based on adult or non-adult advertising, promotional materials have been revalidated with the existing promotional partners and misleading landing page configurations removed.
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Complainant's response

The complainant took note of the corrective and remedial action taken by the member to address the non-compliant aspects of the service. However, this remedial action did not negate the fact that the service on the date it was tested was non-compliant.

The member's service was in breach of several clauses of the Code on the date of testing and as such, notwithstanding the steps taken to remediate the non-compliant service, the member should be held liable for their non-compliant service.

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.

21.11 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

It is important to note at the outset of this ruling that the compliance or otherwise of a service is judged at the date of the alleged transgression and not at the date of the members response to a complaint or even at the date of the adjudication itself. Although the member displayed a willingness to address the issues within their service the service itself when tested by the complainant was not compliant. The member stated that the service itself was not live and as such the impact of the campaign was limited. However the complainant was able to access the campaign for the service and the service itself. Accordingly the service and campaign were live to consumers and the risk to consumers was not ring fenced. Finally, the service was advertised as having a one day free trial which was inaccurate as the service fee was deducted immediately upon subscription with no free trial being honoured.

The course of events is described in the following paragraphs.

The complainant browsed on an explicit adult content website (X18) and clicked on an explicit adult content video (X18), with the expectation to watch the video. They were then directed to an adult verification page, which appeared to still relate to the explicit adult content video. The landing page that the complainant was eventually directed to was not however for explicit adult content videos but rather for a subscription service called Glamourzine. In addition, the landing page was not designed to reflect any adult content and also had no reference to any adult content. The actual content provided, although 18+ was not the same as that originally advertised at the initial point of engagement with the complainant and nor did the landing page reflect the content actually provided.

The service as advertised was therefore misleading in several elements. The way the pricing actually worked as well as the nature of the services promoted upon initial engagement as opposed to those actually capable of being subscribed to.

The member stated that they use 3rd party marketing services to promote their services. However this does not absolve the member from responsibility for the actions of such third parties. It is the responsibility of the member to at all times manage the manner in which the service is marketed and as such they remain liable for actions of their third party advertisers.

Accordingly I find as follows:

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

- I find the member to be in breach.
- The website the complainant was browsing on promoted explicit adult videos. The complainant was then directed to an adult verification page which still appeared to relate to the explicit adult videos but when the complainant clicked on the link for the video, the landing page advertised content that was neither an explicit video or in fact adult content at all (potentially just games and videos). The actual content provided as part of the subscription service, Glamourzine,

although of an adult nature (18+) contained no explicit adult videos (X18) similar to the video promoted on the original website.

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

- I find the member to be in breach.
- The service was advertised as having a free one day trial prior to subscription. However this was never actually honoured as the subscription charge was deducted immediately.

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.

- I find the member to be in breach. The member lured consumers in with the promise of explicit adult videos when in fact the actual content was for a subscription service called Glamourzine which contained no explicit adult videos.
- The subscription fee was also advertised as being applicable after a one day free trial had passed. This lead potential consumers to believe they could try the subscription service before committing to it. But the fee was deducted immediately with no free period honoured.
- Both the nature of the content advertised (see ruling on 5.1 above) as well as the pricing associated with the service (see ruling on 5.4 above) was inaccurate and misleading.
- By not providing accurate information about the services and the trial period prior to subscription, the Member disseminated ambiguous and incorrect information to its consumers.

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.

- I find the member to be in breach.
- The content promoted on the original website was that of an explicit adult video. Although the actual service provided was an adult service it was not an explicit adult video. In addition, the landing page served after the adult verification step advertised certain games and videos which were neither x18 or 18+ content. The actual service itself had no such games or videos and was 18+.
- As such the content provided was not the same as the content advertised either at the original website, the verification page or at the subsequent landing page. The services promoted at the original website and the landing page were different, both to each other, and to the actual services subscribed for. Accordingly, the content of the services which was promoted was not the same as the content which was part of the services actually provided by the member.

21.3. Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words "18+".

- I find no breach as although the content was not what was originally advertised, it was advertised as being 18+ at each stage of the process in all promotional material.

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.

- I find the member to be in breach.
- The adult service promoted was for Glamourzine. Although this is an 18+ adult service this was not an explicit adult video as advertised contrary to reasonable expectations of the consumer as to what would be provided by clicking on the link. In addition the landing page did not appear to promote an 18+ service but appeared to be a promotion for games and videos. The subscription service was an 18+ service for Glamourzine. A consumer would not reasonably be able to ascertain what service was being promoted until they subscribed for 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.

- I find the member to be in breach.
- The service in question was an adult service but the marketing material used was an explicit adult video which is considered an X18 service. In addition after the 18+ verification step the landing page does not relate to adult content at all, but rather seems to promote games and videos.

Sanctions

24.34. If the adjudicator determines that there has been a breach of the Code, then the adjudicator must determine appropriate sanctions. In determining any appropriate sanctions, the adjudicator must take into consideration:

- (a) any previous successful complaints made against the respondent in the past three years;
- (b) any previous successful complaints of a similar nature;
- (c) the nature and severity of the breach;
- (d) the loss suffered by the complainant;
- (e) any efforts made by the respondent to resolve the matter; and
- (f) any other factors that the adjudicator considers material.

I have taken into account the fact that the member responded quickly and remediated the issues with the service in quantifying my sanctions. In addition, I reviewed several cases previously adjudicated on the same breaches and have taken the lower of the fines awarded, bearing in mind the respondent's willingness to address the issues, and promptness in addressing the issues, raised by the complainant. The transgressions of the original service however were still sufficiently serious, with the potential to negatively harm members of the

public, that they 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 respondent at all times as a matter of "business as usual" to ensure compliance with the Code of Conduct at all times. The members argument that the service was not live when it was in fact accessible by the complainant is worrying. No service should accidentally be accessible. In maintaining fair and honest dealings with consumers, it is imperative for members to proactively assess its systems and all services for any irregularities.

I fine the member as follows:

5.1 – R5000

5.4 – R5000

5.5 – R5000

8.8 – R10000

21.4 – R10000

21.11 – R15000

All to be paid within 5 (five) days of publication of this report.

Matters referred back to WASPA

N/A
