



**Wireless Application Service Providers' Association**

## Report of the Adjudicator

Complaint number	#34112
Cited WASPA members	Robot Internet Pte Ltd (1388)
Notifiable WASPA members	Mira Networks (Pty) Ltd
Source of the complaint	WASPA Media Monitor
Complaint short description	Promoting adult subscription services within mobile game offered to and used by children
Date complaint lodged	2017-06-02
Date of alleged breach	Same as above
Applicable version of the Code	v14.7
Clauses of the Code cited	4.2; 22.1; 22.2; 22.4; 22.9; 23.1; 23.2; 23.4; 23.5; 23.6; 23.7; 23.8; 23.9
Related complaints	n/a

considered	
Fines imposed	1) R50 000.00 for breach of sections 23.5, 23.6, 23.8 and 23.9 of the WASPA Code. 2) R15 000 for breach of section 4.2 of the WASPA Code
Other sanctions	None
Is this report notable?	No
Summary of notability	n/a

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## Complaint

1. This complaint involves the promotion of adult subscription services within a mobile game (Tap Ball) offered to and used by children.
2. The complainant conducted a test on the Tap Ball mobile game offered by Google Play.
3. The complainant alleges that this game is considered to be a child-friendly mobile game. Google rates the game as 3+ and suitable for all age groups.
4. The test confirmed that certain in-game promotional material was used to promote the member's adult subscription services in this particular game which was in breach of a number of provisions of the WASPA Code of Conduct.
5. The complainant also noted in their initial complaint that the member did not make use of an affiliate and conducted its own marketing campaigns.
6. The complainant requested that the emergency panel process be convened due to the severity of the alleged breach. However, upon being notified of the complaint, the

member stopped the promotional campaign and it was decided that there was no further need to proceed with the emergency panel hearing.

7. The matter has now been referred to formal adjudication.
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## **Member's response**

8. In its response to the complaint, the member did not deny any of the allegations contained in the complaint.
  9. Instead, the member stated that it had stopped all its "in-app" marketing because its previous attempts at preventing inappropriate promotions being viewed in apps that were made available to children had failed.
  10. The member expressed the further view that it was no longer possible to target apps that would not be made available to children since Google Play and Apple iStore now only allow family-friendly apps. Other third party app stores do still distribute apps not allowed by Google and Apple but these apps have a large amount of adware and malware embedded in them.
  11. The member then recommended that WASPA issue a blanket ban on all "in-app" promotions of adult services by all WASPA members and their advertising and affiliate partners.
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## **Sections of the Code considered**

12. Section 4.2 - Professional conduct

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

13. Section 22 – Adult Services

- 13.1 *Section 22.1* - An “adult service” is 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.
- 13.2 *Section 22.2* - An “adult content service” is 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.
- 13.3 *Section 22.4* - 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.
- 13.4 *Section 22.9* - Promotions for adult services must not appear in publications or other media specifically targeted at children.

14. Section 23 – Children’s services

- 14.1 *Section 23.1* - A “child” refers to a natural person under 18 years of age.
- 14.2 *Section 23.2* - “Children’s services” are those which, either wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children.
- 14.3 *Section 23.4* - Subscription services must not be intentionally targeted at children.
- 14.4 *Section 23.5* - Children’s services must not contain anything that is likely to result in harm to children or which exploits their credulity, lack of experience or sense of loyalty.

- 14.5 *Section 23.6* - Children's services must not include anything that a reasonable parent would not wish their child to hear or learn about in this way.
- 14.6 *Section 23.7* - Children's services must not involve an invasion of privacy of any child.
- 14.7 *Section 23.8* - Children's services must not unduly encourage children to ring or procure other premium rate services or the same service again.
- 14.8 *Section 23.9* - Advertising for children's services must not make use of adult themes or adult material.
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## **Decision**

15. The following appears to be common cause:
- 15.1 The mobile game in question was suitable for use by persons under the age of 18 years. Based on the rating given to the game by Google, it appears that the game was in fact suitable for use by relatively young children (i.e. above the age of 3 years).
- 15.2 The "in-app" promotional material discovered by the complainant when testing the mobile game was of an adult nature and related to an adult subscription service offered by the member and which was not suitable for children.
16. I therefore make a finding that the member has breached sections 23.5, 23.6, 23.8 and 23.9 of the WASPA Code. The complaint is accordingly upheld in this regard.
17. I also accept the unchallenged evidence of the complainant that the member was responsible for running its own promotional campaigns and did not use the services of an affiliate or other third party.

18. It was therefore incumbent on the member to take the necessary steps to ensure that adult-related promotional material did not appear in apps or games which are made available to children.
  19. Although the member intimated in its response that it had made previous attempts to prevent adult-related “in-app” promotions from appearing in apps or games that are offered to children, no further evidence was provided in this regard.
  20. I am therefore of the view that the member failed to take reasonable steps to prevent its adult subscription services being promoted to children. This constitutes unprofessional conduct as envisaged in section 4.2 of the Code and the complaint is accordingly upheld in this regard.
  21. However, there is no evidence before me that the member has *intentionally* targeted children when promoting its adult subscription service and the complaint in respect of section 23.4 of the Code is therefore dismissed.
  22. The remaining sections of the Code cited by the complainant are either not relevant to the present complaint or are used in the Code to define certain terms. I therefore make no further findings with regard to these other sections.
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## Sanctions

23. As mitigating factors, I have taken into account the following:
  - 23.1 This is the first complaint that has been made against the member;
  - 23.2 The member responded immediately to this complaint by stopping the relevant promotional campaign; and
  - 23.3 The member has now stopped all “in-app” promotions of its adult subscription services as a mitigating factor.

24. However, it has been emphasised repeatedly in numerous previous adjudications that the exposure of children to adult-related content must be viewed as a serious matter.
25. The member's failure to prevent its adult subscription services from being promoted in a game which was clearly suitable for use by children as young as 3 years old must be viewed as an aggravating factor.
26. The following sanctions are imposed on the member:
  - 26.1 In respect of the breach of sections 23.5, 23.6, 23.8 and 23.9 of the WASPA Code, the member is fined the sum of R50 000.00; and
  - 26.2 In respect of the breach of section 4.2 of the WASPA Code, the member is fined R15 000.00.
27. Both fines must be paid by the member within 10 (ten) days of its receipt of this adjudication report.