Film and Publication Board
Content Regulatory Authority of South Africa

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

Film and Publication Board (FPB)	Applicant
and	
HAPPY KIDS TV	1st Respondent
FUTURE TODAY INC.	2nd Respondent

Case No: 031/2025/RD/US
Date of hearing: 30 June 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	Mr. Nqubeko Makhanya
For the Respondent	Ms. S Parikh Mr. A Ranjan (CEO of the Second Respondent)

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DECISION

Judge Thokozile Masipa

INTRODUCTION

[1] This matter was referred to the Enforcement Committee for adjudication in terms of section 6B of the Films and Publications Act 65 of 1996, as amended ("the FP Act") read together with Rule 9(1) of the Enforcement Committee Rules.

[2] The Applicant alleged that the Respondent was in contravention of sections 18(1) (a) and (b) of the FP Act in that it had failed to register with the Applicant as a distributor/exhibitor of films, and in that it had failed to submit its films to the Applicant for classification.

THE PARTIES

[3] The Applicant is the FILM AND PUBLICATION BOARD, a Content Regulatory Authority in South Africa, established in terms of section 3 of the Films and Publications Act 65 of 1996, as amended ("the FP Act") with its principal place of business situated at Eco Glade 2, 420 Witch Hazel Street, Eco Park, Centurion, 0169.

[4] The First Respondent is HAPPY KIDS TV, described in the papers by the Applicant, as a United States online streaming platform that offers films or publications to children within the Republic of South Africa.

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[5] The Second Respondent is FUTURE TODAY INC., an entity described in the papers as a United States of America's online technology provider with its website https://www.futuretoday inc.com/ managing the day to day operations of the First Respondent.

THE RELIEF SOUGHT

[6] The Applicant sought an Order in the following terms:

6.1. Condoning the Applicant's noncompliance with Rule 9(1) of the Enforcement Committee Rules, 2023 ("the Rules") and the late filing of the Notice of Referral in terms of Rule 3 of the Rules.

6.2. Interdicting and restraining the First and Second Respondents from unlawfully distributing, exhibiting or making available any unclassified film content for streaming within the Republic of South Africa in contravention of section 18(1) (b) read with sections 24A (1), 24A (2), 24A (5), 24C (2) of the FP Act and Rule 9(3) of the Rules through its website https://www.happy kids.tv or any other digital platform accessible within the Republic of South Africa without being registered to do so with the Applicant.

6.3. Directing the First and the Second Respondents to pay a fine in the amount of R150 000 (one hundred and fifty thousand rand) jointly and severally with the one paying the other being absolved) for distributing films, games or publications to the public within the Republic of South Africa without being registered with the Applicant as a distributor as prescribed in terms of section 24A (1) of the FP Act.

6.4. Directing the First and the Second Respondents to pay a fine in the amount of R500 000 (five hundred thousand rand)(jointly and severally with the one paying the other being absolved) for distributing unclassified films, games or publications in public within the Republic of South Africa as prescribed in terms of section 24A (2) of the FP Act.

6.5. Directing the First and the Second Respondents to pay a fine in the amount of R50 000 (fifty thousand rand)(jointly and severally with the one paying the other to be absolved) for distributing films, games or publications without displaying clearly and conspicuously and in the prescribed manner, classification reference number, age restriction, consumer advice and any other condition imposed on the distribution of that film, game or publication in public within the Republic of South Africa as prescribed in terms of section 24A (5) of the FP Act.

6.6. Directing the First and the Second Respondents to pay a fine in the amount of R50 000 (fifty thousand rand) for not implementing safety measures to protect children from possible commissions of offences by any person in use of the website and which does not allow for filtering or blocking of content not suitable for children as prescribed in terms of section 24C (3) of the FP Act.

6.7. Directing the First and the Second Respondents to pay the costs in respect of these proceedings; and

6.8. Further and/or alternative relief

THE RESPONDENTS' RESPONSE

[7] The Respondent denied any wrongdoing.

[8] In their answering papers, the Respondents submitted that the application was *"fundamentally misconceived in both fact and law and should be dismissed in its entirety."*

[9] According to the Respondents, the Applicant's case was misplaced as it appeared to be premised on the incorrect assumption that the Respondents were distributing or streaming audiovisual content within the Republic of South Africa and were,

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therefore, subject to registration and classification requirements of the Films and Publications Act.

[10] In fact, there was no distribution of any of the Respondents' films in South Africa. There was no streaming of any of audiovisual content in South Africa. This, therefore, meant that the Respondents had no obligation to register with the Applicant as distributors or to submit its film content to the Applicant for classification, was the argument.

