



Report of the Adjudicator

Complaint number	#53158
Cited WASPA members	Smartcall Technology Solutions (Membership no: 0090)
Notifiable WASPA members	n/a
Source of the complaint	WASPA Compliance Department
Complaint short description	Non-compliant adult service and related promotional material
Date complaint lodged	2021-06-24
Date of alleged breach	2021-06-24
Applicable version of the Code	v16.16
Clauses of the Code cited	5.4; 5.5; 5.8; 12.1 (read with 8.2); 12.4; 12.5; 15.6; 15.17; 15.18; 20.1; 20.1B; 20.4; 21.3; 21.5
Related complaints considered	n/a
Fines imposed	<p>The Member is fined an amount of R15 000.00 for its breach of clauses 5.4 and 5.5 of the Code.</p> <p>The Member is fined an amount of R5 000.00 for its breach of clause 5.8 of the Code.</p>

	<p>The Member is fined an amount of R15 000.00 for its breach of clause 12.1 (read with clause 8.2) of the Code.</p> <p>The Member is fined an amount of R5 000.00 for its breach of clause 12.4 of the Code.</p> <p>The Member is fined an amount of R5 000.00 for its breach of clause 12.5 of the Code.</p> <p>The Member is fined an amount of R15 000.00 for its breach of clauses 15.17 and 15.18 of the Code.</p> <p>The Member is fined an amount of R15 000.00 for its breach of clause 20.1 of the Code.</p> <p>The Member is fined an amount of R15 000.00 for its breach of clause 20.1B of the Code.</p>
Other sanctions	n/a
Is this report notable?	n/a
Summary of notability	n/a

Initial complaint

1. The Complainant alleges that one of its testers, while monitoring and conducting manual tests on third party websites, came across a banner advert and landing page promoting a service offered by the Member. The tester proceeded to activate a subscription to the service after entering their MSIDN on the landing page.
2. The Complainant alleges that the service and related promotional material are non-compliant with the requirements of the WASPA Code of Conduct in a number of respects. In particular, the Complainant alleges that the Member has breached the

provisions of clauses 5.4; 5.5; 5.8; 12.1 (read with 8.2); 12.4; 12.5; 15.6; 15.17; 15.18; 20.1; 20.1B; 20.4; 21.3; and 21.5 of the WASPA Code of Conduct.

3. In support of its complaint the Complainant provided video evidence of the full test process, together with screenshots and a step-by-step outline of the tester's journey.

Member's response

4. The Member responded to the complaint by raising a number of issues with the testing process that was carried out. The Member alleged that there were a number of inconsistencies with the process and that the conclusions drawn by the Complainant from the results of the test were flawed. In particular, the Member noted that it was highly improbable that a competing member would allow a banner advert for the Member's services to be displayed on its site and this should have indicated that something was wrong and that the process that followed was irregular.
5. The Member alleged that the Complainant had not provided any indication or proof that the banner advert and landing page referred to in the complaint were operated by the Member.
6. The Member denied that the service that was advertised in the banner advert and landing page was a service offered by the Member.
7. The Member confirmed that the "*STS JPC SA Adult Zonee_24*" subscription service, to which the tester was subscribed during the test, was one of the Member's services, but the Member distinguished this service from the service or services referred to in the relevant promotional material and which was eventually accessed by the Member after the subscription had been activated.
8. The Member alleged that its "*STS JPC SA Adult Zonee_24*" subscription service was still in a testing phase and that the various non-compliance issues raised by the Complainant was probably due to the service not being properly configured yet by the network provider.
9. The Member stated that all marketing and promotional material relating to its "*STS JPC SA Adult Zonee_24*" service (once it was out of the testing phase) was fully compliant with the Code of Conduct.
10. The Member denied that the message that was sent after the subscription was activated was a welcome message. The Member stated that this message was sent as a voluntarily additional step to ensure that the customer knew that they had been subscribed to the service and to ensure that they could access the service.

