



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#41265
Cited WASPA members	TechVault Pte Ltd (1610)
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliance with requirements for advertising for adult content services
Date complaint lodged	2019-04-29
Date of alleged breach	2019-04-29
Applicable version of the Code	v16.3
Clauses of the Code cited	5.5., 8.8., 21.2., 21.4., 21.11
Related complaints	n/a

considered	
Fines imposed	The Member is fined a sum of R 25 000.00 for its breach of clause 5.5, 8.8 and 21.4 of the WASPA Code of Conduct. The Member is fined a sum of R 45 000.00 for its breach of clause 21.11 of the WASPA Code of Conduct.
Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

Complaint

1. Before lodging this complaint, the Complainant had conducted a number of tests on the Member's adult services and the banner advertising used to promote such services. The results of the Complainant's testing was provided in evidence.
2. In one instance, the Complainant found a specific banner advert promoting "Unlimited Games", which when clicked on, directed the tester to a landing page for an adult subscription service.
3. The Complainant also found an adult banner promoting homo-erotic adult content, which when clicked on, directed the tester to a landing page for heteroerotic adult content services.
4. The Complainant alleges that the content of the relevant subscription services being offered by the Member is contrary to the reasonable expectation of consumers responding to the particular promotional banner adverts.

5. The Complainant alleges further that this constitutes misleading advertising and contravenes clauses 5.5, 8.8 and 21.4 of the WASPA Code of Conduct.
 6. Further testing by the Complainant also revealed that the adult banner advert contained images which were explicit in nature and would be classified as X18 or XX by the Films and Publications Board.
 7. The Complainant alleges that the Member's use of such explicit content in its marketing material was in breach of clause 21.11 of the WASPA Code of Conduct.
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Member's response

8. The Member did not respond to the complaint.
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Sections of the Code considered

9. The Complainant cited clauses 5.5, 8.8, 21.2, 21.4 and 21.11 of the WASPA Code of Conduct as the basis for its complaint.

10. Clause 5.5 states:

Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

11. Clause 8.8 states:

Content that is promoted in advertising must be the same content that is provided to the customer as part of the advertised service. Advertising must not mislead consumers into believing that it is for an entirely different service or for different content.

12. Clause 21.2 states:

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. Clause 21.4 states:

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.

14. Clause 21.11 states:

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.

15. No further clauses were assigned by WASPA.
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Decision

16. Based on the evidence presented by the Complainant, I have made the following findings:

16.1 The Member has breached clause 5.5 of the WASPA Code of Conduct in that it has knowingly disseminated information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission by:

- 16.1.1 promoting its adult content services using a banner advert which promotes games; and
 - 16.1.2 promoting heteroerotic adult content services using a banner advert which promotes homoerotic content.
 - 16.2 The Member has breached clause 8.8 of the WASPA Code of Conduct by promoting content in advertising that is not the same content that is provided to the customer as part of the advertised service. The banner advertising used is also misleading in that it misleads consumers into believing that it is for an entirely different service or for different content.
 - 16.3 The Member has breached clause 21.4 of the WASPA Code of Conduct by failing to ensure that its services are in context with the banner adverts promoting them and in that the content of the Member's service is contrary to the reasonable expectation of those responding to the promotion.
 - 16.4 The Member has breached clause 21.11 of the WASPA Code of Conduct by making 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) in marketing material used to promote its adult content services.
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Sanction

- 17. In determining appropriate sanctions against the Member for its numerous breaches of the WASPA Code of Conduct, the following has been taken into consideration:
 - 17.1 any previous successful complaints made against the Member in the past three years;
 - 17.2 any previous successful complaints of a similar nature;

- 17.3 the nature and severity of the breach; and
- 17.4 any efforts made by the Member to resolve the matter; and
18. No previous complaints, including complaints of a similar nature, have been upheld against the Member.
19. However, the Member's contraventions of the WASPA Code of Conduct are viewed in a very serious light due to the explicit nature of the services and marketing material in question.
20. The Member's failure to make any effort to resolve the complaint after it was lodged and its failure to respond to the formal complaint must be viewed as an aggravating factor.
21. In determining appropriate sanctions previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions have also been taken into account.
22. Based on the foregoing, the following sanctions are imposed:
- 23.1 The Member is fined a sum of R 25 000.00 for its breach of clause 5.5, 8.8 and 21.4 of the WASPA Code of Conduct.
- 23.2 The Member is fined a sum of R 45 000.00 for its breach of clause 21.11 of the WASPA Code of Conduct.