[11] In addition, the Respondents raised a *jurisdictional point in limine*. I proceed to deal with this point hereunder

LACK OF JURISDICTION AND TERRITORIAL NEXUS

[12] According to the Respondents, Future Today Inc. is a company incorporated in the United States of America and has no connection whatsoever with the Republic of South Africa.

[13] The Respondents do not conduct business operations in South Africa, maintain no offices in South Africa, employ no personnel in South Africa, and derive no revenue from South African operations.

[14] In addition, the Respondents do not market, target, or actively distribute their services to consumers in South Africa.

[15] More importantly, Applications associated with Happy Kids are not made available through the South African Application Stores and are not specifically offered for download by consumers located in South Africa.

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[16] The Respondent argued that the Applicant has not demonstrated any meaningful commercial, operational or territorial nexus between the Respondents and South Africa sufficiently to establish jurisdiction over the Respondents.

[17] The Respondents argued further, (wrongly, in our view,) that mere accessibility of a website from a jurisdiction does not automatically subject a foreign entity to the regulatory framework of that jurisdiction, particularly where:

- the service is not directed toward residents of that jurisdiction;
- no commercial activity is conducted within that jurisdiction; and
- no revenue is generated from that jurisdiction

[18] For all those reasons, the Respondents denied that they were subject to the registration obligations alleged by the Applicant.

[19] Before dealing with the merits, it is necessary to consider the jurisdictional point raised on behalf of the Respondents first.

[20] It may be so that the Respondents are foreign entities operating without any physical presence in South Africa. It may also be so that they are not targeting the South African public as users for their services or even generating revenue from South Africa. All that is irrelevant for purposes of this judgment. What is relevant is whether their content is accessible to the public in South Africa. If the answer is yes, then the Enforcement Committee would have jurisdiction.

[21] However, since the jurisdictional point raised is inextricably linked with the issue on the merits, it is prudent to now proceed to deal with the merits before making a ruling on the jurisdictional point.

THE MERITS

The Background

[22] Circumstances that led to the present referral of the matter, is briefly set out by the Applicant hereunder.

[23] On 20 November 2024, the Applicant conducted an online inspection per its Compliance Officer, Mr. Yakeen Singh, on the website of the First Respondent with URL https://www.happykids.tv.

[24] According to the Applicant, the inspection revealed that the First Respondent was distributing/exhibiting/streaming various films/movies online and these were accessible to the South African public. Mr Singh checked whether the First Respondent was registered with the Applicant as a distributor of films and found that it was not. Hence his conclusion that it was noncompliant with the FP Act. Subsequent to the inspection, Mr Singh issued and served the Cease-and-Desist Letter and a Notice of Contravention on the Respondents which afforded the Respondents thirty (30) days in which to remedy the noncompliance or request an extension.

[25] On 11 September 2025, Mr Singh conducted a follow-up inspection on the website of the First Respondent and found that the First Respondent had still not registered with the Applicant and had not submitted its films to the Applicant for classification. Hence the present referral.

The Respondents' Defence

[26] The Respondents' defence is set out in detail below.

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HAPPY KIDS TV IS NOT A STREAMING WEBSITE

[27] According to the Respondents the website located at happykids.tv is not a streaming platform.

[28] Instead, the website functions primarily as an informational and promotional website that displays and describes content owned, licensed or distributed by the Respondents.

[29] The website does not provide end users with the ability to stream the audiovisual content identified on the website.

[30] The website, therefore, cannot be characterised as a platform distributing films, games or publications to the public in South Africa.

[31] To the extent that screenshots of content titles were relied upon by the Applicant, the mere display of content metadata, artwork, titles, descriptions, or promotional information does not constitute the distribution or streaming of audiovisual content.

[32] No movie or show can be played from happykids.tv website in South Africa or anywhere in the world, was the submission on behalf of the Respondents.

[33] In support of the submissions that the content was not accessible to the public, the representative for the Respondents conducted a physical demonstration. From the demonstration it could be seen that the content was not accessible to the public.

[34] It would seem, from the above, that the Applicant's conclusion that the Respondents are unlawfully streaming content in South Africa is, therefore, inaccurate.

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NO DISTRIBUTION OF CONTENT WITHIN SOUTH AFRICA

[35] The Respondents specifically denied that they distribute or exhibit audiovisual content to the public within South Africa in the manner alleged by the Applicant.

[36] The Respondents reiterated that the Applicant had not produced any evidence demonstrating that there was

- actual streaming of content to South African users;
- South African customers' accounts;
- South African subscriptions;
- South African revenue generation;
- South African advertising sales; or
- any commercial targeting of South African consumers.

[37] In the absence of such evidence, the Applicant's allegations remain speculative and unsupported.

[38] The detailed thought-out defence by the Respondents above is persuasive.

