



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Integrate Mobile Aggregation Services
<b>Information Provider (IP)</b> (if any)	Corelli Limited
<b>Service Type</b>	Subscription service
<b>Source of Complaints</b>	SABC
<b>Complaint Number</b>	2415
<b>Date received</b>	16 October 2007
<b>Code of Conduct version</b>	5.3

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### Complaint

I have been furnished with a copy of an e-mail complaint lodged by the SABC. The e-mail is dated 19 June 2007. However, the WASPA secretariat sent notification of the complaint to the SP on 16 October 2007. I will therefore take the latter date as the correct date for lodgement of this complaint.

The complaint refers to a commercial advertising a subscription service for tips and advice on love to be sent to the subscriber's cellphone. The commercial was submitted by the IP's placement company, Media Initiative, to the complainant together with draft schedules on the relevant programming during which the commercial could be flighted. It appears from the schedules submitted by Media Initiative that the relevant programming is aimed at children under the age of 5 years.

Although the complainant does acknowledge that the commercial does not contain *explicit sexual content*, it believes that the commercial is deliberately promoting *adult-orientated* content towards children in contravention of the WASPA Code of Conduct.

Since this incident, the complainant decided to stop flighting any SMS commercials in children's programmes, regardless of content.

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## **SP Response**

The SP raises a preliminary point that neither it nor the IP are responsible for the placement of the commercial on the complainant's programming schedule and that it is the responsibility of the broadcasting personnel and in particular the broadcasting manager (in the employ of the complainant) to ensure that adverts are placed in the appropriate slots.

The SP also alleges that it is the complainant, as the broadcaster, who is ultimately responsible for compliance with the Broadcasting Code which includes the following relevant provisions:

### ***Application of the Code***

- 9. All licensees are required to ensure that all broadcasts comply with this Code and are further required to satisfy the Authority that they have adequate procedures to fulfill this requirement. All licensees should ensure that relevant employees and programme-makers, including those from whom they commission programmes, understand the Code's contents and significance. All licensees should also have in place procedures for ensuring that programme-makers can seek guidance on the Code within the licensee's organisation at a senior level***

### ***Children***

- 18. Broadcasters are reminded that children as defined in paragraph 3 above embraces a wide range of maturity and sophistication, and in interpreting this Code it is legitimate for licensees to distinguish, if appropriate, those approaching adulthood from a much younger, pre-teenage audience.***

**18.1 Broadcasters shall not broadcast material unsuitable for children at times when large numbers of children may be expected to be part of the audience.**

The SP then refers to the visual and auditory elements of the commercial and argues that the content of the commercial is clearly not directed at children. For the sake of completeness, the SP states that the advert is displayed on a sky blue background and opens with cupid shooting an arrow before the voice over describes the benefits of the service. There is no nudity, caressing, kissing or fondling of genitals or breasts and the adult models depicted in the advert in cartoon form are fully clothed.

The voice-over script reads as follows:

***“New...get a daily love message on your cell. Send a text message with “love” to 31603, so sms “love” to 31603 now! Make the right moves on the person you have a crush on; get some good advice on great kissing; perhaps today is the day you’ll find the love of your life; get the best love tips on your cell. Send “love” to 31603 now, so sms “love” to 31603.*”**

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## **Sections of the Code considered**

### **The definition sections of the Code and Advertising Rules**

**“Adult service”** is defined 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.*

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**“Adult content service”** is defined as *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.*

**Adult:** Any persons 18 years or older. (See also ‘Child’)

**Adult Content:** Content classified as suitable only for persons 18 years or older in terms of the mobile network operators’ Content guidelines, and/or Content classified (or which would be classified) as XX, X18 and/or F18 in terms of the Films and Publications Act 65 of 1996 as amended.

**Adult Media:** 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 as defined in the Films and Publications Act 65 of 1996

**Age Restricted Content:** Content Services restricted to users above 18 years of age and includes, but is not limited to Adult Content and Gambling Services. The phrase age restricted content services shall be construed accordingly.

