

WASPA APPEAL PANEL FINDINGS FOR COMPLAINT NO #0004; #0012 and #0036

MTN Airborne t/a Airborne Messaging

APPELLANT

in respect of MDG London Ltd / BOMBASTIES / Stixi

29th of March 2005

DECISION

Following adjudication against MTN Airborne, the Respondent lodged an appeal. The Appeals Panel have considered the grounds of appeal as lodged by Appellant. The points raised as grounds for the appeal are addressed below.

Background:

Compliant 04, 12 and 36 all related to advertisements by Bombasties which were placed in *Huisgenoot* of the 2nd of September 2005, the 8th of Sept 2005 and the 8th of October 2005.

It was alleged that these advertisements constituted a breach of the Code of Conduct ("Code"):

Section 8 Adult Services (Clause 8.1.2, 8.1.3 and 8.2.2).

The adjudicator's ruling:

The Adjudicator held that the advertisements were "adult services". The Adjudicator held that *Huisgenoot* is a family magazine and that the advertisement appeared in a publication specifically targeted at children in contravention of section 8.2.2 of the Code. The Adjudicator also held that the fact that the Member blocked portions of the advertisements in order to render them acceptable for the publication of that nature is a contravention of clauses 8.1.2 and 8.1.3 of the Code. The Adjudicator also held that it is not necessary that a publication be exclusively targeted at children to fall within the contravention of clause 8.2.2 of the Code. The Adjudicator held that as specific sections of *Huisgenoot* are targeted at children the publication may be deemed to be "specifically targeted at children".

Grounds of Appeal:

Adjudicator's ruling on 8.1.2:

Adult Services

8.1. Required Practices

8.1.2 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.

The Appellant argued that the advertisements were approved by the publishers, based on the magazine's portfolio. The Appellant noted in its appeal: "Looking at the portfolio, the results are clear that the magazine is targeted for an adolescent age group. The magazine is also not targeted to any specific content but rather a very wide variety, which all adolescent readers have an interest in. The Appellant also argued that the content provider had not advertised Adult content only, but a variety of contents to suite everyone's needs. The adult content was a small percentage of the combined advertisement and was not a majority of the response rate.

Adjudicator's ruling on 8.1.3:

8.1.3 Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult service.

The Appellant argues:

The content provider had explicitly advertised the adult content with an 18+ banner over it to give a clear indication that the content is for Adults Only. In addition, this was done to prevent any harm to readers, which are sensitive to erotic pictures. Although the magazine is targeted for adolescent readers and there might be very small percentage underage readers, the 18+ banner was clearly to be seen, to prevent any misleading content. To further prevent underage readers or to notify adolescent readers, the customer must acknowledge that he/she is over 18 prior to receiving the premium content. This is built into the Premium SMS service and cannot be refused by the customer!

Adjudicator's ruling on 8.2:

8.2 Prohibited Practices

8.2.2 Promotions for adult services must not appear in publications or other media specifically targeted at children.

The Appellant again argues that the targeted readers are adolescents and that the magazine is by no means targeted at children.

To summarise: The Appeal is based on the following arguments:

- (a) The advertisements were approved by *Huisgenoot* and acceptable in terms of *Huisgenoot's* Policies and Procedures
- (b) *Huisgenoot's* magazine portfolio clearly shows that the targeted readers are adolescents
- (c) Even if a small percentage of readers are children, the respondent has taken the precaution of publishing the adult content with an 18+ banner over it.

A further precaution is taken by requiring customers to acknowledge that he/she is over 18 prior to receiving the adult content.

(d) *Huisgenoot* is a magazine for adolescents and it is by no means targeted at children.

(e) The Appellant also argued that even if it was found to have breached the Code, such breach was not intentional and that the penalty imposed was unduly harsh.

The final adjudication in this case follows:

Ad point 1 of the Appeal, the Appellant claims that the advertisements were approved by *Huisgenoot* and deemed acceptable in terms of *Huisgenoot's* Policies and Procedures.

Members are accountable to WASPA for the rendering of services to customers in accordance with the Code of Conduct. The fact that the advertisements complied with the Policies and Procedures of *Huisgenoot* is irrelevant.

This ground of appeal is rejected.

Ad point 2 of the Appeal, the Appellant argues that *Huisgenoot's* magazine portfolio clearly shows that the targeted readers are adolescents. The Appellant is in effect arguing that the *Huisgenoot* is not specifically targeted at children.