11. In summary, the Member submitted that the Complainant had offered no evidence that the testing process was transparent and consistent and that the Complainant had cited purported breaches across a number of services when in fact the only service that the tester was successfully subscribed to was the Member's "*STS JPC SA adult Zonee_24*" service. The Member submitted further that the Complainant had offered no evidence that the "*STS JPC SA Adult Zonee_24*" service was not completely compliant with the requirements of the Code of Conduct.
 12. The Member requested that the complaint be dismissed.
-

Complainant's response

13. The Complainant delivered a comprehensive reply to the various arguments raised and submissions made by the Member in its initial response to the complaint.
14. The Complainant asserted that the testing process was clear and transparent and that the full test video recording was provided without interruption and reflected the actual consumer journey followed by the tester.
15. The Complainant highlighted the relevant elements of the process flow to be considered, namely:
 - 15.1 The "*Complete Download*" banner advert.
 - 15.2 The landing page with the heading "*Find Em locals*".
 - 15.3 The confirmation step SMS with the reference "*STS JPC SA Adult Zone_24*".
 - 15.4 The network provider's USSD self-help portal information with the reference "*STS JPC SA Adult Zone_24*".
 - 15.5 The message sent by the Member with an access link for the service.
 - 15.6 The home page for the "*Flirtmob*" service.
16. The Complainant submitted that all of these elements were causally connected to each other and were connected to the Member.
17. In support of its contention in this regard, the Complainant highlighted the various URL redirects which took place after the tester clicked on the '*Complete Download*' banner advertisement:

- 17.1 starting URL - '*qvs.bozzhub.com*';
 - 17.2 redirect to URL - '*ports.rocks/offer/...*';
 - 17.3 redirect to URL - '*smarcalltech.co.za...*'; and
 - 17.4 redirect to URL - '*am7.in/m799SXSL...*'.
18. The Complainant stated that, by clicking on the banner advertisement, the URL redirects clearly show that the banner advert connected to the Member's site or server ('*smartcalltech.co.za...*') and then redirected to the '*Find em locals*' landing page.
 19. The Complainant submitted that the input box where the tester inserted their MSISDN on the '*Find Em locals*' landing page triggered a subscription confirmation step and should therefore be regarded as the relevant call-to-action in this case.
 20. The tester then received a subscription confirmation message from the network provider to confirm the subscription request. The name of the service referred to in the message from network provider was the Member's "*STS JPC SA Adult Zone_24*".
 21. After the tester responded to the confirmation message by replying 'Yes', they checked on the network provider's USSD self-help portal, which confirmed that the tester's MSISDN had an active subscription with the reference "*STS JPC SA Adult Zone_24*". This corresponds with the subscription confirmation message received from the network provider.
 22. The Complainant stated that the tester then received a message welcoming them to an unnamed service, with a link to access the service. The Complainant highlighted that the URL in the link provided in this message starts with the same parameters as the URL for the '*Find em locals*' landing page, i.e. "*am7.in*".
 23. When the tester clicked on this link, which the Member admitted to sending, they were directed to a web page with the name '*Flirtmob*' and the URL - *flirtmob.mobi*.
 24. The Complainant confirmed that R 5.00 worth of airtime was deducted from the tester's airtime balance, which correlates with the pricing information in the confirmation message received from the network provider for the Member's "*STS JPC SA Adult Zone_24*" service.
 25. The Complainant therefore concluded that there is a clear factual and causal link between the '*Complete Download*' banner advertisement, the landing page with the heading '*Find Em locals*', the confirmation step SMS with the reference '*STS JPC SA Adult Zone_24*', the network provider's USSD self-help portal information with the

reference 'STS JPC SA Adult Zone_24', the SMS message sent by the Member with the service access link, and the "Flirtmob" home page.

