



FINAL REPORT OF THE ADJUDICATOR

WASPA Member (SP)	SMS-NET.ZA
Information Provider (IP) (if any)	Waptrick
Service Type	Advertising, Adult content
Source of Complaints	Public
Complaint Number	2430
Date received	22 October 2007
Code of Conduct version	5.3

Introduction

In this matter the Adjudicator, after having conducted an initial review of the matter , issued out an Interim Decision pursuant to receipt of the following Complaint by the WASPA Secretariat:

“Pls assist me here! How is it that My 12 yr old son can go to a website on his cell to download games and on the same site has full access to download ADULT CONTENT. This is done without him having to put in a password or anything no questions asked! Surely this is why society is what it is and that every child at school these days as obscene adult content on their phones. The webstie add is www.waptrick.com. Pls advise. and if this is international website then how are we going to control this????”

The SP filed a brief response in the following terms:

“We'd like to inform you that waptrick.com is one of many wap sites where we advertise in. We do not have control on the content that is found in there. This site is working like many web sites from which anyone can easily reach adult contents.

In our site, one is first warned while entering adult section with +18 age warning, and also a second check is done using the adult allowance data given from Vodacom operator.”

The Interim Decision found the IP to be in breach of section 8 of the WASPA Code of Conduct with particular reference to section 8.1.3 and the SP was ordered to terminate its relationship with the IP. It appears that this has been done. The Secretariat was also requested to issue a section 13(5) notice in respect of the IP to ensure that it did not enter into a relationship with any other WASPA member for the delivery of its content.

The Interim Decision found it likely that the SP had also breached the Code of Conduct but that further information was required.

Further information received

The Interim Decision requested the following additional information from the SP:

“The Adjudicator further requests the Secretariat to:

1. Request details of the MSISDN which is the subject of the Complaint from the Complainant;
2. Request the SP to file further information with the Secretariat relating to:
 - a. Logs in respect of the use of the service by such MSISDN;
 - b. The precise manner in which the IP’s service is accessed through its service;
 - c. Proof of any steps taken by it to bring the attention of the IP to the existence and provisions of the WASPA Code of Conduct.
3. The Secretariat is further requested to impress upon the SP the seriousness of the alleged breaches raised against it and that these do not relate to any advertising by the SP on the IP’s website but rather to the accessing of adult material on the IP’s website through the SP’s service.”

The SP answered in the terms set out below:

a. Logs in respect of the use of the service by such MSISDN;

TELNO	REQUESTTYPE	REQUESTCODE	CONTENT NAME	INTIME	CHARGE
27796025496	VIDEOCLIP	3442	dancing in the bathroom	10.10.2007 18:06	15000
27796025496	VIDEOCLIP	3426	girl dancing	10.10.2007 18:02	15000

b. The precise manner in which the IP's service is accessed through its service;

There is an advertisement agreement between mentioned IP and SP within the context of SP's links will be shown to the customers by IP among the countries that SP operates in. According to this, SP has worked with IP also in South Africa.

c. Proof of any steps taken by it to bring the attention of the IP to the existence and provisions of the WASPA Code of Conduct.

IP has been operating according to the general rules of SP but it has been found that WASPA Code of Conduct was not forwarded to the IP by us. The responsible person from this situation has been warned about informing our partners. After Interim Report, SP has sent the WASPA Code of Conduct to the IP and requested to take precaution about this immediately. IP has started its actions about this subject."

The SP also provided an exchange of emails between itself and the IP indicating that it had now brought the existence of the WAPA Code to their attention and that the IP was taking steps to ensure that it complied with these.

On 13 December 2007 the SP filed a further supplementary submission which the Adjudicator is willing to take into account in this matter. The following points have been extracted from the supplementary submission as germane:

1. The IP is one of many partner sites in a global partner network run by the SP based on a revenue share arrangement.
2. The SP accepts its responsibility in respect of obliging an IP to comply with the WASPA Code and Advertising Rules and that it had "unintentionally" failed to do so as regards the IP in this matter. This resulted in the IP observing a general set

of “global rules” and steps have been taken to ensure that IPs in this position will in future have the Code and Advertising Rules efficiently brought to their attention.

3. On the basis of the Interim Decision the following remedial action had been taken:
 - a. The offending adverts on the IP site had been removed; and
 - b. Steps were taken to introduce age verification in respect of adult content made available through the services of the SP to the IP in future.

The SP also made certain undertakings with regard to future conduct as also aspects of the manner in which it advertises in respect of free and charged-for content, the latter being beyond the scope of this Adjudication.

Sections of the Code considered

The following sections of version 5.3 of the WASPA Code of Conduct were considered:

3.9. Information providers

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

3.9.2. The member may suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

3.9.3. The member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

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.

Decision

The Final Decision of the Adjudicator is as follows:

1. There has been a breach of section 3.9.1 of the WASPA Code of Conduct insofar as the SP has failed to bring the provisions of the Code and Advertising Rules to the attention of the IP and to ensure that the IP is aware of the requirement on it to comply with such Code and Rules.
2. As a result of this breach a consumer in South Africa who is a minor has been able to access adult content in breach of sections 8.1.1. and 8.1.3. of the Code. In the view of the Adjudicator this is a serious breach which is of the kind that has great potential to create negative perceptions of the WASP industry.
3. The Adjudicator is mindful of the language difficulties experienced by the SP and the steps which it has taken to remedy the matter as also its undertakings with regard to future conduct.

In the circumstances the following order is made:

1. The SP is fined the sum of R5 000 in respect of its breach of section 3.9.1 of the Code.
2. The SP is fined a further sum of R25 000 in respect of the breaches of sections 8.1.1 and 8.1.3, payment of such sum to be suspended for a period of two (2) years from date of notification of the SP of this Final Adjudication subject to the SP not being found to be in breach of section 8 of the Code of Conduct during this period.
3. The SP is permitted to re-establish its relationship with the IP insofar as the Interim Decision required the termination of such relationship. The Secretariat is accordingly requested to suspend the operation of the section 13(5) IP Notice

issued out in terms of the Interim Decision for a period of two (2) years from date of notification of the SP of this Final Adjudication subject to the IP not being found to be in breach of section 8 of the Code of Conduct during this period.

4. The SP is, however, strongly urged to seek professional legal assistance to ensure that all aspects of the service it provides in South Africa are compliant with the Code of Conduct and Advertising Rules (as also the general law).
 5. In this regard the SP is required to notify the Secretariat immediately it recommences its relationship with the IP and the Secretariat is requested to request the WASPA Monitor to verify the compliance of the SP and the IP with the Code and Advertising Rules at this time.
 6. The Secretariat is requested to notify the WASPA membership of the suspension of the section 13(5) notice issued out in respect of the IP.
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