



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#27729
Cited WASPA members	Smartcall Technology Solutions (0090) Interband Enterprises LLC (1315)
Notifiable WASPA members	<i>All</i>
Source of the complaint	<i>WASPA Media Monitor</i>
Complaint short description	<i>Adult Subscription Services</i>
Date complaint lodged	<i>22 September 2015</i>
Date of alleged breach	<i>21 September 2015</i>
Applicable version of the Code	<i>14.3</i>
Clauses of the Code cited	<i>4.2; 4.3; 12.1; 22.3; 22.5; 22.11.</i>
Related complaints considered	<i>#26416 #28130 #21612</i>
Fines imposed	Interband Enterprise LLC (1315) fined R 25 000.00 triggered by continuous breach of clauses 4.2 and 12.1 SmartCall Technology Solutions (0090) fined R 10 000.00 for breach of clause 4.2

	R 100 000.00 Fine imposed on Interband Enterprise LLC (1315) and SmartCall Technology Solutions (0090) for breach of clauses 22.3, 22.5 and 22.11 jointly and severally payable on demand by WASPA Secretariat.
Other sanctions	Interband Enterprise LLC (1315) 8 (eight) Month Suspension from WASPA triggered by monumental breach of clause 22.5
Is this report notable?	<i>Notable</i>
Summary of notability	<i>Apparent and ongoing consumer harm by Interband Enterprise LLC , who have shown to have a high level of deceptive business practices</i>

Initial complaint

- Whilst browsing the internet, the media monitoring team tested an adult content service promoted by Interband ;
- The landing page of the service was of great concern to the monitoring team; and
- The adult images used were potentially unlawful;
- The monitoring team viewed the harm as non-compliance with the Code [of conduct] ;and
- There was NO 18+ displayed; and the
- Pricing display was not prominent.

Member's response

(Interband) - First Respondent response/ acknowledgement is dated 2015/09/22 03:33 PM

We appreciate the seriousness of this matter and as such we have discontinued the service with immediate effect and removed the offending landing page until such time as the service has been made fully compliant with the WASPA code. We will also undertake an internal investigation to determine how this non-compliant marketing was published.

First Respondent Formal Response is dated 2015/10/07 11:12 AM

We want you to take into consideration once more that we work in accordance to WASPA's regulations. In that matter, we have removed and changed everything that was not in compliance with your regulations with immediate effect.

For any information, please be free to contact us.

Dear WASPA Adjudicator,

With regards to our landing page being in contravention of the 22.3, 22.5 and 22.11, we agree that this was in violation of the WASPA code. In mitigation, upon receiving notification of this, we suspended the service immediately and removed the offending landing page. Mrs. Lorraine Hartzner from the WASPA secretariat can confirm the immediacy of this action and that the service remains offline until such time as the landing page is compliant with the WASPA code.

With regard to section 4.2 of the code, Interband provides high quality services around the globe and always strives to have professional dealings both with the public and its customers.

With regard to section 4.3 of the WASPA code, Interband will always strive to conduct ourselves professionally and to co-operate with law enforcement authorities, however, as this matter does not involve law enforcement authorities, this section of the code does not apply to this matter.

With regard to section 4.9 of the WASPA code, section F and G, our banners were placed on adult sites and as such, people clicking on them were unlikely to be offended or degraded as a result of them clicking on an adult related banner. With regard to section 12.1 of the WASPA code, pricing information and the fact that this is a subscription service was directly underneath the call to action. However, we will in future have this information more prominently displayed to avoid further conflict with WASPA.

Kind regards,

(STS)- Second Respondent response/ acknowledgement is dated 2015/10/09 11:04 AM

Hi

Please advise if you could provide us an extension as our legal department is currently reviewing the formal response. Please advise if we could respond by Friday 16 October 2015.

Thank you

Second Respondent response/ acknowledgement is dated 2015/10/19 08:44 AM

Hi

Please advise if you could provide us an extension as our legal department is still reviewing the formal response. Please advise if we could respond by Friday 23 October 2015.

