



## REPORT OF THE ADJUDICATOR

|                                                     |                                                              |
|-----------------------------------------------------|--------------------------------------------------------------|
| <b>WASPA Member (SP)</b>                            | Exact Mobile (Pty) Ltd.<br>Cell C                            |
| <b>Telephone Network(s)</b>                         | MTN<br>Vodacom                                               |
| <b>Information Provider (IP)</b><br>(if applicable) |                                                              |
| <b>Service Type</b>                                 | Content Downloads (games, ring tones, wallpapers, logos etc) |
| <b>Source of Complaints</b>                         | Competitor                                                   |
| <b>Complaint Number</b>                             | #0017                                                        |

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### Complaint

A complaint was received from a competitor of the SP concerning a portion of the SP's advertising directory (booklet form) number 21. The complaint concerned the "Romance" sub-section of the "Info Alerts" Section.

The Secretariat conducted an investigation into the service offered by the SP.

The following breaches of the WASPA Code of Conduct were raised:

#### **8. Adult services**

##### **8.1. Required practices**

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 services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult service.

The Secretariat investigated the Complaint and determined that there may be an additional breach of the WASPA Code of Conduct, namely:

##### **8.2. Prohibited practices**

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

## Investigation

The SP's directory is available by physical post and is available for collection from a large number of physical outlets, including mobile phone shops, fast food chains and the like, thus making them easily accessible to children, even if not specifically targeted at children.

The WASPA Code of Conduct defines "adult services" as 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. There is no requirement that adult services be pornographic in nature, or fall within any specific age categorisation, in terms of the Film and Publications Act, 65 of 1996 or any other applicable standard.

The sub-section complained about contains six content items, namely "Sweet Nothings..." "Love & Sexy Match", "Love Poems", "Marriage Match", "Love & Sex Tips" and "Karma Sutra". The images associated with these services are romantic in nature (soft focus, couples kissing, hands held) and not particularly suggestive. Only three of these services were regarded as possibly of a "clearly sexual nature", namely the Sexy Match component of the "Love & Sexy Match" info alerts, "Love & Sex Tips" and "Karma Sutra".

Further investigation of these services indicated that content received is in SMS format and while of a sexual nature, is generally informative and not particularly explicit in its content.

The Secretariat received a response from the SP, which indicated:

- The directory, which is the subject of the complaint (number 21), was produced in February 2005 and distributed for 6 weeks. The 21<sup>st</sup> directory has been replaced by the 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup> and the 25<sup>th</sup> directory, the 25<sup>th</sup> directory being current at the time of the complaint.
- The SP made a decision from the 24<sup>th</sup> directory not to advertise any adult services (or services that could be construed as adult services), therefore complying with the WASPA Code of Conduct.
- It is possible that there are older directories lying in stores in the market, as consumers may not yet have picked some up. The SP cannot be held responsible for old marketing material produced and distributed in February 2005, which may contravene the WASPA Code of Conduct at that time.
- The services are textual in nature and the pictures used in the associated advertising are not of an adult nature.

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## Decision

The Adjudicator did not uphold the complaint, as the date of publication of the SP's directory precedes both the:

- adoption of the WASPA Code of Conduct by WASPA (30 June 2005); and

- date on which the WASPA Code of Conduct came into effect (being 1 September 2005).

The Adjudicator made no specific finding on whether the services advertised in the sub-section of the directory which is the subject of this complaint constitute “adult service” as defined in the WASPA Code of Conduct. It should be noted and the Adjudicator warns, that should these services be regarded as “adult services” in terms of the WASPA Code of Conduct, the absence of an adult verification mechanism as required in Clause 8.1.3 of the WASPA Code of Conduct, could render the SP liable for a breach of the WASPA Code of Conduct.

The Adjudicator recommends to the SP that reasonable be taken to remove previous directories, that are possibly in breach of the WASPA Code of Conduct, from the outlets at which it was placed.