**X18 Classification:** The Films and Publications Act 65 of 1996 defines X18 as:

- (I) containing a visual presentation, simulated or real, of explicit sexual conduct which, in the case of sexual intercourse, includes an explicit visual presentation of genitals;
- (II) describing predominantly and explicitly any or all of the acts described in the XX category

**XX Classification:** The Films and Publications Act 65 of 1996 defines XX as:

- (i) containing a visual presentation, simulated or real of:
  - (a) a person who is, or is depicted as being, under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity;
  - (b) explicit violent sexual conduct;
  - (c) bestiality;
  - (d) explicit sexual conduct which degrades a person and which constitutes incitement to cause harm; or

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(e) the explicit infliction of or explicit effect of extreme violence which constitutes incitement to cause harm;

## **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.*

### **8.2. 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.*

## **Section 2.3 of the Advertising Rules**

### **2.3 GENERAL TERMS**

*2.3.1 ADULT SERVICES [See also Age-Restricted Services]: If the ads used to advertise any Adult Content themselves contain Adult Content, these ads are restricted to Adult Media // Ads referring to any Adult Content are restricted under certain conditions // An age verification system must be used for access to any Adult Content. // A warning that users must be 18 years or older to use a service must be*

shown.

- **Advertisements Containing Adult Content (Images/Words/Sounds):**

*In respect of the format and design of advertisements which are used to advertise Adult Content Services, if the advertisements themselves contain visual images and/or words or phrases that constitute or depict sexual conduct as is defined in the Films and Publications Act 65 of 1996, then these advertisements may only be advertised in Adult media. This restriction applies even if 'stars,' black strips or other attempts at direct visual blocking or disguising of any sexual conduct or explicit nudity are used in an advertisement.*

- **Advertisements With References To Adult Content:**

*In respect of an advertisement that contains references to Content Services, where that Content constitutes or depicts sexual conduct as defined in the Films and Publications Act 65, but where the advertisement itself for that Content does not constitute or depict sexual conduct as defined in the Films and Publications Act 65, then advertisements that so contain references to the (explicit) Content may be placed in any media, provided that:*

*(a) An Adult Verification System is in place for access to that Content or service,*

**AND THAT**

*(b) The format, placement and design of the advertisement so referring to the (explicit) Content:*

- *is in keeping with the general nature, tone and theme of that particular media and is not calculated to offend the audience having access to that media, AND*
- *abides by any advertising rules set by the owner or controller of that particular media, AND*
- *conforms to any rulings issued by the ASASA in respect of that particular type of advertisement and media, AND*

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- *conforms to any similar rulings by the WASPA Adjudicator or WASPA Appeals Panel in respect of that particular type of advertisement and media, AND WHICH*
  - *conforms to any particular rules set by any mobile operator in respect of use of that Access Channel.*
- **WATERSHED HOURS:**

*For broadcast media (eg TV/Radio) where a policy of watershed hours is implemented, advertisements containing sexually explicit words, images, or sounds:*

- (a) may only be broadcast during the watershed hours so defined by a licensed broadcaster, AND*
- (b) may not contain any sexual Content or nudity in excess of that displayed within the programme the advertisement is placed in.*

*For example, if no nudity is displayed within the programme, then no nudity (whether depicted through animation or otherwise) is allowed in the advertisement.*

**IMPORTANT NOTE:**

***It is entirely the responsibility of those placing an advertisement to determine which laws apply to its service as well as the extent or not of the Adult nature of the programme advertised in.***

***Advertisers must thus contact the relevant broadcaster to determine the classification/rating of any programme before placing their advertisements.***

- ***Any advertisement that has reference to Content or services that are legally restricted to use only by Adults must indicate that it is for Adults only and/or that verification of the user's age may be required.***

*This indication must be placed both in the T&C and in the body of advertisement where the service or Content is advertised.*

- ***No abbreviations to indicate the Adult restriction are allowed (eg '18' or***

**'18+' may not be used).**

*Rather, text indicating the Adult restriction should use the following terminology:*

*"Adults Only. Verification of your age may be required."*

*"You must be over 18 to view images or hear sounds. Verification of your age may be required."*

