



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Mira Networks

Information Provider (IP)
(if any)

Service Type Adult service
Source of Complaints Ms I Venter
Complaint Number 4833
Date received 11 September 2008
Code of Conduct version 6.1

Complaint

The complaint involves a 12 year old child accessing the Moobabes.com portal, which is alleged to contain adult content. The complainant believes that the provisions of sections 8.1.1 and 8.1.3 of the WASPA Code have been breached in that the site does not contain any notice that the video clips on the site are of an adult nature; and that there is no indication that any request for age confirmation was sent to the child.

SP Response

The SP responded to the complaint by firstly clarifying that the user did not spend any money on the moobabes.com portal, but rather on the m-stream application which is downloadable on moobabes.com. M-stream is a video streaming application that is downloadable for free on the portal.

The SP has stated further that the South African version of M-stream gives access to 16+ content. When the application is started, the user is given a menu. Before being able to access any content by clicking the menu position "Start Liveshow", the user must certify that he or she is at least 16 years of age. If not, they will be returned to the main menu. There is no way of accessing the content, without confirmation of age.

Once the service is downloaded, the user may decide to top-up their M-stream account by sending a premium-rated SMS. The user is pre-warned before sending their top-up message of the pricing involved. The user can then choose to send their request or not. If they choose to proceed, they are once again requested to confirm if they want to send the SMS to the shortcode.

Sections of the Code considered

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.

2.2. An "adult content service" is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified.

2.6. A "child" refers to a natural person under 18 years of age.

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.

8.1.4. Marketing messages (including commercial communications) may no longer be sent to a customer of an adult service if that customer has not made use of the service during the preceding three months. This is to prevent the accidental marketing of such services to children as a result of a recycled telephone number.

8.2. Prohibited practices

8.2.1. Adult services must not contain references that suggest or imply the involvement of children.

8.2.2. Promotions for adult services must not appear in publications or other media specifically targeted at children.

Decision

I accessed the moobabes.com site at 03:42 pm on 19/09/08. I found topless thumbnail images on the landing page and hyperlinks describing the content that can be accessed from the page. The hyperlinks direct to bango.net and m-stream.carmunity.de (referred to by the SP in its response). The hyperlink to the m-stream service is as follows:

18+ Live-Cam-Player 2min FREE

There is no express notice on the site's landing page that the services are adult services or adult content services. When accessing any of the hyperlinks, you are re-

directed to the aforesaid sites and asked to enter your phone number in international format. Once again there is no mention made of the adult nature of the services.

In light of the foregoing, I find that the SP has breached section 8.1.1 of the WASPA Code.

Sanctions

Breaches of the provisions of the code which relate to adult content and adult services are viewed in a very serious light. The child referred to in the complaint is 12 years old and has gained access to the adult content on the site with relative ease. Charges that have been incurred from using the service amount to R4 500.

In light of the foregoing, the SP is ordered to:

1. Refund all charges incurred by the complainant in relation to the adult services accessed from the moobabes.com site;
2. Pay a fine of R 50 000.00;
3. Amend the home page of the website: www.moobabes.com to comply with the WASPA Code and Advertising Rules, particularly by expressly stating that adult services are being offered.

These sanctions are not to be suspended pending any appeal by the SP.