26. The Complainant also disputed various averments made by the Member in their response. In particular, the Complainant argued that a competing member's service did not link with or direct to the Member's service. A separate banner advertisement was responded to, which linked to the Member's service. The preceding interactions with the competitors service in the testing process can clearly be distinguished and should be ignored for the purposes of this complaint.
 27. The Complainant also disputed the Member's allegation that this service was still in a testing phase. Once the "call-to-action" was triggered, the subscription confirmation step and the service were activated. The service was also listed on the network provider's self-help portal and monies were deducted for the subscription.
 28. The Complainant argued that, irrespective if the different names used, i.e. "Find em locals", "STS JPC SA Adult Zone_24" or "Flirtmob", this should be treated as one service for the purposes of this complaint. As a connection had been established between this service and the Member, the Member is liable for the cited breaches of the Code of Conduct.
-

Member's further response

29. In a further response, the Member continued to argue that there were a number of inconsistencies with the testing process and that the inconsistent and irrational process flow that was followed was as a result of a misleading and confusing test process. Alternatively, the Member alluded to some "more sinister" reason for the tester being directed to one of the Member's services after clicking on the banner advert found on another member's website.
30. The Member denied that the Complainant had established a causal link between the banner advert, landing page and the subsequent service activation. The Member also denied that the "Find em Locals" landing page or service or the "Flirtmob" service were owned or operated by the Member.
31. The Member argued that the presence of a functioning subscription service was not reliable evidence to contradict the Member's statement that this particular service was still in a testing phase.
32. In summary, the Member asserted that the bulk of the Complainant's argument was predicated upon the incorrect presupposition that the banner advert and landing page were linked to the Member's subscription service. The Complainant had failed to provide

any credible evidence to substantiate its claims other than the proffering of some patently flawed logic. In light of this, any and all complaints pertaining to the banner advert and the subsequent landing page should be dismissed accordingly.

Sections of the Code considered

33. Clauses 5.4; 5.5; 5.8; 12.1 (read with 8.2); 12.4; 12.5; 15.6; 15.17; 15.18; 20.1; 20.1B; 20.4; 21.3; 21.5; of the WASPA Code of Conduct were cited in the formal complaint and considered.
 34. No other relevant clauses were assigned by WASPA.
-

Decision

35. Before I give any further consideration to the other submissions made by the parties to this complaint, it is important to deal with a preliminary issue that has been raised by the Member in its response to this complaint. The Member has asserted that the testing process that was conducted by the Complainant's tester in this matter was unclear, irregular and/or inconsistent.
36. After considering the video evidence, screenshots and step-by-step explanation provided by the Complainant, I find that there is no merit to the Member's averments in this regard. The video demonstrates each and every step taken by the tester while conducting the test, without interruption. There is also nothing in the video that suggests that any part of the test was manipulated or altered.
37. A primary issue to be adjudicated before determining whether there has been any breach of the cited sections of the WASPA Code of Conduct, is whether or not it has been established that the Member is responsible for offering and promoting the service (and related promotional material) that is the subject matter of this complaint, and that the Member is therefore the correct respondent in this complaint.
38. In considering this issue, I have taken into account certain key admissions that were made by the Member in its response to the complaint, together with the submissions and evidence presented by the Complainant.
39. The Member has admitted that the "STS JPC Adult Zone_24" subscription service is a service offered by it and that the subscription fee charged to the tester in this case was the correct daily fee charged for its "STS JPC Adult Zone_24" subscription service.

