



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	40437
Cited WASPA members	Data SMS South Africa (Pty) Ltd (0151)
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Use of XX or XX18 images in marketing material for adult services
Date complaint lodged	2018/10/30
Date of alleged breach	2018/10/30
Applicable version of the Code	15.9
Clauses of the Code cited	21.11
Related complaints considered	N/A
Fines imposed	R50 000.00. R25 000.00 payable on publication of this report and R25 000.00 suspended for 12 months provided the member does not breach the same section of the Code.
Other sanctions	N/A
Is this report notable?	Not Notable

Summary of notability	N/A
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Initial complaint

The WASPA Compliance Department tested several of the member's services and found that the advertising used was in contravention of clause 22.11 of the Code of Conduct ("the Code") in that utilised marketing material that was, or was likely to be, classified as XX18 or XX by the Films and Publications Board.

Member's response

The member responded initially to state that they were in the process of identifying the affiliate marketers involved in the test cases, so they could advise them to immediately terminate the campaigns. In addition, they would notify all affiliate marketers in South Africa that they must respect the Code. They followed up with an email notifying the complainant that they had identified the agency and affiliates involved and had requested the agency to exclude all affected sites and the affiliate in question from any campaigns. In addition, emails had been sent to all agencies running South African campaigns to remind them of the need for compliance with the Code. Finally, they confirmed that the affected agency had excluded the two publishers responsible for the placement of the banner adverts to the non-compliant sites from all future campaigns.

Complainant's response

The complainant had no further response

Member's further response

The member provided no further response other than to state that the three emails should all be considered as part of their response.

Sections of the Code considered

Section 21.11.

Decision

Section 21.11 requires that: 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.

The complainant tested several of the members services and found that the member had non-compliant banner adverts on several sites advertising their services in that the marketing material breached the provisions of 21.11. This is common cause and was not contested by the member.

The member responded to the complaint to determine from which service provider the non-compliant adverts had emanated so as to terminate the relevant campaigns. The advertising agency and publishers involved were identified and the campaigns terminated, and the relevant affiliate marketers excluded from future campaigns. In addition the member took this opportunity to remind all of their advertising agencies and affiliate marketers of their obligations in terms of the Code.

Notwithstanding the actions taken by the member, their services were still in breach of 21.11.

Sanctions

The breach is a serious one in that it forms part of the prohibited practices section of the Code relating to adult services. I therefore fine the member R50 000.00 (fifty thousand rand). As the member was proactive and excluded the non-compliant publishers from further campaigns, I suspend R25 000.00 (twenty five thousand rand) of such fine. Accordingly the member must pay to WASPA R25 000.00 (twenty five thousand rand) on publication of this report, the remaining R25 000.00 (twenty five thousand rand) to be suspended provided the member does not breach this section of the Code within the next 12 (twelve) months following publication of this report.

Matters referred back to WASPA

N/A