Thank you

Second Respondent response/ acknowledgement is dated 2015/10/26 09:53 PM

Hi

Please note that STS acknowledge receipt of below complaint with Interband. We have sent this to our IP and can confirm that they have removed the campaign with immediate effect.

Please find below response from the client.

We want you to take into consideration once more that we work in accordance to WASPA's regulations. In that matter, we have removed and changed everything that was not in compliance with your regulations with immediate effect.

Please contact me should you need any additional information.

Complainant's response

No further response to the member's initial response was provided by complainant

Member's further response

No further response than those above

Sections of the Code considered

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

4.3. Members must conduct themselves lawfully at all times and must co-operate with law enforcement authorities where there is a legal obligation to do so.

12.1. For any web page, pricing information does not need to be displayed for services which are free, or which are billed at standard rates. For all other services, where there is a call-to-action,

pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action

22.3. Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words “18+ only”.

22.5. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Reasonable steps may include the customer confirming his or her age prior to or as part of initiating the service.

22.11. Marketing material for any adult services may not make use of material which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.

Decision

I start by noting that both Interband and STS were given generous opportunities to answer and / or respond to this matter and it is always advisable for all members implicated in a complaint to give input on the complaint and by the First Respondents own admission “*We appreciate the seriousness of this matter*”, it is unknown however how long the harm was in fact in operation, as the complaint was only brought on the 22 October 2015, this in itself is a concern.

Mobile is a significant portion of the market and it is here to stay. Giving people access to products and services on the device of their choice is what many want for their brand, however as a self-regulatory body WASPA must be seen to take steps to prevent non-compliant campaigns from being used to promote services which are in fact harmful to the industry as a whole.

I have taken the decision to treat both Interband and STS as joint wrong doers as this particular breach goes to the heart of what WASPA is attempting to guard against. It is common cause that this campaign was particularly misleading and that there may have been large commercial benefits to both members. STS must be seen to take steps to prevent non complaint campaigns, particularly those relating to adult content as the Code has been continuous on this aspect throughout the years that it has been in operation. There is a significant level of deceptiveness from both members even though in the response from STS dated 14/12/2015, they pointed out that Interband is a registered affiliate member. The WASPA Code is a dynamic document capable of quick amendment to counter new and unethical practices, the section relating to Adult content however, has had no significant evolution from the inception of the code.

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

Consumers are persons to whom goods or services are marketed, who have entered into transactions with suppliers, users of particular goods or recipients/beneficiaries of services. “*Conducting themselves in a professional manner*” when dealing with consumers, include giving consumers an opportunity to observe and be made aware of terms and conditions and to reach the call to action page that triggers the subscription process. Noting both the pricing and age restriction is imperative in any adult service. The members failed to ensure that the consumer is sufficiently advised of the content and the subscribed nature of the service.

The member (s) cannot be seen to have conducted themselves in a professional manner, whether by advertising or channelling the service via a particular platform.

4.3. Members must conduct themselves lawfully at all times and must co-operate with law enforcement authorities where there is a legal obligation to do so.

I concur with the submission by Interband in that there is no breach of 4.3, the matter does not involve law enforcement authorities. Accordingly this service does not warrant the co-operation with law enforcement agencies and sub clause 4.3 does not apply to this matter, there cannot be seen to be a breach of sub clause 4.3.

Complaint regarding sub clause 4.3 is dismissed.

12.1. For any web page, pricing information does not need to be displayed for services which are free, or which are billed at standard rates. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action

“Prominent” - adjective

1.
standing out so as to be seen easily; conspicuous; particularly noticeable:
2.
standing out beyond the adjacent surface or line; projecting.

[\(<http://www.dictionary.com/browse/prominently>\)](http://www.dictionary.com/browse/prominently)

Taking into account the actual place of the call to action and the pricing, the situation is that there is very little to no “standing” out of the pricing information neither can it be easily seen. The members have breached this clause in that the pricing information is not particularly noticeable and there is no indication that the product offering is adult in nature.

