

**IN THE ENFORCEMENT COMMITTEE OF THE FILM AND PUBLICATION
BOARD (FPB)**

Film and Publication Board (FPB)

Applicant

and

GAME X

1st Respondent

Ali Qashim

2nd Respondent

Ali Saqib

3rd Respondent

Case No:009/2025/RD/GP

Date of hearing: 20 January 2026

MEMBERS OF THE ENFORCEMENT COMMITTEE

Judge Thokozile Masipa - Chairperson

Ms Malini Maharaj - Member

Dr. Adv Nzumbululo Silas Siphuma - Member

OFFICE OF THE ENFORCEMENT COMMITTEE

Mpho Mooketsi - Registrar

LEGAL REPRESENTATION

For the Applicant

Ms Ntokozo Ndlovu

For the Respondent

(No Appearance)

DECISION

Judge Thokozile Masipa

INTRODUCTION

[1] This matter was referred to the Enforcement Committee in terms of section 6B(1) of the Films and Publications Act 65 of 1996 as amended (the FP Act).

[2] The basis of the referral was an allegation that the Respondents failed to comply with section 18(1)(a) and 18(1)(b) of the FP Act.

THE PARTIES

[3] The Applicant is the Film and Publication Board (FPB), a statutory body established in terms of section 3 of the FP Act as amended, to regulate the creation, production, possession and distribution of films, games and certain publications.

[4] The First Respondent is an entity called Game X which conducts the business of selling games. It operates from its premises at Kiosk-1, N1 City Mall, Goodwood, Cape Town.

[5] According to Companies and Intellectual Properties Commission (CIPC) check conducted by FPB, Games X does not appear to have been registered as a company in South Africa.

[6] The Second Respondent is Ali Qashim, a male adult and co-owner of Games X whose full and further particulars are unknown.

[7] The Third Respondent is Mr Ali Qalib, a male adult whose full and further particulars are unknown.

THE RELIEF SOUGHT

[8] The Applicant sought the following relief:

- 8.1. Condoning the late filing of the Notice of Referral in terms of Rule 3 of the Enforcement Committee Rules.
- 8.2. A finding of non-compliance with the provisions of the FP Act;
- 8.3. The imposition of a fine not exceeding the sum of R150000.00 for distributing films without first having been registered with the Board as a distributor of films as prescribed in terms of section 24A (1) of the FP Act.
- 8.4. The imposition of a fine not exceeding the sum of R500000.00 for distributing unclassified films as prescribed in terms of Section 24A (2) of the FP Act.
- 8.5. Ordering the Respondents to pay the costs in respect of the proceedings, jointly and severally.

THE BACKGROUND

[9] Mr. Moteku Johannes Maekela is employed as an investigator by the Applicant. As part of his duties, he conducts investigations relating to non-compliance issues which surface from compliance reports. Among other things, he gathers relevant information and compiles investigation reports.

[10] In this matter he deposed to an affidavit, namely: a statement made in terms of section 9(3) of the FP Act in which he set out the background to the present matter.

- [11] During the course of his duties, Mr. Maekela visited the premises of the First Respondent where he established that Games X is not registered with the FPB as distributor of games and that the games distributed at its shop are not classified by the FPB as required by section 18(1)(a) and 18(1)(b), respectively, of the FP Act. In addition, the games do not display any FPB classification ratings.
- [12] On 22 October 2024, Games X was issued with a Notice of Contravention for contravening the FP Act by distributing and exhibiting games without being registered. The Notice of Contravention was received by Mr. Ali Saqib, co-owner of the entity. In terms of the Notice, Games X was afforded a period of 30 days within which to remedy the non-compliance.
- [13] On 16 May 2025, Mr. Alexander Justus Hugo, a Compliance Officer attached to the office of the FPB in the Western Cape Region, conducted a follow-up compliance inspection at the premises of Game X. There he discovered that since Game X was issued with a Notice of Contravention, on 22 October 2024, the First Respondent took no steps to remedy the non-compliance.
- [14] At the time of the proceedings, the Respondents had still not made any attempt to ensure that the First Respondent complies with the provisions of the FP Act.
- [15] Hence the referral to this Enforcement Committee ("EC") in terms of the FP Act.

THE COMPLAINT

[16] The Respondents are alleged to have failed to comply with section 18(1) of the FP Act which provides as follows:

- 16.1. *“any person who distributes, broadcasts and exhibits any film or game in the Republic shall, in the prescribed manner, on payment of the prescribed fee –*
- (a) register with the Board as a distributor or exhibitor of films or games, and*
 - (b) submit for examination and classification any film or game that has not been classified, exempted or approved in terms of this Act...”*

THE DEFENCE

- [17] There was no appearance for the Respondents. In addition, the Respondents had raised no defence at all prior to the proceedings.
- [18] It was clear from the correspondence between the parties, that the Respondents knew about the allegations against the First Respondent. I say this because following the allegations against it, there was a semblance of compliance from Game X when it made an application to register as a distributor of games with the FPB.
- [19] That alone was proof that Game X knew of the allegations and made an attempt to mitigate the situation.
- [20] When the application failed, the Respondents made no further attempt to pursue the process.

