



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch
Information Provider (IP) (if any)	
Service Type	Adult
Source of Complaints	WASPA Monitor
Complaint Number	2740
Date received	26 November 2007
Code of Conduct version	5.3

Complaint

The Complainant raised the flighting of a commercial for an adult service after 21h00 on 25 November 2007 as a potential breach of the WASPA Code of Conduct. The Complainant noted that the commercial had been inserted into a programming environment (ACTION X) which carried a 13 age restriction and concluded that "[N]udity and visual element are definitely not appropriate to viewers in that time slot".

SP Response

The SP filed the following Response:

"All our TV spots are booked by our Media Manager and are approved by stations. The station is aware of the nature of the TV commercial and that the brand is of an adult nature. We receive actual time stamps from the stations where the TV commercials flight, and upon receiving these I can see that we did flight a TV commercial for wallpapers of men on the 25th November in a program called Painkiller Jane at 22:15:46 not at 21:00. There were 4 additional TV commercials flighted on the 25th November on ACTION X as well.

Please note that no TV commercials are booked without the knowledge and

approval of the TV stations and none of the TV commercials flight before 22:00 and after 05:00. During this time the audience is presumed to be of an adult nature."

Sections of the Code considered

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.

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

Request for further information

The Adjudicator requested the Secretariat to request additional information from the SP in order to facilitate the adjudication of the Complaint. Accordingly the following request was sent to the SP on 7 December 2007:

'In its Response to Complaint 2470 the SP states the following:

"All our TV spots are booked by our Media Manager and are approved by stations. The station is aware of the nature of the TV commercial and that the brand is of an adult nature. We receive actual time stamps from the stations where the TV commercials flight, and upon receiving these I can see that we did flight a TV commercial for wallpapers of men on the 25th November in a program called Painkiller Jane at 22:15:46 not at 21:00. There were 4 additional TV commercials flighted on the 25th November on ACTION X as well."

Please provide details of the 4 additional TV commercials mentioned in the last sentence as having been flighted on ACTION X. Please specify the time at which advert appeared based on the timestamp provided as well as a description of such advert and whether it was of an adult nature or not.'

Notwithstanding such request and further reminders in respect thereof sent to the SP the additional information was not forthcoming and accordingly the Complaint falls to be adjudicated without the benefit of such information.

Decision

The Response provided by the SP is not satisfactory insofar as it states that one particular advert was flighted after 22h00 (which would, perhaps, be acceptable) but fails to provide any details of four flightings which it admits occurred in the earlier time slot before 22h00 and during the age 13 restricted ACTION X programme. This is not remedied by the broad statement that no adult content advertisements are flighted other than between 22h00 and 05h00 and that the TV Stations are aware of the adult nature of the advertising.

In the absence of the requested additional information – particularly as regards the nature of the advertisements which were flighted during ACTION X - the version of the Complainant is accepted.

The SP is accordingly found to have breached section 8.1.2 of the Code of Conduct in that promotions for adult services flighted by it were not within the context of the media in which they appeared.

The failure, furthermore, of the SP to provide the requested additional information constitutes a breach of section 3.1.1 of the Code in that the SP, a WASPA member, has failed to deal with WASPA in a professional manner.

In evaluating a suitable sanction the Adjudicator has considered:

- The failure of this SP to provide a formal response in respect of Complaint 2409 (in respect of which inaction a formal reprimand was issued);
- The failure of the SP to provide additional confirmation as requested in respect of Complaint 2402;
- The decision of the Adjudicator under Complaint #0304;
- The failure of the SP to provide a Response to this Complaint; and

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- The growing trend towards a failure to provide a Response or additional information as required by the WASPA Code of Conduct.

The SP is fined the sum of R6 000 in respect of the breach of section 8.1.2 of the Code. It should be noted that this is based on the single breach raised in the Complaint and not the possible three other breaches raised in the SP's initial Response.

The SP is further issued with a formal reprimand and a fine of R2 500 in respect of the breach of section 3.1.1. of the Code, payment of such fine suspended for a period of six months subject to the SP not

- being found to be in breach of section 3.1.1 of the Code; or
- failing to provide a Response or additional information as may be requested by the Secretariat in respect of any Complaint regarding the SP

within such period of suspension.