22.3. Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words “18+ only”.

WASPA submitted a paper to the Independent Communications Authority of South Africa and stated the following, “WASPA requests that the Authority consider broadening its definition of an “adult service” to include material which would have been classified as X18 under the Film and Publications Act. This is in line with the approach taken in the Film and Publications Amendment Bill 2015 and with the discussion set out in the South African Law Reform Commission’s Issue Paper on Children and Pornography” (<http://www.ellipsis.co.za/wp-content/uploads/2016/01/WASPA-Submission-Draft-PRS-Code-20160212.pdf>). Therefore as industry members, both are guarded against utilising adult services in a manner which could bring into play a larger breach of national legislation.

Adult Services may not offend against good taste or decency or be offensive to public or sectoral values and sensitivities, the promotional material must indicate the age restriction as 18+ particularly with the images used by the member on the landing page to represent the service offerings. VODACOM ACM (Adult Content Management) Policy Guidelines of 2011, which aim to ensure and provide a responsible and legal framework for the provision of adult content which will not only protect children from accessing inappropriate content but also provide business rules that will ensure compliance with the law under *Clause 5 states - Illegal content will include but not be limited to content which is defamatory, offensive, derogatory, hateful, obscene and as such are prohibited the Vodacom Network. Examples of content that will fall into the following categories, include, but are not limited to:*

5.5.2 Female Genitalia / Aroused male genitalia;

5.5.5 Oral-genital contact of any kind;

5.5.6 Penetration by finger, penis, tongue, or any object;

5.5.14 the above applies to both heterosexual and homosexual activities and cartoon imagery.

The member(s) have breached sub clause 22.3 in that the actual advertisement on the landing page clearly portrays female genitalia, penetration by finger all of which is homosexual in nature.

22.5. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Reasonable steps may include the customer confirming his or her age prior to or as part of initiating the service.

“WASPA takes a hard line on advertising to children in line with its goals of protecting kids from harmful content and promoting an ethical WASP industry. We insist that our members must adhere to our Code of Conduct as well as the specific guidelines and policies set out by the country’s broadcasters when they show adverts on television because ethical behaviour by WASPs is in the interests of consumers and the industry alike.” (http://waspa.org.za/press_release/waspa-lays-down-the-law-on-advertising-subscription-services-to-kids/). VODACOM ACM Policy Supra 5.7, WASPs should comply with WASPA Code of Conduct in terms of the provision of adult content services including the requirements of age verification.

Testing by the monitoring team indicated that:

Whilst the user was browsing the internet, the user was directed to a page promoting the HotJizz subscription service at R7/day.

The service offered “HOT MILF VIDEOS”, however, the landing page contained images that are not permitted on South African networks and the pricing was not prominent.

There was no display of 18+ only. The user then clicked on the “Play Now!” call to action button.

The user then received the Vodacom double opt-in SMS and subsequently replied with the keyword “Yes”.

The user then received the Welcome SMS on his mobile phone and proceeded to open the URL provided. The user was then directed to the homepage for HotJizz and proceeded to login with the credentials provided in the Welcome SMS.

The above is a clear indication that both the Vodacom ACM Policy as well as the Code have been significantly breached by the members, ***find attached the report and screenshots by the Media Monitor***, the images are a clear indication of the various violations. A recent survey by *our mobile planet* found that 29 million South Africans use a mobile phone, 20.5 million a smartphone. It's relatively easy to get a smartphone contract in South Africa and this has been good for the nation's internet penetration. The study found that of the country's mobile users, 57% hardly ever use a desktop computer, reinforcing the perspective that mobile is the key to SA's rapidly evolving digital scene. Children therefore may be able to access such content as there is no Adult Verification System in place.

22.11. Marketing material for any adult services may not make use of material which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.

