



REPORT OF THE ADJUDICATOR

Complaint reference number:	19595
WASPA member(s):	Marketel (Pty) Ltd (SP)
Membership number(s):	0010
Complainant:	WASPA Monitor
Type of complaint:	Adult Service
Date complaint was lodged:	2013-02-12
Date of the alleged offence:	N/A
Relevant version of the Code:	12.1
Clauses considered:	4.1.2; 6.2.2; 6.2.3; 6.2.4; 6.2.5; 6.3.1; 8.1.1; 14.3.5; 14.3.6 & 14.3.14
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	N/A

Complaint

The Complainant in this matter, the WASPA monitor, has levied a complaint against the SP in this matter, alleging that its adult advertisement placed in a newspaper, and subsequent direction to its website, constituted various breaches.

The Monitor also requested immediate suspension of the advertisement, failing which; the matter should proceed to formal adjudication.

After having received the SP's response, the Monitor expressed her dissatisfaction in the SP's inability to immediately pull the advertisement and asked for formal adjudication.

Service provider's response

The SP provided an initial response, but then subsequently filed two later responses.

The Adjudicator is unfortunately unwilling to consider these late responses.

This stems from the length of period that lapsed between the filing of the formal complaint and subsequent filing of the response.

Section 14.3.5 clearly states that the member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint, including any mitigating factors that the member wishes the adjudicator to consider.

Section 14.3.6 then clearly states that if the member fails to respond within this time period, it will be assumed that the member does not wish to respond. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

The Secretariat did not provide an extension.

No concrete reasons were given for the delay apart from mentioning that it was due to various factors.

The Adjudicator will therefore only consider the original response by the SP. In this the SP provided its commitment to make some changes but also iterated the fact that the immediate pulling of the advertisement could prove difficult and subsequently asked for a delay in facilitating this.

Sections of the Code considered

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.4. Pricing contained in an advertisement must not be misleading.

6.2.5. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.3.1. For services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service.

8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.

14.3.5 The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint, including any mitigating factors that the member wishes the adjudicator to consider.

14.3.6 If the member fails to respond within this time period, it will be assumed that the member does not wish to respond. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent reply.

The Complainant alleged various breaches of the Code by the SP.

The SP in its response clarified the process to a certain extent but did not deny the incorrectness of the allegations levied against it. It did however explain that the immediate pulling of the advertisement was not possible, due to the fact that it was already paid for.

Section 14.3.14 of the Code states that on the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

The Adjudicator is therefore of the opinion, having read the response of the SP, that the SP does admit that its own service / advertisement and subsequent costing associated therewith, is incomplete, incorrect and misleading, hence its proposal, as stated in its own words, to do the following:

- classified advert ***will be changed to include "18+" and WAP/Web reference;***
- the automated msg will be re - worded ***to make it clear and easier to understand.***

The Adjudicator therefore finds the SP in breach of sections 6.2.3, 6.2.4, 6.2.5, 6.3.1 and 8.1.1.

However, the Adjudicator is not of the opinion that there has been a clear breach of sections 4.1.2 or 6.2.2.

The Complaint is therefore partially upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;
- The SPs' subsequent response.

The Adjudicator has taken note of the SP's immediate response and willingness to rectify the various breaches.

The Adjudicator is also of the opinion that it would have been practically impossible for the SP to immediately have removed a placed advertisement that has already gone to print and is of the opinion that the period offered by the SP to rectify such breach was justifiable.

It is also the opinion of the Adjudicator that certain newspapers make provisions for adult advertising which is indicated as such. It is however unclear if this was the instance here, but the Adjudicator will consider the possibility thereof as a mitigating factor in this matter.

The SP is formally reprimanded for its breaches of sections 6.2.3 – 6.2.5.

The SP is formally reprimanded for its breach of section 8.1.1.

The Adjudicator does however want to clarify that the lesser sanction of a formal reprimand levied against the SP for its breach of section 8.1.1 is only due to the following:

- The fact that most newspapers contain these advertisements in a adult section;
- The fact that the SMS message received by the Complainant made clear mention thereof;
- The fact that the eventual website directed to, further makes this clear.

Any breach of the Code that relates to content that might harm non-adults, is considered as serious infringements.