40. The video evidence provided by the Complainant clearly demonstrates that a subscription to the Member's "STS JPC Adult Zone_24" service was activated when the tester entered their MSIDN on the "Find em Locals" landing page.
41. After the tester entered their MSIDN on the landing page, a request was sent to the relevant mobile network operator that the MSIDN in question had requested to join the service. The network provider then sent a subscription confirmation message to that MSIDN to confirm the request. This confirmation message cited the name of the requested service as "STS JPC SA Adult Zone_24".
42. The network provider's USSD self-help portal also confirmed that the tester was subscribed to a service called "STS JPC SA Adult Zone_24".
43. The Member denied that it is responsible for the "Find em Locals" landing page or that there is any causal connection between this landing page and its "STS JPC Adult Zone_24" subscription service.
44. However, it is telling that the Member admitted that it sent the following message after the subscription confirmation step occurred:

"Dear Customer, welcome to our service. Click <http://am7.in/m5WBBknkqnPkP88WzWB8WBk8E8n8n8n8n840e6> to use service",

but offered no explanation as to why the URL in the access link provided by the Member in this message (i.e. *am7.in*) corresponds with the URL for the "Find em Locals" landing page.

45. Based on the evidence presented, I am satisfied that it has been established, at least on a prima facie basis, that the Member is connected to the "Find em Locals" landing page and that the tester's interaction with this landing page triggered the subscription to the Member's service.
46. The test results further demonstrated that when the tester clicked on the access link provided in the message sent by the Member, they were directed to a site with the name "Flirtmob", with URL - *flirtmob.mobi*. The Member again offered no explanation for this and simply denied that the "Flirtmob" service was offered or operated by it.
47. Based on the evidence provided, I am satisfied that the service offered to the tester after the subscription was activated was the "Flirtmob" service, and that the tester was directed to the home page for this service after clicking on the access link provided by the Member. It is therefore reasonable to conclude, at least on a prima facie basis, that the Member was responsible for providing this service even though it was named differently.

48. In answering these averments, the Member simply denied that it operated or was responsible for the *"Find em Locals"* landing page or the *"Flirtmob"* home page and service.
49. The Member's denials were also not unqualified. The Member made the following statement in its response: *"To the best of our knowledge, the "Find EM Locals" service is not an STS service"*; and further that: *"We have done a search of all of our records and can find no link to the "Find EM Locals" service and therefore deny that the "Find EM Locals" Service belongs to it and/or is connected to the STS JPC Adult Zone_24 Service.."*
50. It would be reasonable to expect that a member would know, or ought to know, what services they offer and promote to consumers (either on its own behalf or on behalf of its clients). The Member also did not present any evidence that another member, affiliate or service provider was responsible for the *"Find em Locals"* landing page or the *"Flirtmob"* service.
51. Taking into account the seriousness of the alleged contraventions of the Code, one would expect the Member to present positive evidence to support its denials and to refute the correctness or truth of the averments made by the Complainant in this regard.
52. Although this is not a court of law and the same standards for presenting evidence are not applied when adjudicating complaints lodged in terms of the WASPA Code of Conduct against members, if the Member fails to present any evidence to support its bare denials when it is in a position to do so, then it cannot be held that there is a *real* dispute of fact.
53. Instead, the Member has tried to obfuscate the issues by questioning the test process and the conclusions that were drawn by the Complainant from the results of that process. In particular, the Member made much of the fact that the banner advert, which initiated the process flow and preceded the tester being directed to this landing page, was displayed on a website or page operated by another member of WASPA. The Member alleged that this alone indicates that there was something irregular (or "sinister") with the entire process flow that followed.
54. I must respectfully disagree with the Member in this regard. It is well-known in the industry that banner adverts are placed by automated ad servers programmed on the basis of certain keywords or search criteria and it is not improbable that a banner advert could appear on another member's website or pages.
55. The Member also did not offer any explanation as to why the tester was redirected, after interacting with this banner advert, to a server or site with the URL - *smarttech.co.za*, before being linked to the *"Find em Locals"* landing page.

56. The Member also alleged that the “*STS JPC SA Adult Zone_24*” service was a different service to the “*Flirtmob*” service, and denied that they were one and the same as alleged by the Complainant. However, the Member again failed to present any further information or evidence in this regard, including about the nature of the “*STS JPC SA Adult Zone_24*” service or any description of the content or services offered to subscribers to that service so as to distinguish it from the “*Flirtmob*” service.
57. After considering all of the information and evidence provided in this complaint, I am satisfied that the Complainant has established that the Member is the correct respondent in this complaint and that it would be the responsible party should any of the alleged breaches of the Code of Conduct cited in the complaint be upheld.

