



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	A breach regarding adult content and the "Sexy Cherry" subscription service.
Complainants:	Monitor
Complaint Number:	7240
Code Version:	7.0
Advertising Rules Version:	N/A

Complaint

The Monitor wrote:

“Adult service Infringements.

Usage of Vodacom Billing to provide access to restricted content. The service contains imagery showing female genitalia. Content available on the service would be rated as CS3.1/2.

In certain images the Anus is visible therefore exceeding CS3.1/2.

Distribution of content rated higher than CS3.1/2 is prohibited.
Examples as downloaded from www.sexys.mobi

Breaches of Code:

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.

3.1.2. Members are committed to lawful conduct at all times.

Requirements:

All illegal content is to be removed with immediate effect.”

The Monitor provided the following feedback:

"This is a very serious offence and Buongiorno need to provide more feedback than "we've made changes".

I need to know exactly what those changes are."

In its final response the Monitor wrote:

"I think this should proceed to normal adjudication (unless Ant totally disagrees). I feel that they should be appropriately sanctioned even though they've removed the content."

Service provider's response

In its initial response the SP stated:

"Thank you for making the issue known to us. We've reviewed the Adult content in question and we have made the changes accordingly as per the WASPA code of conduct. Once again we thank you for bringing this to our attention."

In its final response the SP wrote:

"The content has been removed from the Web site. Please would you be so kind as to inform the media monitor in this regard. Thank you again for bringing this matter to our attention."

Sections of the Code considered

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.

3.1.2. Members are committed to lawful conduct at all times.

Decision

In adjudicating a matter the Adjudicator has to rely on the information provided to him / her.

In this matter the Adjudicator has taken note of the complaint lodged and the SP's subsequent response.

The SP has not contradicted the complaint and has therefore acknowledged its breach of the Code of Conduct.

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;
- The SP's subsequent conduct

Although the SP has acted on rectifying the breach, the Adjudicator does not warrant the excuse or response offered by the SP as sufficient or justified.

A breach of this nature and especially the content displayed in the particular instance are unacceptable and must be regarded as a serious offence.

The SP is fined:

1. R30 000 for its breach of section 3.1.1; and
2. R50 000 for its non-compliance with section 3.1.2.

These fines must be paid to the WASPA Secretariat within 5 (five) working days after receiving notice hereof.
