



ADJUDICATOR'S REPORT

Complaint reference number: 21612

WASPA member(s): Honolux (1334) (IP) / Mira Networks (0011) (SP)

Complainant: WASPA employee

Type of complaint: Spam and Adult Content Service

Date complaint was lodged: 2013-09-06

Date of the alleged offence: Not specified

Relevant version of the Code: 12.4

Clauses considered: 5.1.11, 5.2.1, 5.3, 6.3.5, 8.1.1, 8.1.2, 8.1.3, 8.2.3 and 11.1.2

Relevant version of the Ad. Rules: Not applicable

Clauses considered: Not considered

Related cases considered: It was not necessary to consider previous adjudications

Complaint

The complainant is a WASPA employee who initially lodged the following complaint:

Detailed_Description_Complaint: Message received: 2013-09-06 9:09AM: \"Someone you don't know has shared their private pics with you: <http://bigmob.co/e/eesfZk805B2004C> play private pic share stop?sms stop 44539R10/day

This is a company phone and there are no WASP services on it, nor will there ever be. This is a risky SMS to send out to random people, imagine a wife getting hold of this.

In terms of CoC 5.1.11 I hereby request where this service provider got my cellphone number, and proof that whoever supplied my number to them has my permission.

In terms of CoC 5.2.1 I consider this message SPAM, as I have not requested this message, have no prior relationship with this service provider, nor do they have my consent.

Tick_as_appropriate: I have not contacted the service provider and believe this matter requires WASPA's attention

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

Service provider's response and further developments

The IP's initial response to the complaint on 6 September 2013 was as follows:

Dear Mr. [REDACTED],

Thank you for your message received via WASPA. In regards to your complaint, we run online games and competitions from time to time where people input their phone number and accept receipt of marketing messages during participation. It looks like your number was provided in the course of one of these marketing actions. Two possibilities cross my mind: is it possible that you might have input your number online at some point in time and don't remember having done so? Otherwise, if this is not the case, it is also possible that someone used a fake number when participating that ended up being yours, either willingly or unwillingly.

In any case, we apologize for the inconvenience we have caused you. It is in our best interest to only contact people who have effectively shown their willingness to be contacted. Please rest assured your number will be removed from our database with immediate effect and no more messages will be sent.

*Best regards,
Pablo Lombardi.
The Sunny Alerts Helpdesk.*

The complainant was not satisfied with this response and replied on 7 September 2013 as follows:

Pablo,

First, I don't take part in online games or competitions. Second, this is a company phone, I would have used a private phone number.

Is it not required that you validate a phone number that's used? If someone just put a random number in there, they start to get spammed?

I'm sorry, it's not acceptable. I want to know exactly where you got my number from. Your answer is too vague.

The IP's response on 9 September 2013 was as follows:

Thank you for your reply. We've verified that your number came specifically from a promotion that was run on Facebook during the month of June.

Phone numbers were not validated at time of entry since a simple form was being used for people to input their data. Seeing that this might pose similar problems in the future, we will implement a validation procedure to make sure phone numbers actually belong to the person who is inputting the data.

Once again, our apologies for the inconvenience you've had to go through due to this oversight.

The complainant then asked to amend his original complaint to include clause 8.1.1 of the Code on 9 September 2013:

Dear WASPA complaints,

Further to my initial complaint, I want to please alter this complaint to include section 8.1.1 of the WASPA Code of Conduct.

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

The SMS that was sent to me, provided again for clarity:

| "Someone you don't know has shared their private pics with you:

| <http://bigmob.co/e/eesfZk805B2004C> play private pic share stop?sms | stop 44539R10/day

Nowhere in this message does it state that it is an adult service. Only in the website's smallprint it says "Clicking on the action link you're declaring to be 18+ and are accepting..."

I have no idea what this competition in June was for, as I did not enter my number. Sunny Alerts sent this SMS to some apparently random phone numbers (entered incorrectly, etc). I have no idea if it was an adult competition, but I'm curious how many phone numbers these adult services were marketed to belongs to underage persons.

Sunny Alerts can't even properly explain where they got my number (a promotion on Facebook in June is not sufficient for me), how could they tell it does not belong to a minor? And send advertising for an adult service to this number?