*"You must be over 18 to enter this competition. Verification of your age may be required."*

### **2.3.2 Age-Restricted Services Indicate If Age-Restricted**

- ***Any services that would or should ordinarily be restricted to Adults – which may include Adult Content Services - or where it would be undesirable for Children to have access to those services because of the potential Adult nature of the service, must be indicated as being Age Restricted.***

*Examples of Age-Restricted Services (non-exhaustive list):*

- *Gambling Services*
  - *Contact-type services where Children may potentially come into contact with Adults masquerading as Children*
  - *Adult Content*
  - *Dating Services*
  - *Content that does not necessarily fit the definition of Adult Content, but which may contain images, audio or text that is obscene or otherwise unsuitable for access and consumption by Children*
  - *Competitions with Age Restrictions*
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- ***No abbreviations to indicate the Age Restriction are allowed (eg '18' or '18+' only may not be used).***

*Rather, text indicating the Age Restriction should use the following terminology:*



*“Adults Only. Verification of your age may be required.”*

*“You must be over 18 to view images or hear sounds. Verification of your age may be required.”*

*“You must be over 18 to enter this competition. Verification of your age may be required.”*

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## **Decision**

The first issue to be considered is whether the LOVE subscription service being advertised can be classified as either:

- a) an “adult service”; or
- b) an “adult content service”; or
- c) an “age-restricted service”.

I am satisfied after viewing the advert that it does not fall within the parameters of a) and b). However the question remains whether it can be classified as an age-restricted service.

Age-restricted services include any services that would or should ordinarily be restricted to Adults (i.e. persons over the age of 18) or where it would be undesirable for Children (i.e. persons under the age of 18) to have access to those services because of the potential Adult nature of the service.

A non-exhaustive list of possible examples of age-restricted services is listed in section 2.3.3 of the Advertising Rules.

I do not believe that access or consumption of the content services advertised by the IP in the commercial should be restricted to persons over the age of 18 years. Crushes on the opposite sex, kissing and experiencing the “idealised” feelings of love

as depicted by images of cupid would probably be deemed appropriate by a reasonable parent of children in the pre-pubescent and/or teenage stages of their development.

I believe that it is necessary to distinguish between *age-restricted services* and *age-appropriate services*. The following section of the Broadcasting Code quoted by the SP in their response is fundamental in understanding this distinction:

***Broadcasters are reminded that children as defined in paragraph 3 above embraces a wide range of maturity and sophistication, and in interpreting this Code it is legitimate for licensees to distinguish, if appropriate, those approaching adulthood from a much younger, pre-teenage audience.***

I agree with this statement and believe that it should be kept in mind when reaching a value judgment as to whether the LOVE subscription service advertised by the IP is age-appropriate for the audience targeted by their media placement company (it is stated that the age group is under 5 years old).

While it may be difficult to pin down exactly what age the abovementioned stages of development for every child commences, it is clear that it would not be at the age of 5 or less.

I therefore find that the advert in question is not age appropriate for the scheduled programming slots the IP's agent has requested and that it should be placed in programming that is aimed at a target audience of 12-18 year olds.

The SP's argument that it, and/or the IP, are not responsible for placing the advertisements is not a good one and is contrary to what is expressly provided for in bold in the Advertising Rules:

***IMPORTANT NOTE:***

***It is entirely the responsibility of those placing an advertisement to determine which laws apply to its service as well as the extent or not of the Adult nature of the programme advertised in. Advertisers must thus contact the relevant broadcaster to determine the classification/rating of any programme before placing their advertisements.***

## **Sanction**

The IP has not contravened any specific section of the Code and/or Advertising Rules in their current form. However, advertising content services during age-inappropriate times and programming slots with the complainant is contrary to the spirit and underlying purpose of the Code.

The SP is ordered to take the necessary steps to ensure that the TV advertisement in question is aired at times and during programming which is age-appropriate. It is recommended that the IP, and/or its agents, should confirm appropriate time and programming schedules for its adverts with the relevant broadcaster beforehand.