



REPORT OF THE ADJUDICATOR

Complaint reference number:	19827
WASPA member(s):	Buongiorno South Africa (SP) (002)
Membership number(s):	See above
Complainant:	Monitor
Type of complaint:	Adult Subscription Service
Date complaint was lodged:	2013/03/06
Date of the alleged offence:	2013/03/06
Relevant version of the Code:	12.1
Clauses considered:	4.1.1, 6.2.2, 8.1.1, 8.1.3, 11.1.1 and 11.1.2
Relevant version of the Ad. Rules:	N/A

Related cases considered:

Complaint

Complaint 19827 was logged by the WASPA Monitor regarding an adult subscription service.

The complaint progressed as follows:

- The formal complaint was sent to the WASP on 2013-03-06.
- WASP responded requesting advice concerning the complaint on 2013-03-13 (placing complaint on hold until appeal outcome).
- WASPA secretariat replied on 2013-03-14.
- WASP responded on 2013-03-14.
- WASPA secretariat responded with additional advice on 2013-03-26.
- Revised date for response by WASP is sent by WASPA secretariat on 2013-04-09 (complaint is found not to have all corresponding elements as the appeals complaint, as complaint number 19827 deals with adult content services).
- WASPA secretariat sends reminder email to WASP on 2013-04-16.
- WASP is non-responsive and WASPA secretariat sends email informing handover to adjudication on 2013-04-18.

Description of complaint by Monitor:

"We ran a test on the Blinko SexyCherry Subscription service wapsite. The following problems were encountered:

The pages are neither prominent nor explicit in advertising that this is a subscription service. The billing information and subscription service wording should have been seen in the first screenshot (above or below the image of the female).

There is no verification step that the user is in fact an adult, nor is there an 18+ shown on the page. This should have been visible in the first screenshot. Only 1 example of content is shown.

Revisions are required as soon as possible please.

Remedial options:

If the service is immediately suspended upon receipt of this complaint and not reactivated until suitable changes have been made and communicated to the WASPA Secretariat, it is likely that this complaint can be resolved informally. This remedy might prevent fines from being imposed for breaches of the WASPA Code.

The WASPA Monitor requests that the service provider provides a clear plan of action for dealing with this matter, for example:

- This service has been suspended, effective from [date].
- The following changes have been made to the service: ...

Service provider's response

The SP responded to the complaint as follows:

We refer to your email dated 6 March 2013.

Buongiorno South Africa (Pty) Ltd ('Buongiorno') kindly requests that further action pertaining to the above-mentioned complaint be stayed. It has been brought to our attention that the complaint is similarly-situated to an adjudication currently on Appeal, namely 16313.

In an effort to not frustrate WASPA's processes pertaining to the formal reprimand of a Complaint to an Adjudicator, we kindly ask that all action hereto be placed on hold pending the release of Appeal Record 16313.

In the event that the Secretariat deems it unnecessary to grant such request, Buongiorno would like to place on record that it reserves its rights to respond more comprehensively to the above-mentioned campaign.

Complainant's Further Reply

The Secretariat placed the complaint on hold pending the outcome of the appeal of matters 15477/15722/16851 /16977/17184/17236 as requested.

The Secretariat then also notified the SP as follows:

“Currently there are a number of complaints which, based on your requests, we have placed "on hold" pending the outcome of various appeals processes, due to the similarity of those matters with the matters under appeal.

However, upon reviewing the case file for 19827, it seems that there are elements of that complaint which do not overlap with the matters currently under appeal, specifically the fact that this complaint allegedly involves an adult content service.

We must therefore request that you provide us with a response to this complaint by 2013-04-16, so that we can hand it over to an adjudicator for review.

You are, of course, welcome to detail any overlap you see between complaint 19827 and pending appeals in your formal response so that the adjudicator is able to take that into account when considering his or her report.”

Sections of the Code considered

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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

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

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 users age must be obtained prior to the delivery of an adult content service.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as subscription services. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.2. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed, except as provided for in 11.1.3.

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.

Decision

Due to the information provided in detail by the Monitor as to the non-compliance of this adult content service, and due to the fact that the SP failed to respond at all in providing any mitigating facts as to why this site is compliant with the Code, I have no option but to uphold the complaint.

Sanctions

I order the SP to immediately suspend the site and to only allow it to go live again once it has confirmed that all the issues of non-compliance have been resolved in line with the Code of Conduct.

I furthermore fine the SP R20 000 for their breach of the Code and failure to respond to the Secretariat.