



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Wap Network Group Limited
Information Provider (IP):	Not applicable
Service Type:	Adult content service
Complainant:	Public
Complaint Number:	5223
Code Version:	6.2
Advertising Rules Version:	Not applicable

Complaint

The complainant has lodged a complaint against the member on the following basis:

Received unsolicited messages of an offensive adult nature from Wapbill.net. The call centre number being 011-461-33231 is not operational. The number listed on the WASPA website is also not listed correctly - it is for a company called Global Gold. So it is nearly impossible for a South African to contact Wapbill unless you have access to the internet.

Has not at any stage downloaded or ordered content of an adult nature. The complainant requests details on how her number was obtained and if WAP portals are able to gather phone numbers as one passes over them, is this not in breach of privacy laws in South Africa?

It is unknown whether there has been charges to her phone and what the charges might have been

The complainant has alleged that the member has infringed the following sections of the Code:

- **4.1.3.** Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address
- **4.1.6.** Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).
- **4.1.7.** Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.
- **5.1.7.** Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.
- **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.

The complainant has maintained that she did not visit the member's site and is concerned that her personal information has been misappropriated and abused.

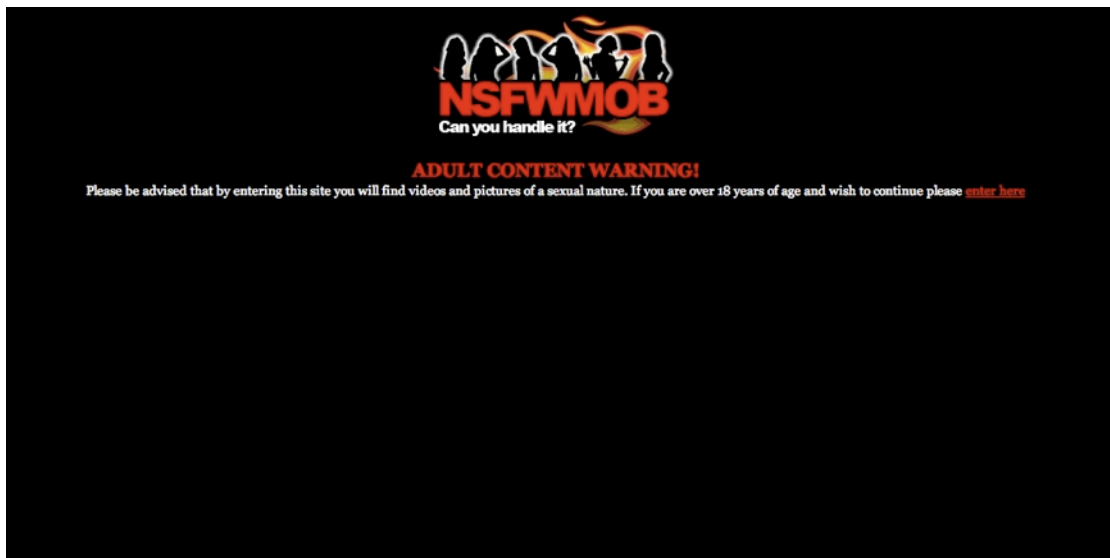
Service provider's response

The member maintains that it has server logs indicating that the complainant accessed its service. I was not briefed with the logs and I am unable to comment on the extent to which the logs confirm the complainant accessed the member's service. The member has indicated that the complainant's phone number was associated with her apparent access of the member's service so I have assumed, for the purpose of this report, that the logs reflect that a device associated with the complainant's phone number was used to access the member's service.

The complainant was not satisfied with the member's communications to her explaining that it -

- could only have sent promotional messages to the complainant's handset if her handset was used to access the member's service;
- does not send unsolicited "adult themed content";
- clearly indicates to WAP users that its site contains "material of an adult nature" and that it is only available to users who are over the age of 18; and
- includes clear "opt out details" in all its promotional messages.

The member subsequently advised me that the site the complainant is alleged to have accessed can be found at <http://www.nsfwmob.com/za/>. I refer to this site address as the "site's landing page" below. A screenshot of the site when this report was prepared is below:



This screenshot is relevant to whether the member has complied with the Code.