Any age restrictions on the content the WASP is providing must be clearly marked and the service provided must have an Adult Verification System in place for access to that content or service. (http://waspa.org.za/press_release/waspa-lays-down-the-law-on-advertising-subscription-services-to-kids/). This is a serious breach of the WASPA Code, and warrants a serious sanction that the WASP cannot ignore.

Sanctions

Clause 24.34 of the code was taken into account as well as the mitigating factors placed on record by the First Respondent, however the significant breach of the code is in relation to the actual product offering and the advertisement prominently displayed. Further, the Second respondent seemingly showed no remorse nor any indication to ensure future compliance, they further did not even bother asking for condonation for the late filing of their responses to the secretariat, the First Respondent indicated that there would be an internal investigation, this can be seen as mere lip service because there may have been a significant amount of revenue already generated.

My ruling therefore is that the following (*financial and non-financial*) sanctions are applicable;

1. Interband Enterprise LLC (1315) fined R 25 000.00 triggered by the continuous breach of clauses 4.2 and 12.1
2. SmartCall Technology Solutions (0090) fined R 10 000.00 for breach of clause 4.2.
3. R 100 000.00 Fine imposed on Interband Enterprise LLC (1315) and SmartCall Technology Solutions (0090) for breach of clauses 22.3, 22.5 and 22.11 jointly and severally payable on demand by WASPA Secretariat.
4. Interband Enterprise LLC (1315) 8 (eight) Month Suspension from WASPA triggered by monumental breach of clause 22.5.

Matters referred back to WASPA

NONE

Name: HotJizz

21 September 2015

SP: Smartcall Technology Solutions

IP: Interband

WASPA Member: Yes (Affiliate)

SMS Code: 44363

URL:

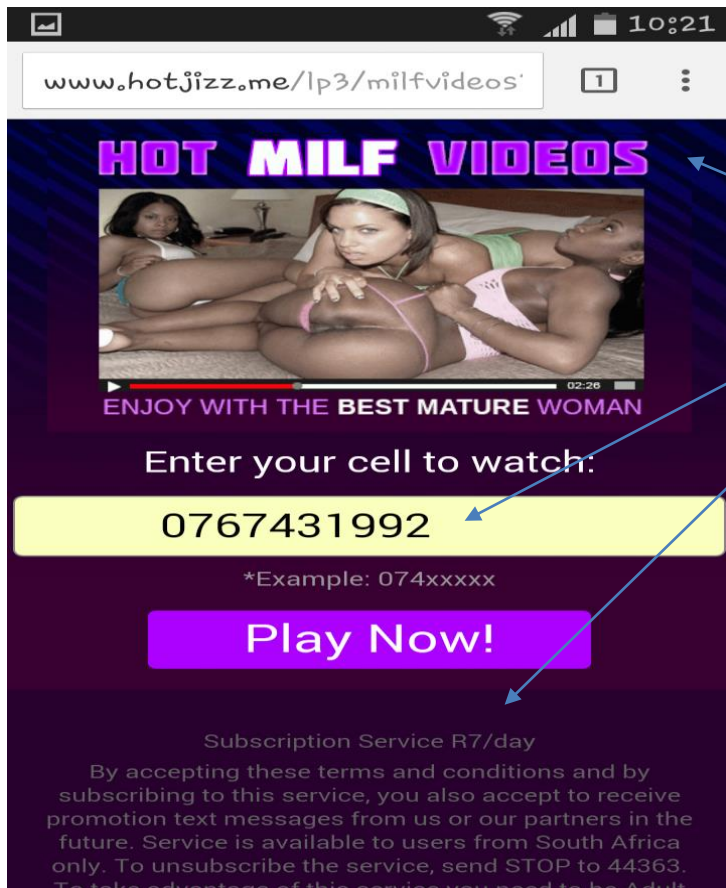
http://www.hotjizz.me/lp3/milfvideos3/nomsisdn.php?keyword=NEWMILFVID3&id_trans=&site_id=null&msisdnpin=

Please Note: All images have been resized to meet document needs. Original screenshots available on request.

