

REPORT OF THE ADJUDICATOR

WASPA Member (SP) Mobile 365

Information Provider (IP)

(if applicable)

Infomedia trading as Partymob

Content Downloads (Java Games, ring tones, wallpapers, Service Type

logos etc)

Source of Complaints Competitor

Complaint Numbers #0304

Complaint

A complaint was received from a competitor of the SP, concerning advertisements placed by the IP in Heat magazine dated 13 – 19 May 2006.

The complainant states:

"Section 8.1 Any adult service must be clearly indicated as such in any promotional material and advertisements. The Kamasutra game which shows sexual positions is offered between games such as Ice Age2. No mention is made that this game is of an adult nature.

Section 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 HEAT magazine is targeted mainly at teenagers. The sale of adult content is therefore not the type of content a reader would be expecting.

Section 8.1.3 Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult content service. No age verification takes place with the purchase of this game.

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

The HEAT magazine is targeted at teenagers. Teenagers are under the age of 18."

The Complaints concern the appearance of adult content in a magazine with a massmarket circulation.

The following breaches of the WASPA Code of Conduct were raised:

8. Adult services

8.1. Required practices

- 8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.
- 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.
- 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 Secretariat investigated the Complaint and determined that there may be an additional breach of the WASPA Code of Conduct, namely:

8.2. Prohibited practices

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

Investigation

The SP furnished a reply as follows:

Partymob is a service run by one of Mobile 365's customers, Infomedia based in the UK. They typically run full page adverts in a variety of magazines offering a range of content that can be selected using a keyword via a premium MO SMS.

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The complaint outlined above is valid. The advert in question offered a variety of content and the Kamasutra Game was one piece of content available in this ad. This was an unintentional error by one of our customers and one that slipped through our internal proofing processes. We have taken the necessary steps to ensure this does not occur again and have requested that Infomedia join WASPA as an affiliate member within the next month.

The adverts have now been rectified, although their may be some overlap with adverts that Infomedia were not able to cancel because of magazine print deadlines.

Decision

The adjudicator appreciated the SP's frank and honest response, however he did question exactly how unintentional the inclusion of this content in the general advertisement was, when it is being repeated month after month and may overlap due to print deadlines, as indicated by the SP.

Wireless Application Service Provider Association

Report of the Adjudicator

Complaints #0304

Without better evidence to the contrary, the Adjudicator had no basis to dispute the SP's version.

The Adjudicator qualified the complainant's contention that Heat magazine is targeted at teenagers, by indicating that this is only one of its primary target markets, yet one of its largest reader groups.

In determining a sanction, the Adjudicator considered his findings and particularly the sanction imposed in respect of complaints #0004, #0012 and #0036.

In such report, the Adjudicator imposed the following sanction:

- The SP is formally reprimanded for its failure to comply with the WASPA Code of Conduct:
- The SP is ordered to pay a fine totalling R6 000 in respect of its breach of clauses 8.1.2 and 8.2.2 of the WASPA Code of Conduct;
- The SP is ordered to pay a fine totalling R6 000 in respect of its breach of clause 8.1.3 of the WASPA Code of Conduct:
- The SP is required to remedy its breach of 8.1.3 of the WASPA Code of Conduct; and
- The SP is required to amend its advertising to comply with the WASPA Code of Conduct.

The Adjudicator noted that such sanction must be distinguished as it was imposed prior to the introduction of the WASPA Advertising Rules, while this complaint has been submitted some five months after its introduction. This complaint can furthermore be distinguished on the basis that the SP has admitted its error and undertaken to rectify it.

The Adjudicator accordingly imposed the following sanction:

- The SP is formally reprimanded for its failure to comply with the WASPA Code of Conduct and the WASPA Advertising Rules;
- The SP is ordered to pay a fine totalling R10 000 in respect of its breach of clauses 8.1.2 and 8.2.2 of the WASPA Code of Conduct;
- The SP is ordered to pay a fine totalling R6 000 in respect of its breach of clause 8.1.3 of the WASPA Code of Conduct; and
- The SP is required to amend its advertising to comply with the WASPA Code of Conduct.