

REPORT OF THE ADJUDICATOR

WASPA member(s):	Infobip Africa (SP)
Source of Complaint:	Monitor
Type of complaint:	Advertising and pricing of services
Nature of complaint:	Escalation of a heads-up to Member
Date of heads-up:	2014-02-26
Date of escalation to formal complaint:	10 March 2014
Date of access of the service (cause of the complaint):	2014-02-25
Relevant version of the Code:	12.4
Clauses considered:	3.9.6, 4.1.1; 4.1.2; 6.1.1, 6.5.1
Relevant version of the Ad. Rules:	2.3
Clauses considered:	9.3.1; 9.3.2
Related cases considered:	None

Complaint

The complaint is the escalation of a *heads up* issued by the WASPA Monitor notifying the Service Provider of alleged non-compliance with the WASPA Code of Conduct (and Advertising Rules) applicable to the service in question, as described below.

Initial Notification of Non-Compliance

The Monitor notified the Service Provider on 2014-02-26 as follows:

A test was run on an advertisement concerning adult video services utilising the Service Provider's services.

The Monitor raised the following concerns with the advertisement content being in breach of the WASPA Code of Conduct:

- The billing information for the service was hidden at the bottom of a clickable image;

- The use of the term “XXX” was in breach of the advertising rules
- The use of the term “free” may not be used unless the customer is not charged any amounts to retrieve the content, with the exception of costs to download the content
- Whilst the advertisement claims that the service is free, a fee of R30 per SMS for the services is in fact payable.
- The use of the term “30 ZAR” (in the advertisement content in relation to the price of the service) is in breach of the WASPA Code.

In substantiation and to evidence the cause for the alleged breaches, the Monitor attached images and screenshots that reveal:

- The use of the words “free” and “XXX” in the title of the advertisement “APP Videos XXX Free”
- In the description of the service as “the best free porn videos app of Google Play” the use of the word “free”
- The information at the bottom of the relevant *page* that reveal the price for the service as 30 ZAR per SMS.
- On the tester opening the application price the new page confirms the price for the service as 30 ZAR per SMS.
- On the tester accessing the content through the instructions provided, the airtime balance of the tester reduced by R30.00 and the tester received an SMS confirming that the tester had access to the service for 24 hours.
- On the tester accessing and viewing the video, the tester concluded that the service was not of an XXX nature.

In that the service received did not correlate with the service advertised, a further issue of false advertising was noted. The relevant SMS Code as well as the relevant URL pertaining to the service was referenced in the supporting documentation.

The Monitor advised the Service Provider that the Service Provider had 2 days to revise the non-compliances to prevent a formal complaint being lodged.

Service Provider’s Response

The Service Provider responded that it had forwarded and discussed the issue with their Mobile Payments team, and that they were in contact with the client at the time to have the complaint resolved as soon as possible. Furthermore, the Service Provider noted that it will reply to the Monitor on receipt of feedback from the client and the mobile payments team.

With the exception of the above, the Service Provider has tendered no further response for consideration in this adjudication.

Formal Complaint

In the absence of further response or correspondence from the Service Provider, the Service Provider was notified of a formal complaint to be passed on to the Adjudicator for review. The notification of the complaint included a call for a late response which may be submitted to WASPA Secretariat. No further responses were received by WASPA Secretariat from the Service Provider.

Sections of the WASPA Code of Conduct Considered

3.9.6. The member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

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

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

6.1.1. In addition to the provisions listed below all members are bound by the *WASPA Advertising Rules*, published as a separate document.

6.5.1. The keyword \"free\" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

Sections of the Advertising Rules Considered

9.3.2 ADULT SERVICES [See also Age-Restricted Services]:

Use of the Terms XXX or X18

No advert may use the reference XXX or X18 if the content actually provided is objectively and/or legally not XXX or X18 respectively, or if the distribution thereof conflicts with any national law.

9.3.1 ABBREVIATIONS

Indication	Correct Abbreviation	Wrong Abbreviation
Rand Pricing	R7.50	R7.5 or 7.5R or ZAR7.5 etc

Decision

Taking account of the relevant sections of the WASPA Code of Conduct and the Advertising Rules, the content of the advertisement as evidenced by the WASPA Monitor in screenshots and images in the initial notification to the Service Provider; and in the absence of any substantial response from the Service Provider - **the SP finds itself with several contentions of the complaint that have not been responded to or mitigated.**

Hence, I find the SP is in breach of 4.1.1, 4.1.2 and 6.5.1 of the Code as contended in the complaint.

In addition, with reference to 6.1.1 of the WASPA Code of Conduct, the Service Provider is clearly in breach of the *WASPA Advertising Rules* in particular, sections 9.3.1 and 9.3.2.

Sanctions

In the circumstances, the Service Provider is fined R25 000.00

The Service Provider shall procure that the breaches of the Code and the Advertising Rules as specified above in the relevant service - is duly corrected and provide proof of same to WASPA within two (2) days of notification of this sanction, failing which the Service Provider is required to terminate the service.