



Wireless Application Service Providers' Association

Report of the Appeals Panel

Complaint number	34112
Cited WASPA members	Robot Internet Pte Ltd (1388)
Notifiable WASPA members	Mira Networks (Pty) Ltd (0011)
Appeal lodged by	Robot Internet Pte Ltd
Type of appeal	Panel
Scope of appeal	Review of the decision, sections and sanctions imposed by the adjudicator.
Applicable version of the Code	14.7
Sections considered by the panel	4.2., 23.1., 23.2, 23.4, 23.5, 23.6, 23.7, 23.8, 23.9, 22.1, 22.2, 22.4, 22.9
Related complaints considered	N/A
Amended sanctions	Adjudicator's rulings and sanctions dismissed.
Appeal fee	Refunded in full.
Is this report notable?	Yes
Summary of notability	The promotion of adult content in games which, whilst not targeted at children, are reasonably expected to be used by children is currently not adequately dealt with by the Code. The suggestion is that the Code Committee review the situation to provide clarity for all members.

Initial complaint

Complaint 34112 involved the promotion of adult subscription services within a mobile game (Tap Ball) offered to and used by children. The complainant conducted a test on the Tap Ball mobile game offered by Google Play. The complainant alleged that the game is considered to be a child-friendly mobile game, rated by Google as 3+ (three years of age plus) and suitable for all age groups.

Adjudicator's findings

The Adjudicator found as follows:

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).
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.

The Adjudicator found based on the above that the the member had breached sections 23.5, 23.6, 23.8 and 23.9 of the WASPA Code.

In addition, due to the fact that the member did their own marketing, the Adjudicator found that the member had breached section 4.2 of the WASPA Code in that it had failed to take reasonable steps to prevent its adult subscription services being promoted to children which constituted unprofessional conduct as envisaged in section 4.2 of the WASPA Code.

Appeal submissions

The member appealed the Adjudicator's decision in respect of the following

1. A breach of sections 23.5, 23.6, 23.8 & 23.9 of the WASPA Code;
2. A breach of section 4.2 of the WASPA code; and
3. The level of sanctions imposed for the alleged breaches.

In respect of the breaches of 23.5, 23.6, 23.8 and 23.9, the member stated as follows: “The adjudicator deemed that we breached sections 23.5, 23.6, 23.8 & 23.9. However if you read section 23 in its totality, this sections relates to 23.2 “children’s services”. These are services that are marketed to children. Our service is clearly not per 23.2 ... “wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children”...In this case we have not breached the sections identified as we did not promote a children’s service.”

In respect of the breach of section 4(2) of the WASPA Code the member stated as follows: “In respect of the breach of section 4.2 the adjudicator has ruled that “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.” We dispute that our conduct was unprofessional as envisaged by the code. The appearance of the advertising banner in app that could potentially be viewed by a child (as it was age unrestricted) was inadvertent. As soon as we were notified of the breach we stopped all ad campaigns on the ad network identified and cancelled all the subscriptions that had occurred on that ad channel. We feel this demonstrated our commitment to maintaining professional conduct.”

In respect of the severity of sanctions for the breaches the member viewed these as unduly harsh and punitive bearing in mind the guidelines for sanctions as set out in 24.34 of the WASPA Code and historical sanctions handed down in adjudications for breaches of the same sections of the WASPA Code.

The member accordingly requested that the complaint be set aside. We assume they meant to decision of the Adjudicator and the sanctions be set aside.

Deliberations and findings

The panel reviewed the complaint files, the Adjudicator’s report as well as the member’s appeal.

The panel finds that there was no breach of sections 23.5, 23.6, 23.8 and 23.9 as section 23 relates to “children’s services” as defined by the WASPA Code which are “wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children” and the member’s services are not children’s services but rather adult services as envisaged by the WASPA Code.

The panel also finds that the member did not act unprofessionally but rather proceeded to take all steps required by WASPA to ensure compliance with the WASPA Code and the complaints process. In fact, the member suggested that all in-app promotion is problematic and should be banned by WASPA as it is “simply not possible to target apps that could not be deemed

applicable to children. Google Play and iStore now only allow family friendly apps so every app can be potentially construed as being child applicable.”

However this does not conclude the matter. This was a difficult decision for the panel to make. As will become apparent, this appeal succeeds not because it is acceptable to have adult content in games played by children, but rather because the sections of the WASPA code of conduct were incorrect.

The panel finds that a critical potential breach of the WASPA Code was not raised in the formal complaint and consequently never considered in the above complaint. It is now trite that a WASPA appeal panel may not consider this potential breach of the WASPA Code which was not raised in the original complaint (please refer to section 24.32A of the WASPA Code). Instead the panel is obliged to refer the matter back to WASPA, which it hereby does, as more fully set out below.

Additional Issues

The panel believes that an important section of the code (section 22.4) was potentially breached in the promotion of the member’s services. Accordingly, the panel recommends that WASPA institute a new complaint against the member for formal adjudication based on a breach by the member of section 22.4, which reads:

‘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.’

In addition, the panel believes that the WASPA Code of Conduct committee should consider amending the WASPA Code of Conduct to clarify the position for all members and as a result the panel has deemed this report to be notable as set out in the header of this appeal result.

Amendment of decision and sanctions

For the reasons set out above, the decision of the Adjudicator and the sanctions are set aside.

Appeal fee

The member has been successful in the Appeal and the panel orders a refund of the Appeal fee.
