



REPORT OF THE ADJUDICATOR

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| WASPA Member | AMV Holdings Ltd |
| Service Type | WAP Adult Content |
| Source of Complaints | Public |
| Complaint Number | 5235 |
| Date lodged | 19 November 2008 |
| Code of Conduct version | 6.2 |

Complaint

This complaint was lodged as a result of adult content reaching minors, the complainant alleging that his fourteen year old child received a marketing message for an adult service from the WASPA member. The complainant noted further that “with one click” his son could have been exposed to porn.

WASPA Member Response

The member filed the following response:

“We acquired this user, on 9th November 2008, whereby the user’s MSISDN was entered into our web-site <http://zaf.mobterms.com/>

The web-site clearly states that:

[no text provided]

This resulted in a (free) promotional WAP Push link being sent to the handset:

The user browsed onto the homepage of the site however did not access any content and was not charged.

We have since contacted the user with (free) promotional information in relation to services we offer however the customer has not responded to these promotions and has not been charged.

We have now insured the number is Blacklisted from all future promotional information.

Sections of the Code considered

The following sections of version 6.2 of the WASPA Code of Conduct were considered:

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

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.

Decision

1. The central issue here is how it came to be that a promotional message for explicit adult WAP services was sent to a 14 year old child.
2. The Adjudicator visited the page at <http://zaf.mobterms.com/> at which the following text is to be found:

“FREE WAP MENU

Simply enter your mobile number below!!!!

We will send regular **free promotional links** to your cell.

Browse **our services** - take advantage of FREE content. We also offer a range of premium content and services!

We won't share your number with **ANYONE** else and you will not be subscribed when entering your number!

Enter your mobile number:

Terms & Conditions

By entering your number above you are under no obligation. We will simply send you regular service promotions. The WAP link will detail our offer, and contain clear pricing for any premium content or services.

To STOP any of our services send STOP to: 31210.

You must be over 16 to use our services.

To OPT-OUT Of marketing send OPTOUT to 31210. Remember we never share your data with any 3rd parties.

For help, call: 011 4610317 or e-mail: help@blue-stream.biz. Address: PO Box 2952, London, WC1N 3XX, UK.”

3. There is nothing in this text that provides any indication that those entering their mobile numbers would receive promotional material of an adult nature. There is no specific requirement that anyone who enters their number should be over the age of 18. The terms and conditions that services are only available to persons over the age of 16 is not sufficient to sanction the pushing of promotional messages allowing direct access to adult services to those entering their numbers. Although the exact message is not provided it will obviously be of such a nature as to entice the recipient to take up the services on offer.
4. The member does not deal with this aspect or the age of the user directly in its Response. There is no denial that the WAP push link promoted a porn site as alleged by the complainant or that the complainant's son could have accessed “porn with one click”.
5. This is a breach of sections 8.1.2 in that the sending of a promotion for adult services sent to the complainant's child was not in context with the page set out above.
6. It is also found to be a breach of section 8.1.3 in that the WASPA member has not taken reasonable steps to ensure that minors do not have access to adult content services. On the contrary it is not unreasonable to assume that the member could reasonably have contemplated that minors would sign up for this service but nevertheless sent promotional messages of an adult nature which would encourage the recipient to access an adult service.
7. The complaint is upheld and the member is found to have breached sections 8.1.2 & 8.1.3 of the Code of Conduct.
8. It is possible to take a view that the conduct of the WASPA member further breaches section 3.1.1 of the Code in that it constitutes an offence under the Film and Publications Act but the Adjudicator has taken the view that there are more appropriate avenues for seeking redress in this respect and that it is not necessary to decide this matter for the purposes of this Adjudication.

Sanctions

9. Any offence involving minors is to be regarded in a serious light. It is one of the primary purposes of the Code of Conduct to “ensure that children are adequately protected from potentially harmful content”.
10. In the [Adjudication under complaint 4673](#), lodged in October 2008, the same member was found to be in breach of the Code pursuant to a complaint that a minor child had received

WAP messages promoting adult content. The member was fined R100 000 after it was found that insufficient steps had been taken to verify the age of the complainant's son prior to messages with direct links to porn sites. The Adjudication in this matter had not been released as at the time this complaint was lodged.

11. In the [Adjudication under complaint 4833](#) a different WASPA member was found to have breached section 8.1.1 after not explicitly stating in its promotional material that services accessed would be of an adult nature. The member was fined R50 000.
 12. The member has a recent history featuring a high number of adverse findings regarding its services.
 13. The Adjudicator accepts that parents bear a primary responsibility in directing their children's use of mobile phones but regards this consideration as being of limited impact in mitigation of the breaches detailed above.
 14. Incidents of this nature have a severely prejudicial effect on the WASP industry. Members are required to take the utmost care in ensuring that children are not provided with easy access to adult content.
 15. In the circumstances the following sanction is imposed:
 - a. the Member is required to immediately review all of its advertising, irrespective of the medium and to withdraw or amend such advertising and the mechanisms behind it to ensure that promotional content for adult services is not sent to any person without reasonable measures having been implemented to ensure such persons are over the age of 18;
 - b. the Member is fined the sum of R100 000, payable within 10 (ten) days of date of notification of this adjudication.
 16. The sanction set out in 15 (a) above shall not be suspended pending any appeal of this Adjudication.
 17. Any further breach of the code relating to access by minors to adult content will be dealt with in extremely harsh terms;
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