# REPORT OF THE ADJUDICATOR

WASPA Member (SP): Marketel (Pty) Ltd

Information Provider (IP): N/A

(if applicable)

Service Type: Adult

Complainant: WASPA Monitor

Complaint Number: 3147

Code version: Code v5.7 and Ad Rules v1.6

# Complaint

1. The following complaint was lodged by the WASPA Monitor on 29 January 2008:

DateBreach: 20 january 2008

WaspService: 42654 - Marketel

ClausesBreached: 2.2.1 - Adult content and age restricted services.

DescriptionComplaint: This adult service ad (18 age restricted) ran an ad on Action X during a 13 Age restricted movie \"Covert One: The Hades factor\" on 20 January

2008. I can not supply a copy of the commercial to you.

Script of the ad: \"Sms Live. Over 18\'s only. R30/sms\".

2. It would appear that the allegation is not that clause 2.2.1 of the WASPA Code of Conduct has been breached, but rather that clause 2.2.1 of the Advertising Rules incorporated into the Code of Conduct by clause 6.1.1 thereof has been breached.

## Response

- 3. The SP responded to the complaint as follows:
  - 3.1. The advert in guestion did run on the date alleged.
  - 3.2. The advert complied with the WASPA Code of Conduct.
  - 3.3. The advertisement was placed with the broadcaster concerned ("media owner" in the SP's response) to be run at certain agreed times as per a set schedule.
  - 3.4. The times set out in the schedule were to correspond with adult programming.

- 3.5. The SP provided a copy of a schedule of advertisement placements provided by either an advertising agency or the broadcaster (this is not clear from the record) in respect of the period from 9 January 2008 until 30 January 2008. All entries for this period were substantially the same.
- 3.6. The heading of the Schedule reads as follows:

## **Media Placements Summary**

All Records: Placement Date in January for 'Marketel (Pty) Ltd (7800)'

Client: Marketel (Pty) Ltd (7800) Product: Explicit Phantasy

Campaign: 11270A - Media 2007 Start: 24-Oct-07 End: 31-Jan-08

Sch. No Category Description Start End

3324 Television ADULT TV Campaign 01/10/07 31/01/08

3.7. The entry in respect of the 20<sup>th</sup> of January 2008 reads as follows:

No Date Material Details Show / Position Size/Dur. Status M.I. No Inv. No
Action TV (DSTV) - 280305900 (Oracle Airtime Sales (Pty) Ltd - 6000915)

11270A/0361 20-Jan-08 EXHH/30/002/E - Adult - ActionX - ActionX; Various 30seconds Billed 17146 121A
Comments: Added Value - Late Night Adult Movie Package Contract No: 24110

- 3.8. The times set out in the schedule were agreed with the broadcaster (the SP does not make clear whether this was done through an advertising agency or directly).
- 3.9. The slots allocated for the advertisement in question were for periods during which adult programming would be broadcast.
- 3.10. The SP could find no record of any correspondence from the broadcaster or the advertising agency advising that the schedule had been in any way changed.

## Portion of the Code Considered

- 4. The following clause in the WASPA Code of Conduct was 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.
- 5. The complaint refers to clause 2.2.1 of the Advertising Rules, which is itself a summary of clause 2.3.1; the summary will however suffice for these purposes:

No Content Services that may directly or indirectly allow persons under 18 years of age to obtain Adult Content and/or any Age-restricted Content may be advertised in media of general distribution, unless an adult verification process (implemented

or approved by the mobile network operators) is in place to prevent - as may be reasonably possible - access to that content service by children.

Advertising material for content services may not contain visual images and/or words or phrases that constitute or depict sexual conduct as defined in the Films and Publications Act 65 of 1996 unless contained in media that has been lawfully authorised to be distributed to and/or viewed by persons over the age of 18 only, and/or media that is distributed under restricted conditions.

If on TV, any advertising of adult content on broadcast channels may only be done during the watershed hours defined by a licensed broadcaster and may not contain any sexual content or nudity in excess of that displayed within the programme the advertisement is placed in.

#### Decision

- 6. It is common cause that the advertisement in question was screened on 20 January 2008. It is however unfortunate that the complaint did not include the time that the advertisement was screened. Had this been provided, it would have been possible to check whether the advertisement was in fact screened during a "Late Night Adult Movie Package" as suggested by the schedule provided by the SP.
- 7. It is clear from the record that the SP had every intention that the advertisement be screened during a period of adult programming (called "watershed hours" in the Advertising Rules).
- 8. I have also been given no reason to disbelieve the SP's version that it arranged for the advertisement to be screened during such a period of adult programming.
- 9. It is clearly not the fault of the SP if the broadcaster screened the advert at an inappropriate time in breach of its agreement with the SP, or alternatively screened programming suitable for persons under the age of 18 years during a period that it had told the SP was reserved for adult programming.
- 10. Had the SP intentionally placed the advertisement in question during a period of adult programming or even if it had done so negligently then I would have had no difficulty in finding a breach of the Code of Conduct. The evidence however shows that any error was made by the broadcaster.
- 11. I can thus not find that the SP has breached either clause 2.2.1 of the Advertising Rules, or clause 8.1.2 of the Code of Conduct.
- 12. Should the broadcaster have performed either of the acts set out in paragraph 9, then the proper course is to institute a complaint against the broadcaster with the ASASA.
- 13. The complaint is not upheld.

11/2/2008