The appeal turns on the nature, market and reader profile of the *Huisgenoot*. In general, *Huisgenoot*, together with its sister publications *You* and *Drum*, are regarded as family magazines. These magazines offer something for everyone, namely women and men, mothers and fathers, teenagers and the young. This mixed-mode approach is echoed by the editor of *Huisgenoot*, and she describes the publication as follows:

“*Huisgenoot* is by far the biggest magazine in the country - in any language. Week after week...the winning recipe to entertain, inform and intrigue, with topical background features about news events touching the lives of average South African families...*Huisgenoot's* editorial mix also includes human dramas, medical and scientific discoveries, general-interest coverage, and everything from glamour and fashion to consumer affairs. Add recipes and handiwork. Crossword puzzles, home projects, motoring news and sport. Wonderful competitions. Interesting fiction. Indispensable school projects for children. And much more. Everything neatly packaged in an impeccable magazine full of colour” (see http://familymagazines.media24.co.za/huisgenoot_edit.htm).

This publication is keenly read by young readers. *Huisgenoot* is a popular magazine for young readers, the so-called tweenies, between 10 and thirteen years of age. The popularity of *Huisgenoot* for the young generation is evident from a recent survey. The results of the survey are as follows:

“Tweenies say: YOU, Huisgenoot and Kick Off are like cool man
Two Media24 magazines were highlighted in this year's *Sunday Times* Generation Next brand survey. *YOU* and *Huisgenoot* were voted best youth magazines in SA, with *Kick Off* hot on their heels in third place, making it the most popular sports magazine in the tweenie market (kids aged between 10 and 13). The tweenie market, currently the largest age group in South Africa, annually consumes products to the value of R6 billion. *YOU* and *Huisgenoot* were also awarded Superbrand status recently. Superbrands is an international project to reward the best brands in each country as voted by a council of top marketing experts” (see http://www.media24.com/newsletters/issue24_ENG.htm).

The Appellants argued that the *Huisgenoot's* magazine portfolio clearly shows that the targeted readers are adolescents. In terms of section 1 of the Child Care Act 74 of 1983 “child” means any person under the age of 18 years. Section 1 of the Code also defines a child as a natural person under the age of 18 years. An adolescent is defined as a young person who has undergone puberty but who has not reached full maturity; a teenager (see <http://dictionary.reference.com/search?q=adolescent>). Adolescence begins with the onset of physiologically normal puberty, and ends when an adult identity and behaviour are accepted. This period of development corresponds roughly to the period between the ages of 10 and 19 years, which is consistent with the World Health Organization's definition of adolescence (see <http://www.cps.ca/english/statements/AM/ah03-02.htm>).

Adolescents are children aged between 10 and 19 years. Children are persons under the age of 18. It thus follows from not only the evidence provided by the magazine's publishers, but also the Appellant's adamant admissions that the targeted readers are adolescents, *Huisgenoot's* reader profile is thus made up by a significant number of children.

The Code refers to an adult service as follows:

2.1. 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.

From the above definition and the examples of the advertisements complained of, it is clear that an adult service was rendered. This point was not placed in dispute by the Appellant. *Huisgenoot* is a publication which is, according to the Appellant, targeted at adolescents. As indicated above, adolescents include children and it therefore follows that *Huisgenoot* should not be regarded as a suitable publication for advertising adult content.

This ground of appeal is rejected.

Ad point 3 of the Appeal, the Appellant argue that even if a small percentage of readers are children, the respondent has taken the precaution of publishing the adult content with an 18+ banner over it. A further precaution is taken by requiring customers to acknowledge that he/she is over 18 prior to receiving

the adult content. Explicit confirmation of a user's age is needed for access to adult services.

As is noted above, *Huisgenoot* is a family magazine and portions of this publication are specifically targeted at children. The Code requires adult services to be in context with the publication or other media in which they appear. Reasonable steps were thus not taken to ensure that only persons of 18 years of age or older have access to adult services. Requiring a customer to acknowledge that he is over 18 years of age alone is not deemed to sufficient.

This ground of appeal is rejected.

Ad point 4 of the Appeal

The ruling in respect of point 2 above is sufficient to indicate that *Huisgenoot* is a publication that also targets children, and as such the publication of these advertisements is a prohibited practice. The Adjudicator was correct in holding that *Huisgenoot* is at least partially targeted at children.

This ground of appeal is rejected.

Ad point 5 of the Appeal, the Appellant argued that even if it was found to have breached the Code, such breach was not intentional and that the penalty imposed was unduly harsh and that the finding should be reviewed to a suspended sentence.

The Code of Conduct was developed over a long period of time and adopted in June 2005. The two month hiatus period between the adoption of the Code of Conduct and its implementation was sufficient to enable members to comply. The Appellant breached the Code. One of the objectives of the Code is to protect children from potentially harmful content and a breach of these standards should be viewed in a serious light.

This ground of appeal is rejected.

Decision

We find that the Appellant contravened the Code of Conduct relating to the original complaint, namely a prohibited practice of offering adult services to children.

The adjudicator's ruling and the fine imposed in the sanction is therefore upheld.

On that basis, we reject the Appeal.

THE APPEALS PANEL

29TH MARCH 2005