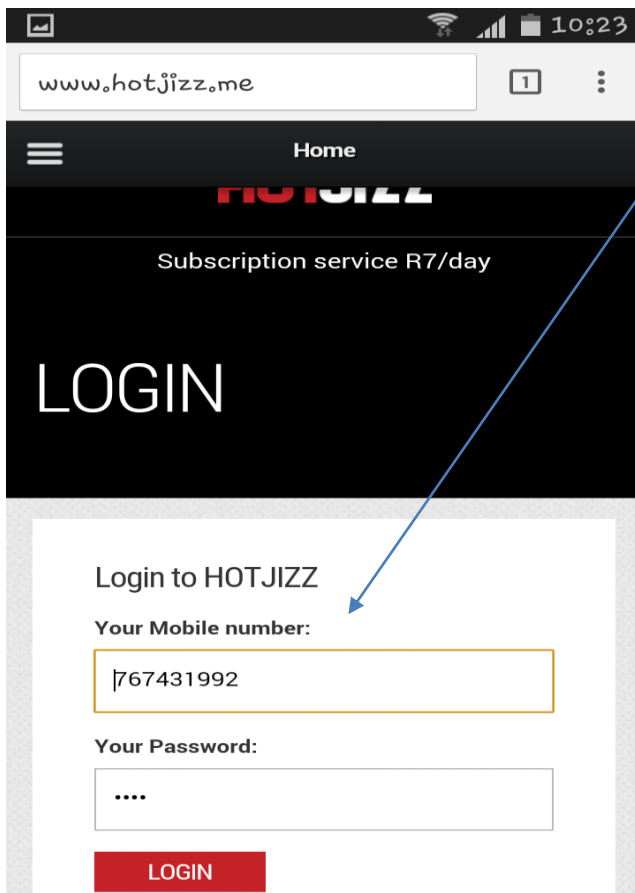
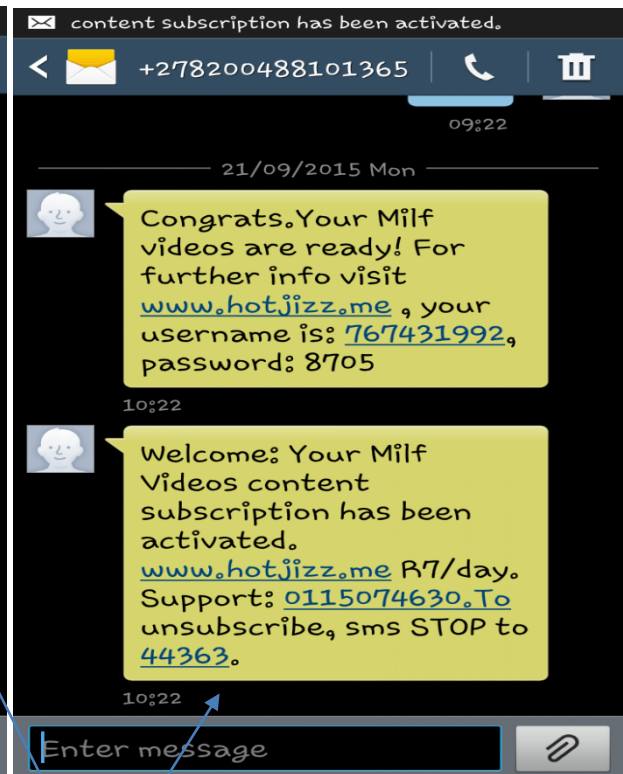
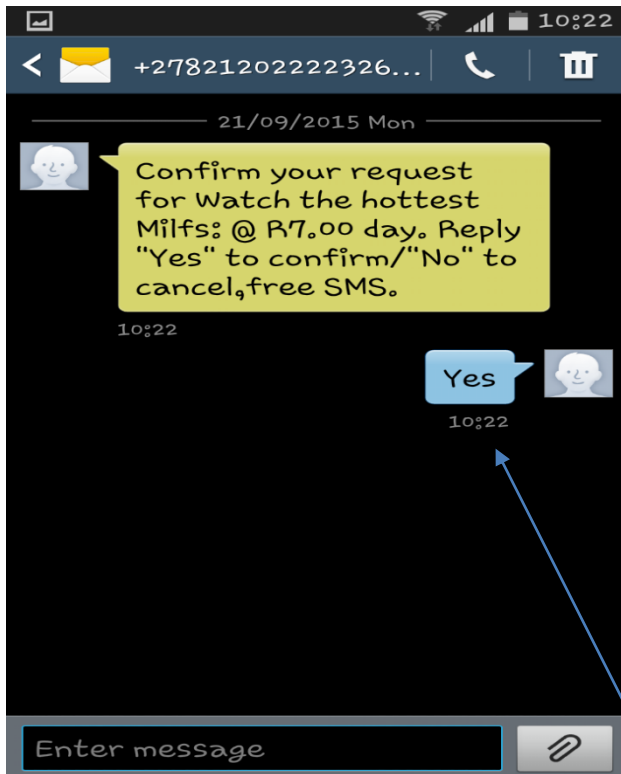
Vodacom

