



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Opera Interactive
Information Provider (IP) (if any)	Phonebox Entertainment Inc
Service Type	Adult
Source of Complaints	Competitor
Complaint Number	#2252
Date received	28 September 2007
Code of Conduct version	5.3

Complaint

The Complainant alleged that the SP breached the Code of Conduct by allowing access to X18 content through one of its shortcodes. According to the Complainant "I believe all local content providers should be treated equally, and that www.phonerotica.com should either limit the content available to exclude XX and X18 - or cease operations in South Africa".

SP Response

The SP indicated in its Response that it had, on receipt of the Complaint, tested the site and discovered that IP had added some new content that could be classified as X18 rated onto its WAP site. They thereafter suspended the service and requested an explanation from the IP.

The SP accepted that its shortcode had been used to access X18 content and raised the following to be considered in mitigation:

"1) When the content provider first approached us we were aware it was intending to sell adult material via its own WAP site.

- 2) The service provider had already been running services in SA via other WASPs
 - 3) We put in safeguards to ensure compliance with the rules regarding adult services and specifically informed the content provider of the need to comply with Vodacom 1.7 classification for example.
 - 4) We also tested the service at regular intervals to ensure compliance. Our last test was on 25th August 2007. At this stage everything seemed to be in order. We do not know when the new content was first displayed -we are waiting for a response from Phonebox Inc. in this regard.
 - 5) Opera Telecom has only been responsible for receiving the premium rated MO message. We have not hosted nor distributed the content or had any other control over the WAP site or content management system.
 - 6) As far as we know the service has been marketed to a closed "opt-in" user list and has not been publicly promoted anywhere in South Africa. Opera Telecom itself has never sent any messages to subscribers in SA promoting the service or the content.
 - 7) The service is only available via Opera to Vodacom customers.
 - 8) We have had no other complaints or comments about the service until now.
 - 9) We note the complainants request to terminate the service or change the nature of the content. We have immediately complied with this request by suspending the service.
 - 10) We recommend the service remains suspended until we have clarified the nature of the material and an advisory sent to all Waspa members.
 - 11) We accept our responsibility as a WASP if there was a transgression and apologise fully."
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IP Response

The IP filed its Response as follows:

“We have investigated the issue. On September 18th 2007, at around 20:00 GMT, we made a change to our software that has inadvertently affected the content shown to the users. As you may be aware, our WAP site (PhonErotica) is configurable, it can show various levels of content based on the IP address (mobile operator) of the visitor. For example, in South Africa, when we charge using Opera, we show soft content according to the local legislation. At the same time, on the same site, a USA visitor will see more explicit content. Unfortunately, we made a simple change on Sept. 18th that changed this behavior without our knowledge. The change was unintentional.

In the hope that the shortcode is reactivated, we have reverted to a soft site that corresponds to the WASPA guidelines.”

Sections of the Code considered

The following section of Version 5.3 of the WASPA Code of Conduct was considered:

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.

Decision

The versions of the SP and the IP are accepted.

The Adjudicator finds that there has not been a breach by the SP insofar as the steps taken by it to not allow access to X18 content were reasonable.

This does not detract from the fact that a very serious breach of the Code has occurred. Notwithstanding the Adjudicator's acceptance that the breach was unintentional, the urgent need to prevent breaches of this nature requires the imposition of a substantial sanction.

The Secretariat is instructed to issue out a notice under section 13(5) of the WASPA Code of Conduct. Section 13(5) reads as follows:

13.5. Information provider notices

13.5.1. If the adjudicator has determined that an information provider is operating in breach of the Code of Conduct, and the adjudicator is of the reasonable opinion that the information provider may persist in such breach, whether through the member against whom the complaint was lodged or another member, the adjudicator may instruct the secretariat to issue a notice to WASPA's members.

13.5.2. The notice referred to in 13.5.1. must clearly identify the information provider and the relevant breach or breaches of the Code of Conduct, and must specify a date from which the notice applies.

13.5.3. Any member permitting the information provider to operate in breach of the Code of Conduct (in the same or substantially similar manner to that identified in the notice referred to in 13.5.1), after the date specified in the notice, will be automatically in breach of the same part or parts of the Code of Conduct as the information provider. Such members will be subject to sanctions determined by the adjudicator in accordance with section 13.4, read in conjunction with section 13.3.11.

The issuing of the notice is suspended subject to the IP not being found to be in breach of any provision of the WASPA Code of Conduct or Advertising Rules relating to adult content for two (2) years from the date on which it is notified of this Adjudication. In the event that the IP is found to be in breach of such provision the Secretariat shall immediately cause the section 13.5 notice to be issued and the date of coming into effect of the notice shall be the date on which the Adjudication is delivered to the Secretariat.