In short, this mobile number was entered into a web form, not validated, and now an ad for adult subs services was sent to it, without confirming the number or age group of the owner.

I'm not even going to start on how adult advertisements could damage the relationship between a couple.

The IP responded on 9 September 2013 as follows:

Thank you for your reply. We are sorry for the misunderstanding, but just to make sure we are on the same page and for the record, the service marketed IS NOT an adult service. You are right in saying that the website's text reads "Clicking on the action link you're declaring to be 18+..." but the only reason this is so is that this is a standard text used in some of our services and deleting that specific part was overlooked when the website was created. We have now changed it so as not to reflect this limitation, but anyway the only thing we can be accused of here is being overzealous and limiting the public the service is directed to, which is in fact against our own interests since it is suitable for everyone.

You state that the details we provided you with regarding how we obtained your number are not sufficient for you. We are willing and eager to provide you with whatever other details you need until you are fully satisfied with this matter.

*Thank you once again,
Pablo Lombardi
The Sunny Alerts Helpdesk.*

At this point the complainant escalated the complaint and requested that it proceed as a formal complaint. The complainant's request, along with related correspondence which I have referred to is annexed to this report and marked Annexure "A". The escalation notice also include a screenshot of the Web page which the complainant visited to assess the IP's contentions about the nature of the campaign.

The IP's detailed reply is annexed to this report and marked Annexure "B". I have only included the IP's reply and removed portions of Annexure "A" which followed.

The complainant's response to Annexure "B" is annexed as Annexure "C" and similarly edited to include only the reply.

The IP was given a further opportunity to respond and did so on 17 September 2013:

Dear Charles,

Thanks for the follow-up. At this point, it looks as if the complainant is repeating the same arguments, which we have already responded to to the best of our knowledge and with the utmost promptness and willingness to clarify this issue, so it doesn't look as if there is much more to be said. Once again, and to summarize, we feel that we have always acted out of goodwill and as such:

- The complainant was not spammed as he claims but rather than that there was an honest mistake in believing consent for sending messages to his number had been rightfully obtained. If this is not upheld, then it follows that most companies in the whole world are violating this rule, which would be absurd to say the least.*
- There is no such thing as false advertising anywhere in our portal.*
- The issue of the "suggestive" images was due to a human error. It was sorted out and the images quickly removed as soon as found out. It would be against our own interests to willingly promote inappropriate content within a certain portal.*

*Best regards,
Pablo.*

Sections of the Code considered

5.1.11. Upon request of the recipient of a direct marketing message, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained, and provide proof that the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

...

5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;*
- (b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications*
 - (i) at the time when the information was collected; and*
 - (ii) on the occasion of each communication with the recipient; or*

(c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

...

5.3. Prevention of spam

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

...

6.3.5. Content that is promoted in marketing campaigns, must be the same content that is delivered to or available to be retrieved by the customer's handset.

...

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 content services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult content service.

...

8.2.3. Adult services may not be marketed via direct communications with a customer of non-adult services, unless that customer has explicitly given permission for such marketing to take place and the customer has confirmed that they are, in fact, an adult.

...

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.

Sections of the Advertising Rules considered [if applicable]

I did not consider the Advertising Rules.

Decision

Spam

It is clear from the IP's correspondence with the complainant that the IP is unable to clearly –

identify the source from which the recipient's personal information was obtained, and provide proof that the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

Similarly, the IP finds itself in a position where its message to the complainant is likely unsolicited and is therefore spam according to clause 5.2.1 of the Code. Flowing from this, the IP also appears to have fallen foul of clause 5.3 which requires members to prevent spam.

Content and adult services

The complainant included clause 6.3.5 as a basis of his complaint. He suggested that the content he received when he subsequently subscribed to the IP's service to test it was not the same content as the content marketed in the IP's campaign website but this was not included in my case file so I am unable to make a determination on this aspect of the complaint. I am similarly unable to make a determination regarding alleged non-compliance with clause 11.1.2.

One of the major themes of the complaint is whether the IP's service is an "adult service". The IP insists that it is not. The complainant disagrees. The Code defines 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.