MSISDN: 27767131992

Handset: Galaxy Note 2



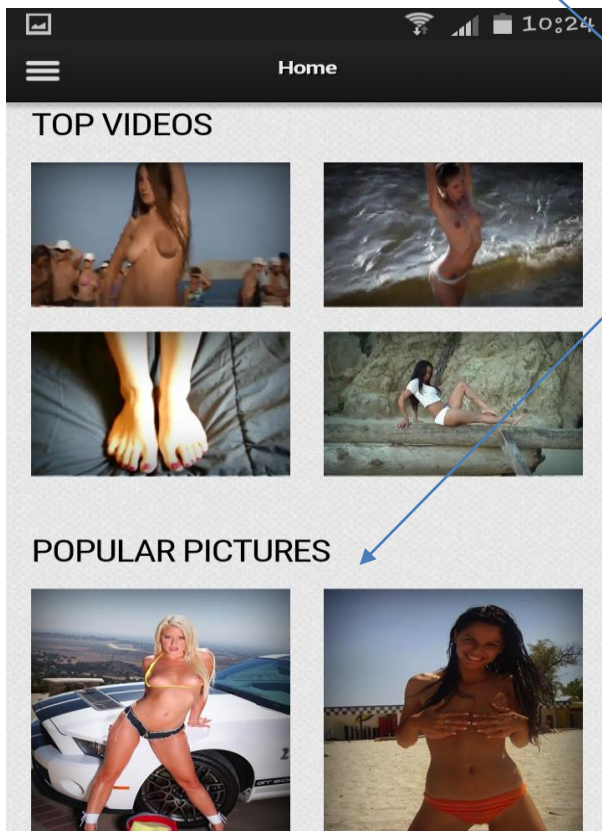
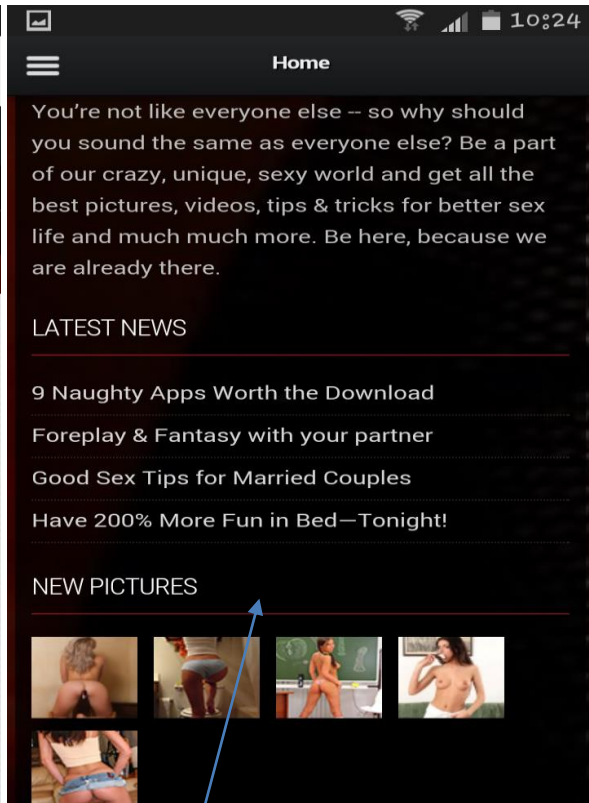
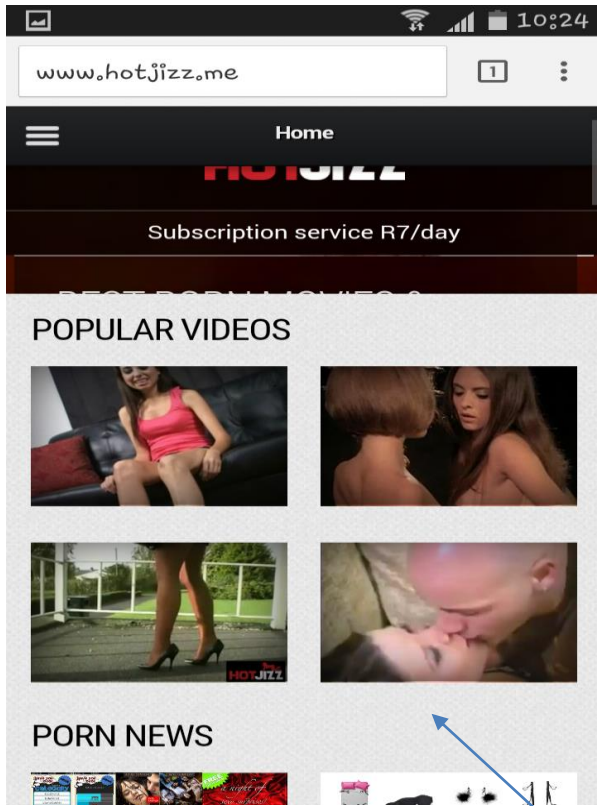
Whilst the user was browsing the internet, the user was directed to a page promoting the HotJizz subscription service at R7/day. The service offered "HOT MILF VIDEOS", however, the landing page contained images that is not permitted on the South African networks and the pricing was not prominent. There is also not a display of 18+ only. The user then clicked on the "Play Now!" call to action button.