Sections of the Code considered

I considered the following provisions of the Code which the complainant contends the member has breached (the provisions of each section are [set out above](#)):

- **4.1.3** - As is evident from the screenshot above, the member does not detail "full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address". The member has not complied with this section.

- **4.1.6** - The member has contended that it provides a landline telephone number for its call centre and despite the complainant's contentions that the call centre was not accessible through this number, I have not been furnished with sufficient evidence to make a determination as to whether the member infringed this section of the Code.
- **4.1.7** - As I mentioned above, the member has advised WASPA and the complainant that its call centre is accessible through a South African telephone number. The complainant has not disputed that the number was provided and rather has maintained that the number is not "operational". I have therefore not been furnished with sufficient evidence to make a determination as to whether the member infringed this section of the Code.
- **5.1.7** - The complainant requested the member to advise her how it came to be in possession of her personal information given that she did not access the site. The complainant made correspondence available to us in terms of which the member advised the complainant that her handset was used to access the site and therefore the member came to be in possession of her personal information. While the member does appear to have responded to the complainant's inquiries in this regard, I have not been furnished with evidence as to when the request was made and responded to and I am therefore unable to make a determination as to whether the member infringed this section of the Code.
- **8.1.4** - The complainant has not alleged that the member sent her marketing messages despite her not having made use of the member's service for a period of three months. Rather she has contended that she did not access the site. I have therefore not been furnished with sufficient evidence to make a determination as to whether the member infringed this section of the Code.

There is no indication in the complaint whether the member's site complies with sections 4.1.9 or 4.1.10 which provide as follows:

4.1.9. Members undertake to inform their wireless application service customers that they are bound by this Code of Conduct. Members also undertake to make these customers aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer wish to do so.

4.1.10. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

Although not specifically mentioned in the complaint, I am concerned that while the member has included a link for a user to click on to indicate the user is above the age of 18, there is no exit option available for users who are younger than 18 and who may have arrived at the site in error. I am therefore in doubt as to whether the member has adequately complied with section 8.1.3 of the Code which provides as follows:

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.
(*emphasis added*)

Providing a single option, namely to indicate that the user is above the age of 18 and wishes to access the site, does not constitute a reasonable step to ensure that users are above the age of 18 and wish to access the site. "Reasonable steps", in my view, require that users be given at least two options based on their age and/or desire to enter the site. One option should be to enter the site and signify that the user is above the age of 18 and the second option should be to refrain from entering the site either because the user does not wish to access the site or because the user is too young. Where possible, the option should default to the latter so as to ensure that the user positively asserts that he or she is above the age of 18 and wishes to enter the site.

Decision

The member appears to have contravened sections 4.1.3 and 8.1.3 of the Code for the reasons set out above. The information which the member is required to furnish in terms of section 4.1.3 should be presented on the site's landing page.

I am concerned that the member may not have complied with sections 4.1.9 and 4.1.10 and the member is required to publish the requisite advisories on the site's landing page.

Sanctions

Given the member's failure to comply with the provisions of the Code I impose a fine of R5 000 on the member. The member does appear to have attempted to address

the complainant's concerns and to assist the WASPA Secretariat in its investigation of this complaint and I therefore suspend the fine for a period of 3 months provided the member is not found to have infringed sections 4.1.3, 4.1.9, 4.1.10 and/or 8.1.3 in that time.

In addition to the suspended fine, I also instruct the member to suspend access to the site until such time as it has complied fully with sections 4.1.3, 4.1.9, 4.1.10 and 8.1.3 in that it has -

- detailed its full contact details on the site's landing page, including the registered company name, telephone and fax numbers, e-mail address and physical address;
- informed its customers/users that it is bound by the WASPA Code of Conduct and has made these customers/users aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer / user wish to do so;
- included a link to the WASPA web site and/or this Code of Conduct; and
- taken reasonable steps to ensure that only persons of 18 years of age or older have access to its adult content services and further that it has implemented steps to ensure that it obtains explicit confirmation of a user's age prior to the delivery of an adult content service (this includes granting access to the site beyond the site's landing page).

Findings date: 15 April 2009