The Oxford English dictionary available on my Apple MacBook Air defines "sexual" as "relating to the instincts, physiological processes, and activities connected with physical attraction or intimate physical contact between individuals". The screenshot the complainant sent to WASPA as part of his expanded complaint (Annexure "A" to this report) shows cropped photos of four women in suggestive poses. It is disingenuous for the IP to argue that the images lack a "sexual nature" and even if the images are promotional material, the service falls within the scope of the "adult service" definition I quoted above.

The IP went to some lengths to argue that because the service is not an adult service, the requirement for people who are "18+" to be eligible to use the service was an error:

8.1.1, 8.1.2 and 8.1.3: as explained above, the service is not adult, so the text indicating it is so was removed when the complainant kindly informed us that it was erroneously being used. It had been in place due to our having reused the same text from an adult service running separately. Quickly thereafter, the images that the complainant is concerned about were removed as also explained above.

Not only did the IP neglect to clearly identify the service as an adult service, it then removed an age specific requirement that would have addressed clause 8.1.3, exacerbating its non-compliance with the Code. If, on the other hand, this was a genuine mistake and the underlying service is not intended to be an adult service, the question arises why the IP used sexually suggestive imagery to promote an unrelated service (which renders this an adult service as the Code defines it)? The manner in which the IP presented its service brings it into conflict with clauses 8.1.1, 8.1.2 and/or 8.2.3.

Sanctions

In light of my findings above, I direct the IP to pay fines of –

1. R20 000 for its breach of clauses 5.1.11, 5.2.1, 5.3.1 and 5.3.2; and
2. R10 000 for its breach of clauses 8.1.1, 8.1.2, 8.1.3 and/or 8.2.3, collectively.

The fines are payable on demand by the WASPA Secretariat.

Subject: Re: [WASPA.complaints] WASPA Code of Conduct complaint Ref: #21612
From: [REDACTED] <[REDACTED]@waspa.org.za.net>
Date: Tue, 10 Sep 2013 12:57:16 +0200
To: Sunny Alerts Helpdesk <help@sunnyalerts.com>
CC: "complaints@waspa.org.za" <complaints@waspa.org.za>

Good morning.

I would like to request the WASPA complaints team to escalate this complaint to a formal complaint, as per WASPA Code of Conduct section 14.3.

I apologise in advance to the adjudicator if I am a bit overzealous, but I'm considering this complaint in the view that the same message I received, and content available to me via this service might just as well be sent to my child, or any other child for that matter, which I see as a very serious problem.

The SMS: "Someone you don't know has shared their private pics with you: <http://bigmob.co/e/eefsfZk805B2004C> play private pic share stop?sms stop 44539R10/day".

In my honest opinion - this SMS indicates adult content.

Clicking the link in your SMS leads me to this page (attached: bigmob.png):

Plus the phrase "Enter your cell to unlock!" - indicates adult content to me.

I subscribed to this service with a personal cellphone account, as I was sure it could not be possible for a site with an SMS message and web-portal like above to ***not*** be an adult site.

I found several suggestive images on your site, and an adult image. The images has been supplied to WASPA. I do not feel comfortable attaching these images to an e-mail.

In summary this complaint now applies to breaches of the following WASPA Code of Conduct sections:

5.1.11: (Sending of commercial messages)
 | Upon request of the recipient of a direct marketing message, the
 | message originator must, within a reasonable period of time, identify
 | the source from which the recipient's personal information was
 | obtained, and provide proof that the organisation supplying the
 | originator with the recipient's contact information has the
 | recipient's explicit consent to do so.

The answer provided to me by the WASP is not sufficient in my personal opinion.

5.2.1: (Identification of SPAM)
 | Any direct marketing message is considered unsolicited (and hence
 | spam) unless:
 |
 | a) the recipient has requested the message;
 | b) the message recipient has a prior commercial relationship with the
 | message originator and has been given a reasonable opportunity to
 | object to direct marketing communications;
 | i) at the time when the information was collected; and
 | ii) on the occasion of each communication with the recipient; or
 | c) the organisation supplying the originator with the recipient's
 | contact information has the recipient's explicit consent to do so.

I have not requested the message. I have no prior relationship of any kind with the service provider.

5.3: (Prevention of SPAM)
 | Members will not send or promote the sending of spam and will take
 | reasonable measures to ensure that their facilities are not used by
 | others for this purpose.