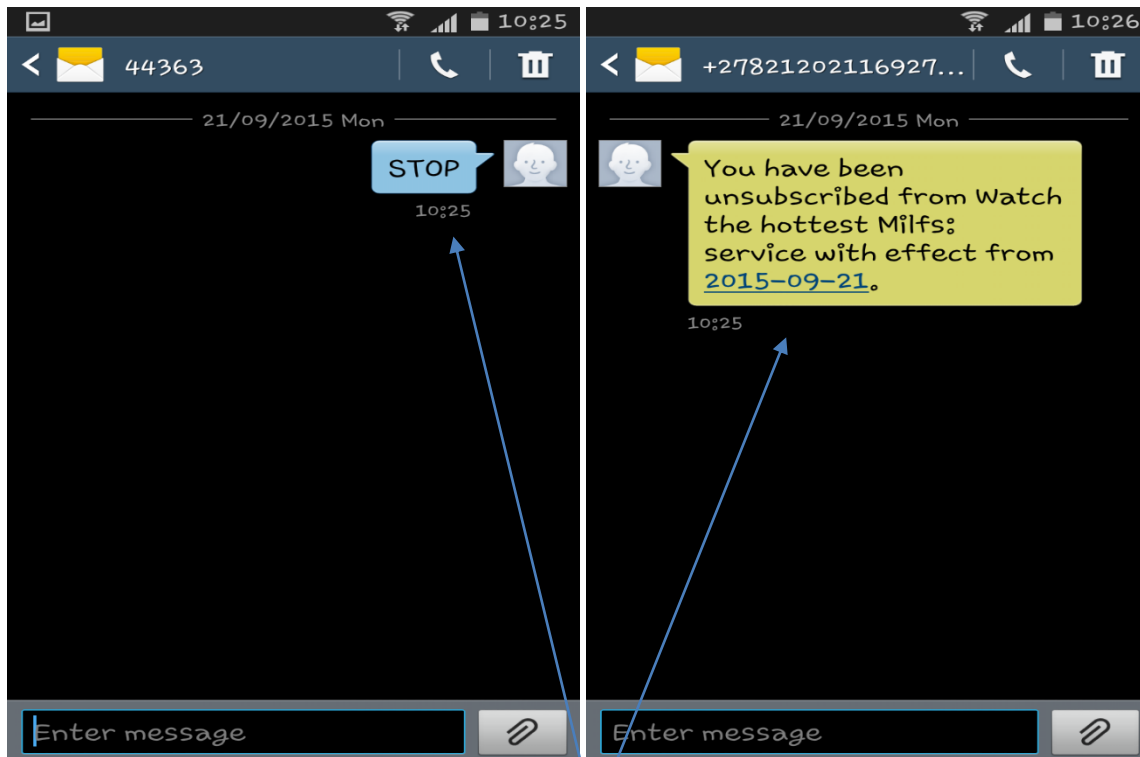
The user then received the Vodacom double opt-in SMS and subsequently replied with the keyword "Yes".