THE PROCEEDINGS

The Application for a condonation of the late filing of the Notice of Referral

- [21] At the outset there was an application for condonation for the late filing of the Notice of Referral. The application was not opposed.
- [22] To make a case for condonation, the Applicant must show good cause which includes explaining the cause and extent of the delay, the prospects of success in the main application, the potential prejudice in finding for or against the condonation application as well as whether granting the application will be in the public interest.
- [23] In the present matter, the EC is satisfied that there was adequate explanation for the delay (see attached consolation judgment) in that the Applicant is seriously under resourced. This unfortunately is something that the Applicant cannot resolve as it is the prerogative of the Treasury.
- [24] The EC is also satisfied that the Applicant has a good prospect of success in the main application.
- [25] In addition, the EC is satisfied that granting the application would not cause any prejudice to the Respondent as it can remedy the situation by registering with the Applicant and by then submitting its games to the Applicant for classification. It can also apply for self-classification in terms of section 18C. Meanwhile there is no evidence that its business will suffer any harm or prejudice.
- [26] On the other hand, if the condonation application were to be refused, great prejudice to the Applicant and the general public would occur.

[27] If the Respondent were to go unpunished, where it is plain that there been a contravention of the FP Act, the public might lose confidence in the Applicant as a Regulatory Authority. Worse still, unscrupulous distributors/exhibitors might be tempted to take advantage and disregard the law with impunity while children continue to suffer harm from being exposed to inappropriate material.

[28] Lastly, it is in the public interest that this condonation application be granted. The public deserves the protection offered by the FP Act, despite any delay that may have been caused by the Applicant's circumstances.

[29] It follows, therefore, that the condonation application must succeed.

DISCUSSION: FACTUAL AND LEGAL ANALYSIS

[30] It is convenient at this stage to discuss the factual and legal aspects of the complaint.

[31] The mandate of the FPB is, *inter alia*, to regulate the creation, production, possession and distribution of film, games and certain publications by way of classification.

[32] There is a good reason for this mandate. Amongst other things, it is to

- 32.1. protect consumers against harmful and disturbing material while allowing adults to make informed choices for themselves and for the children in their care by providing consumer advice;
- 32.2. protect children from exposure to disturbing and harmful material and from premature exposure to adult material;

- 32.3. make the use of children in pornography and exposure to pornography punishable;
- 32.4. criminalise the possession, production and distribution of child pornography; and
- 32.5. create offences for non-compliance with the FPB Act.

[33] In the present case Game X is a distributor of games operating without having registered with the Board. It has also failed to submit the games it distributes to the FPB for classification. None of this has been contradicted.

[34] This means that patrons who choose to do business with Games X are denied protection as contemplated by the FP Act. I say this because the games distributed are not classified which means there is no clear information (age rating, content advice) for the public. Without such information, consumers are vulnerable as they cannot make informed decisions for themselves and for those in their care.

[35] Without such protection, intended by the FP Act, the FPB would have failed to fulfil its mandate as a watchdog for the public.

[36] It cannot be said that the Applicant is unreasonable in prosecuting such matters. In fact, the 30-day period given to a distributor/exhibitor to remedy the non-compliance is more than reasonable.

[37] In the present case, the 30 days period within which to remedy the non-compliance was extended to almost a year.

[38] For reasons beyond its control, the Applicant was unable to conduct its follow-up inspection timeously. Instead, it took about a year before the Compliance Officer,

Mr. Singh, was able to conduct a follow-up inspection at the premises of the Respondent.

[39] And to his amazement he found that the Respondent was still non-compliant. Sadly, it had squandered this extended opportunity to remedy its non-compliance and chose to carry on as usual. It did so at its own peril.

[40] The Respondent cannot plead ignorance to the fact that it was conducting its business illegally, as the correspondence between the parties proves otherwise.

[41] The conduct of the Respondent is clearly an aggravating factor which calls for a heavy penalty.

CONCLUSION

[42] There is formidable evidence against the Respondent that it is in contravention of the FP Act and that despite being given an opportunity to remedy the problem, it failed to do so.

[43] The insistence by the Respondent to continue distributing its games without complying with the provisions of the FP Act is an indication that it has no respect for the law.

FINDING

[44] Accordingly, the Enforcement Committee finds the following:

- 44.1. The Respondent failed to comply with section 18(1)(a) of the FP Act in that it distributes games without having registered with the Film and Publication Board.
- 44.2. The Respondent failed to comply with section 18(1)(b) of the FP Act in that it distributes unclassified games to the public.

ORDER

[45] a result, the following order is granted:

- 45.1. The Respondent is ordered to pay a fine in the amount of R150000 (One Hundred and Fifty Thousand Rand) for failure to register as a distributor with the Film and Publication Board.
- 45.2. The Respondent is ordered to pay as a fine an amount of R500000 for failure to submit its games to the Film and Publication Board for classification.
- 45.3. The Respondents are ordered to pay the costs of the proceedings.

T M Masipa

ENFORCEMENT COMMITTEE

Judge Thokozile Masipa – Chairperson

Ms Nalini Maharaj – Member

Dr. Adv Nzumbululo Silas Siphuma – Member

29/07/2026