According to section 5.2.1 of the Code of Conduct, this is a SPAM message.

6.3.5: (General provisions)
 | Content that is promoted in marketing campaigns, must be the same
 | content that is delivered to or available to be retrieved by the
 | customer's handset.

I believe the content advertised (on their portal - the semi-provocative images of women) does not match their content provided (rintones, wallpapers, and such). Thus, false advertising.

8.1.1: (Adult services)
 | Any adult service must be clearly indicated as such in any
 | promotional material and advertisements.
 8.1.2: (Adult services)
 | 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: (Adult services)
 | 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.

When I mentioned it was an adult service (before I subscribed to the service), the text indicating if you click the button to continue declares you're 18 years or older, was removed by the service provider,

and I was informed it was put there by mistake. Afterwards I subscribed and found a non-mistakable adult image (supplied to WASPA). Thus, since they removed that text, they've been breaching section 8.1.1.

8.2.3: (Prohibited practices)

- | Adult services may not be marketed via direct communications with a
- | customer of non-adult services, unless that customer has explicitly
- | given permission for such marketing to take place and the customer
- | has confirmed that they are, in fact, an adult.

I have not ever given this service provider any permission to advertise adult services to me.

11.1.2: (Promotion of subscription services)

- | 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.

The examples on their portal does not match the content they provide.

On 2013-09-09 3:43 PM, Sunny Alerts Helpdesk wrote:

Dear Mr. [REDACTED]

Thank you for your reply. We are sorry for the misunderstanding, but just to make sure we are on the same page and for the record, the service marketed IS NOT an adult service. You are right in saying that the website's text reads "Clicking on the action link you're declaring to be 18+..." but the only reason this is so is that this is a standard text used in some of our services and deleting that specific part was overlooked when the website was created. We have now changed it so as not to reflect this limitation, but anyway the only thing we can be accused of here is being overzealous and limiting the public the service is directed to, which is in fact against our own interests since it is suitable for everyone.

You state that the details we provided you with regarding how we obtained your number are not sufficient for you. We are willing and eager to provide you with whatever other details you need until you are fully satisfied with this matter.

Thank you once again,
Pablo Lombardi
The Sunny Alerts Helpdesk.

-----Original Message-----

From: [REDACTED] <[REDACTED]@za.net>
Date: Monday, September 9, 2013 1:16 PM
To: Pablo Lopez Puccio <help@sunnyalerts.com>, "complaints@waspa.org.za" <complaints@waspa.org.za>
Subject: Re: WASPA Code of Conduct complaint Ref: #21612

Dear WASPA complaints,

Further to my initial complaint, I want to please alter this complaint to include section 8.1.1 of the WASPA Code of Conduct.

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

The SMS that was sent to me, provided again for clarity:
| "Someone you don't know has shared their private pics with you:
| <http://bigmob.co/e/eesfZk805B2004C> play private pic share stop?sms
| stop 44539R10/day

Nowhere in this message does it state that it is an adult service. Only in the website's smallprint it says "Clicking on the action link you're declaring to be 18+ and are accepting..."

I have no idea what this competition in June was for, as I did not enter my number. Sunny Alerts sent this SMS to some apparently random phone numbers (entered incorrectly, etc). I have no idea if it was an adult competition, but I'm curious how many phone numbers these adult services were marketed to belongs to underage persons.

Sunny Alerts can't even properly explain where they got my number (a promotion on Facebook in June is not sufficient for me), how could they tell it does not belong to a minor? And send advertising for an adult service to this number?

In short, this mobile number was entered into a web form, not validated, and now an ad for adult subs services was sent to it, without confirming the number or age group of the owner.

I'm not even going to start on how adult advertisements could damage the relationship between a couple.

Regards,
[REDACTED]

On 2013-09-09 10:22 AM, Sunny Alerts Helpdesk wrote:

Dear Mr. [REDACTED]

Thank you for your reply. We've verified that your number came specifically from a promotion that was run on Facebook during the month of June.

Phone numbers were not validated at time of entry since a simple form was being used for people to input their data. Seeing that this might pose similar problems in the future, we will implement a validation procedure to make sure phone numbers actually belong to the person who is inputting the data.