The user then received the Welcome SMS on his mobile phone and proceeded to open the URL provided.

The user was then directed to the homepage for HotJizz and proceeded to login with the credentials provided in the Welcome SMS.



The user was then logged in the HotJizz service which offered videos and pictures of non-explicit content. The service also offered App reviews, sex health tips for couples etc. The user could view the items offered by the service.



The user then elected to cancel the subscription by sending the keyword "STOP" to 44363 as indicated in the Welcome SMS. The user then received an SMS informing him that the subscription has been cancelled.

Conclusion:

Whilst the user was browsing the internet, the user was directed to a page promoting the HotJizz subscription service at R7/day. The service offered "HOT MILF VIDEOS", however, the landing page contained images that is not permitted on the South African networks. The pricing display was not prominent and there was no "18+" displayed.

The user then clicked on the "Play Now!" call to action button.

The user then received the Vodacom double opt-in SMS and subsequently replied with the keyword "Yes". The user then received the Welcome SMS on his mobile phone and proceeded to open the URL provided. The user was then directed to the homepage for HotJizz and proceeded to login with the credentials provided in the Welcome SMS.

The user was then logged in the HotJizz service which offered videos and pictures of non-explicit content. The service also offered App reviews, sex health tips for couples etc. The user could view the items offered by the service.

The user then elected to cancel the subscription by sending the keyword "STOP" to 44363 as indicated in the Welcome SMS.

The user then received an SMS informing him that the subscription has been cancelled.

General comments:

The landing page of this service is of great concern to WASPA. The adult images used, is not the work of an affiliate marketer pushing the boundaries, but adult images promoted by Interband themselves. This is viewed as a serious non-compliance. Furthermore, there is NO 18+ displayed.

These requirements (see clauses below) have been adopted by our industry for years and years. We find it alarming that a landing page like this is being promoted.

Possible breaches of the Code:

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

4.3. Members must conduct themselves lawfully at all times and must co-operate with law enforcement authorities where there is a legal obligation to do so.

4.9. Members must not provide any services or promotional material that:

(f) causes grave or widespread offence; or

(g) debases, degrades or demeans.

12.1. For any web page, pricing information does not need to be displayed for services which are free, or which are billed at standard rates. For all other services, where there is a call-to-action, pricing information must be clearly and prominently displayed immediately adjacent to the call-to-action.

22.3. Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words "18+ only".

22.5. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Reasonable steps may include the customer confirming his or her age prior to or as part of initiating the service.

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