[39] The Respondents proceeded to demonstrate that theirs was a reputable and responsible platform specifically designed with child safety in mind. Details are set out verbatim hereunder for ease of reference and clarity.

CHILD SAFETY AND COPPA COMPLIANCE

[40] *"Without conceding that South African regulatory requirements apply to the Respondents, the Respondents note that HappyKids operates as a children's entertainment brand with extensive child safety protections.*

HappyKids is recognised as a kid-safe platform and is designed specifically for family and children's audiences.

The platform operates in compliance with the United States Children's Online Privacy Protection Act ("COPPA"), one of the most rigorous child privacy and protection frameworks applicable to digital services directed at children.

The Respondents maintain policies, controls, and content review procedures intended to ensure that children are not exposed to disturbing, harmful or inappropriate, or age-inappropriate content.

The Respondents reject any allegation that they have *failed to implement measures designed to protect children.*

To the contrary, child safety is a core component of the Respondents' business model and operational practices.

The Applicant has produced no evidence demonstrating that children have been exposed to harmful content through HappyKids."

[41] In essence, the above is a direct response to the Applicant's concerns and allegations that the Respondents' platform was exposing children to disturbing, harmful and inappropriate content.

[42] In reply, the Applicant's counsel failed to deal adequately with the Respondents' submissions above. And none of the questions from members of the Enforcement Committee in this regard were adequately addressed.

DISCUSSION AND ANALYSIS

[43] The allegations are that the Respondents are in contravention of section 18(1) (a) and (b) of the FP Act.

[44] The issue to be determined at the outset is whether the Respondents fall under the jurisdiction of the Film and Publication Board.

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[45] The test for determining if a foreign entity falls under the jurisdiction of the Film and Publication Board is based on accessibility and distribution of content to the South African public, rather than physical presence of the Respondent in the jurisdiction of the Regulator.

[46] Under the Films and Publications Act as amended, the FPB holds regulatory and compliance jurisdiction over all films, games and publications distributed in South Africa, including online and digital content.

[47] In the present case, the Respondents would not fall outside the jurisdiction of the Board simply because the First Respondent did not have a physical presence in South Africa.

[48] The relevant question would be whether the content is accessible to the public in South Africa.

[49] The Respondent denied that its content was accessible to the South African public and went on to demonstrate this convincingly. In reply, the Applicant submitted that at the time the Compliance Officer made its first inspection and a follow-up inspection, the films from the Respondent's website were accessible to South African public.

[50] The Applicant's submission had no weight as it was not supported by any evidence.

[51] In the present case the Applicant has not shown that the Respondent's content can be accessed, or has ever been accessed, downloaded or streamed, at any time, by users located in South Africa.

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CONCLUSION

[52] The Applicant made allegations of noncompliance with the provisions of the FP Act against the Respondent but failed to produce evidence in support thereof.

[53] Mere allegations of wrongdoing alone are not sufficient to prove a case, especially where there is a dispute. Unassailable credible evidence that can be relied upon is what is needed. Sadly, there was no such evidence in this case.

[54] Submissions were made that, at the time of the inspections by the Compliance Officer, film content from the First Respondent's website was accessible to the public in South. No evidence, however, was provided in support of the submissions. In my view, this omission was fatal to the Applicant's case.

[55] There was also a dispute over whether the content on YouTube alleged by the Applicant to be that of the First Respondent, really was the First Respondent's. The Respondents denied any knowledge of such content and submitted that it belonged to some other entity which had no connection with them at all.

[56] Once more the Applicant failed to deal with this response adequately which undeniably weakened its case.

[57] But what sealed the case of the Applicant was that there had been correspondence from the Respondents to the Applicant where the Respondent set out their defence in detail. This important piece of correspondence was not part of the bundle before the Enforcement Committee. Disturbingly this oversight (if it was an oversight), was not explained by the Applicant, a fact which weakened its case even further.

FINDING

[58] In the absence of such evidence, therefore, no case has been made out by the Applicant, and no finding of noncompliance can be made against the Respondent.

ORDER

[59] In the premises, the following Order is granted:

59.1. Condonation for the Applicant's failure to comply with Rule 9 (1) of the Enforcement Committee Rules, 2023, and the late filing of the Notice of Referral is granted.

59.2. The jurisdictional point raised by the Respondent is upheld on the basis that the content by the First Respondent is not accessible to the South African public.

59.3. The application by the Applicant for noncompliance with the provisions of the Films and Publications Act, as amended, against the First and the Second Respondents is dismissed.

59.4. No costs order is granted.

TMMasipa

ENFORCEMENT COMMITTEE
Judge Thokozile Masipa – Chairperson
Ms Nalini Maharaj – Member
Dr. Adv Nzumbululo Silas Siphuma – Member
Date: 19/8/2026