Once again, our apologies for the inconvenience you've had to go through due to this oversight.

Best regards,
Pablo Lombardi
The Sunny Alerts Helpdesk.

On Sep 7, 2013, at 1:36 PM, "[REDACTED] <[REDACTED]@za.net>" wrote:

Pablo,

First, I don't take part in online games or competitions. Second, this is a company phone, I would have used a private phone number.

Is it not required that you validate a phone number that's used? If someone just put a random number in there, they start to get spammed?

I'm sorry, it's not acceptable. I want to know exactly where you got my number from. Your answer is too vague.

Regards,
[REDACTED]

On 2013-09-06 4:10 PM, Sunny Alerts Helpdesk wrote:

Dear Mr. [REDACTED]

Thank you for your message received via WASPA. In regards to your complaint, we run online games and competitions from time to time where people input their phone number and accept receipt of marketing messages during participation. It looks like your number was provided in the course of one of these marketing actions. Two possibilities cross my mind: is it possible that you might have input your number online at some point in time and don't remember having done so? Otherwise, if this is not the case, it is also possible that someone used a fake number when participating that ended up being yours, either willingly or unwillingly.

In any case, we apologize for the inconvenience we have caused you. It is in our best interest to only contact people who have effectively shown their willingness to be contacted. Please rest assured your number will be removed from our database with immediate effect and no more messages will be sent.

Best regards,
Pablo Lombardi.
The Sunny Alerts Helpdesk.

-----Original Message-----

From: WASPA Complaints <complaints@waspa.org.za>
Organization: WASPA
Reply-To: "complaints@waspa.org.za" <complaints@waspa.org.za>
Date: Friday, September 6, 2013 9:54 AM
To: Alex Rebuffo <alex@honolux.com>, Pablo Lopez Puccio <pablo@honolux.com>
Cc: "archive@waspa.org.za" <archive@waspa.org.za>
Subject: WASPA Code of Conduct complaint Ref: #21612

Dear WASPA member,

The attached complaint has been lodged with WASPA against Honolux.

After reviewing this complaint, the WASPA Secretariat believes that it can most likely be resolved using the informal complaint procedure described in 14.2 of the Code of Conduct.

Accordingly:

- We encourage you to contact the complainant directly, and to resolve this complaint directly with him or her.
- You have five working days to resolve the complaint with the complainant.
- If, after five working days have passed, the complainant is satisfied with your response, this complaint will be closed and no further action will be taken.
- If, after five working days have passed, the complainant is not satisfied that this complaint has been resolved, then this complaint will be escalated to a formal complaint.
- Please address any correspondence relating to this complaint, to complaints@waspa.org.za. Correspondence should not be sent to any other address.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to complaints@waspa.org.za.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the complaint follows below ---

Complaint #21612 (lodged via the WASPA website):

Full_Name: [REDACTED]

Cellular: [REDACTED]

Alternate_Contact_Number: [REDACTED]

Email: [REDACTED]@za.net

PhysicalAddress: 1301 Felixstreet
Mountain View
Pretoria
0082

PostalAddress: PO Box 23670
Gezina

PostCode: 0031

Affiliations: I am employed by, or otherwise associated with one of
WASPA's member companies

Affiliation_Information: I do work for WASPA.

WASPName: bigmob

OtherID: +2783 [REDACTED] & [REDACTED]

Code_Breached: 5.1.11
5.2.1

Detailed_Description_Complaint: Message received:2013-09-06 9:09AM:
\"Someone you don't know has shared their private pics with you:
<http://bigmob.co/e/eesfZk805B2004C> play private pic share stop?sms stop
44539R10/day

This is a company phone and there are no WASP services on it, nor will
there ever be. This is a risky SMS to send out to random people,
imagine a
wife getting hold of this.

In terms of CoC 5.1.11 I hereby request where this service provider got
my
cellphone number, and proof that whoever supplied my number to them has
my
permission.

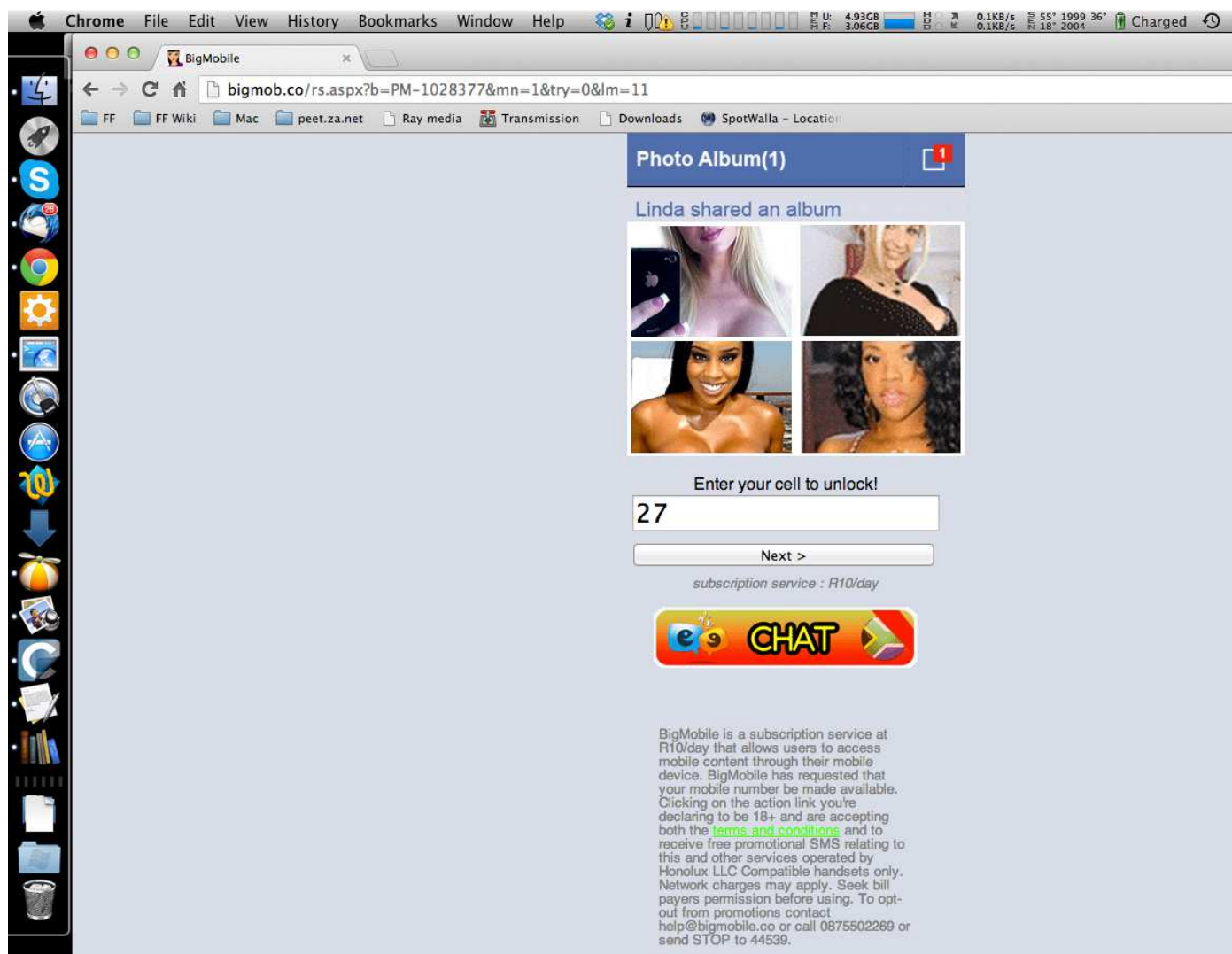
In terms of CoC 5.2.1 I consider this message SPAM, as I have not
requested this message, have no prior relationship with this service
provider, nor do they have my consent.

Tick_as_appropriate: I have not contacted the service provider and
believe
this matter requires WASPA's attention

Declaration_Good_Faith: Information provided is true and correct and
provided in good faith

--
[REDACTED]
PGP public key: [http://\[REDACTED\]@za.net/](http://[REDACTED]@za.net/) or hkp://[REDACTED]@za.net

--bigmob.png



bigmob.png	Content-Type: image/png
	Content-Encoding: base64

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaint Ref: #21612
From: Pablo Lopez Puccio <pablo@honolux.com>
Date: Wed, 11 Sep 2013 18:23:30 +0000
To: "complaints@waspa.org.za" <complaints@waspa.org.za>

Dear WASPA Secretariat,

Thank you for your email. We are sorry we have not been able to resolve this dispute via the informal procedure but the complainant has not been open to accepting any of our explanations, although we have tried our best to provide him with every piece of information he has requested to resolve this issue amicably.

I will try to respond to the complainant's points one by one, so you can have the full picture of what's actually happened.

- 1) It is the complainant's **opinion** that "the SMS indicates adult content". This is twisting the facts and we differ radically. No implication whatsoever is made to adult content in the message. The fact that a picture is private simply **does not** imply that it is adult.
- 2) It is the complainant's **opinion** that the phrase "Enter your cell to unlock" also implies adult content. Again, this is twisting the facts in a radical way. There is no implication whatsoever of adult content in that phrase. If the adjudicator honestly feels that such a phrase should not be used, we are open to changing it if necessary but, again, not for its implying adult content in any way whatsoever.
- 3) The complainant mentions that he found several "suggestive" images and one "adult" image on the site. We will not deny this as there is some extent of truth to this and we apologize therefor. The images the complainant is referring to were hidden in a submenu of the content portal (not readily accessible without a few clicks) and this was due to the fact that the portal was copied from another portal running in a different market that contained these images. Due to an oversight the images were not eliminated, but this does not make the service adult per se. This was due to a human error and immediate action was taken as soon as it was found out: the images were readily eliminated from the portal.

In terms of the specific WASPA Code of Conduct sections the complainant refers to as having been supposedly breached:

5.1.11, 5.2.1 and 5.3: The complainant states that the message he received should be considered as spam. We explained to the complainant that his number was given to us in the process of participating in a promotion where inputting the phone number and giving consent to receive marketing messages was part of the entry procedure. The complainant claims he did not input the number himself, which we can not know for sure, but assuming this is true, it could have happened that someone used false information and input the complainant's phone number instead of their own, either knowingly or by mistake. In our humble opinion it is a bit too far fetched to assume there was intention to harm or to deceive by the simple fact that the number was not validated at time of entry. This would render thousand of companies "deceivers" or "wrongdoers" for the simple reason that they ask people to give them their phone number to contact them in the future and some people enter their phone number incorrectly without the companies' knowledge.

6.3.5: The complainant's affirmation is intentionally misleading. No content in the type of "semi-provocative images of women" is advertised anywhere. As stated above, we only accept responsibility for having erroneously included one arguably "adult" image **within** the portal that was readily taken offline as soon as we found out about the error.

8.1.1, 8.1.2 and 8.1.3: as explained above, the service is not adult, so the text indicating it is so was removed when the complainant kindly informed us that it was erroneously being used. It had been in place due to our having reused the same text from an adult service running separately. Quickly thereafter, the images that the complainant is concerned about were removed as also explained above.

8.2.3: As stated above, this is not an adult service, so no adult service is being marketed whatsoever.

11.1.2: No advert sent or promoted by us contains examples of the content provided, so this accusation should simply be disregarded.

We are fully available to respond to any other questions, queries or clarification requests you may need from us to close this issue.

From: WASPA Complaints <complaints@waspa.org.za>
Organization: WASPA
Reply-To: "complaints@waspa.org.za" <complaints@waspa.org.za>
Date: Tuesday, September 10, 2013 1:02 PM
To: Pablo Lopez Puccio <pablo@honolux.com>, Alex Rebuffo <alex@honolux.com>
Cc: "archive@waspa.org.za" <archive@waspa.org.za>
Subject: [formal] WASPA Code of Conduct complaint Ref: #21612

Dear WASPA member,

The attached complaint has been lodged with WASPA against Honolux LLC. This complaint is being processed according to the formal complaint procedure described in section 14.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to complaints@waspa.org.za. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to complaints@waspa.org.za.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the complaint follows below ---

----- Original Message -----

Subject: Re: [WASPA.complaints] WASPA Code of Conduct complaint Ref: #21612

Date: Tue, 10 Sep 2013 12:57:16 +0200

From: [REDACTED]

Reply-To: complaints@waspa.org.za <complaints@waspa.org.za>

To: Sunny Alerts Helpdesk <help@sunnyalerts.com>

CC: complaints@waspa.org.za <complaints@waspa.org.za>

Subject: Re: [WASPA.complaints] Resolution of Complaint

From: [REDACTED] <[REDACTED]@za.net>

Date: Thu, 12 Sep 2013 11:20:50 +0200

To: complaints@waspa.org.za

CC: archive@waspa.org.za

Morning.

I am not happy with the response I received from the service provider.
There are three issues here:

- a) I was SPAMMED by this service provider.
- b) I believe there is false advertising on the service providers' portal. I might be wrong, but I would like the adjudicator to consider this.
- b) I managed to download Adult content from a service which the service provider ***explicitly*** stated is non-adult. Whether or not it was human error is (in my opinion) not an issue here. The issue is I happened to download the picture ***without*** indicating I'm 18 years or older, more importantly while being on a non-Adult service.

I would like to request the WASPA complaints team to proceed and assign this complaint to an adjudicator.

I've tried to summarise my response to their response as this:

- a) It's up to the adjudicator to decide if a service portal displays images where one needs to enter your cellphone number to continue, is seen as advertisements of content that is provided by that service (as per the screenshot of their portal sent). In my opinion, most if not all users will see it like that.
 - i) If so, the service provider's response (2) is moot.
 - ii) If so, my complaint against the breach of the WASPA Code of Conduct sections 6.3.5 and 11.1.1 applies.
- b) It's up to the adjudicator to decide if adult content found in a service portal causes the service to be assumed to be an Adult service, or not. In my opinion, I (and how many other people) entered a non-adult portal, and downloaded adult content. I'm sure it was a mistake, but that does not make it right, I still got adult content from an (explicitly stated) non-adult portal.
 - i) If so, my complaint against the breach of the WASPA Code of Conduct sections 8.1.1, 8.1.2, 8.1.3 and 8.2.3 applies.

Additionally to the service providers response to (3), I need to indicate that all the contents of the service is "hidden in a submenu" of the content portal.

Note that the WASPA Code of Conduct sections 5.1.11, 5.2.1 and 5.3 is still breached (in my opinion).

5.1.11 - They cannot clearly state where and when they got my number. "A competition on Facebook during June" is not sufficient for me. I was not even informed the name of the competition, what date and time my number was entered, not even what kind of competition it was.

5.2.1 - I had NOT requested the message, I have NO prior relationship with the service provider, and as for (c) their explanation deems this not applicable).

5.3 - (5.3.1) - They sent me spam, as indicated above.

Regards,

■■■■

On 2013-09-12 8:42 AM, WASPA Complaints wrote:

Dear ■■■■

Regarding your complaint against Honolux we have received the following correspondence from the service provider:

[see email below]

We would like to check that the service provider has resolved this complaint to your satisfaction. If so, we will close the complaint and notify the service provider that we have done so.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to [<complaints@waspa.org.za>](mailto:complaints@waspa.org.za).

Warm regards,
WASPA Secretariat

----- Original Message -----

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaint Ref: #21612

Date: Wed, 11 Sep 2013 18:23:30 +0000

From: Pablo Lopez Puccio [<pablo@honolux.com>](mailto:pablo@honolux.com)

Reply-To: [<complaints@waspa.org.za>](mailto:complaints@waspa.org.za)

To: [<complaints@waspa.org.za>](mailto:complaints@waspa.org.za)

Dear WASPA Secretariat,

Thank you for your email. We are sorry we have not been able to resolve this dispute via the informal procedure but the complainant has not been open to accepting any of our explanations, although we have tried our best to provide him with every piece of information he has requested to resolve this issue amicably.

I will try to respond to the complainant's points one by one, so you can have the full picture of what's actually happened.

1) It is the complainant's ***opinion*** that "the SMS indicates adult content". This is twisting the facts and we differ radically. No implication whatsoever is made to adult content in the message. The fact that a picture is private simply ***does not*** imply that it is adult.

2) It is the complainant's ***opinion*** that the phrase "Enter your cell to unlock" also implies adult content. Again, this is twisting the facts in a radical way. There is no implication whatsoever of adult content in