Cited breaches of the WASPA Code of Conduct

58. I will deal first with the alleged breaches of all the other clauses cited by the Complainant and then come back to the alleged breach of clauses 5.4 and 5.5.

Alleged breach of clauses 12.1 (read with clause 8.2); 12.4, 12.5, 20.1B and 20.4 of the Code

59. As set out above, it has been established that the Member is responsible for the “*Find em Locals*” landing page.
60. It is clear from a simple review of the “*Find em Locals*” landing page that:
- 60.1 There is no pricing information displayed (in the prescribed format or at all).
 - 60.2 There is no customer support number displayed.
 - 60.3 There is no link to the full terms and conditions for the service.
 - 60.4 There is no mention of any restrictions (including on the location, gender and age range of users of the service).
 - 60.5 There is no display of 18+ wording.
61. In its response, the Member referred to the “*Flirtmob*” service being a free service and that users were only charged when they purchase credits to enable them to contact other users of the service. The Member therefore argues that no pricing information had to be displayed on the landing page for this service.
62. However, it is common cause that the tester was actually charged an amount of R5.00 when the service was activated and before any “credits” were purchased to use the

service. I am satisfied that it has been established that this was not a free service and that the relevant pricing information had to be displayed on the landing page.

63. The Complainant is also correct in stating that the input box on the *"Find em Locals"* landing page was the relevant "call-to-action" (as defined in clause 8.9 of the Code) and was therefore the first step in the two-step confirmation process to activate the service. The relevant pricing information should therefore have been displayed on this landing page.
64. The Member is therefore in breach of clause 12.1 (read with clause 8.2) of the Code and the complaint is upheld in this regard.
65. The test results also demonstrate that there was no subsequent confirmation step containing a link to the terms and conditions for the service after the tester entered their MSIDN on the *"Find em Locals"* landing page. The minimum terms and conditions for the use of the service should therefore have been clearly displayed on this landing page.
66. No terms and conditions were displayed, nor was any link provided on the landing page to another web page where the full terms and conditions for the service were available. The Member is therefore in breach of clause 12.4 and 12.5 of the Code and the complaint is upheld in this regard.
67. Regarding the alleged breach of clause 20.1B of the Code, it has been established that the access link provided by the Member directs the customer to the home page of a service called *"Flirtmob"*. This service is a contact or dating service.
68. The *"Find em Local"* landing page must also be regarded as the relevant promotional material for the *"Flirtmob"* contact and/or dating service. This landing page does not make clear any restrictions on the location, gender and age range of users of the service.
69. The Member is therefore also in breach of clause 20.1B of the Code and the complaint is upheld in this regard.
70. The Member stated in its initial response that the video evidence was incomplete and there may have been earlier steps taken where the relevant age restriction for the service could have been conveyed.
71. This was clearly not the case and I am satisfied that the video was complete and demonstrates the tester's entire journey.
72. There is no indication of the adult nature of the service until the full terms and conditions accessible from the *"Flirtmob"* home page are made available to users. This can only happen after the user has been subscribed to the service.

73. The Member also alleged, after trying to distinguish its “*STS JPC SA Adult Zone_24*” service from the “*Flirtmob*” (or “*Find em Locals*”) service, that all promotional material for the “*STS JPC SA Adult Zone_24*” service was compliant with the requirements of the Code. However, the Member again failed to provide any evidence in this regard.
74. There is also no further evidence that the Member took any reasonable steps to ensure that persons under the age of 18 years were not able to access the service.
75. Based on the foregoing, the Member is in breach of clause 20.4 of the Code and the complaint is accordingly upheld in this regard.

Alleged breach of clause 5.8 of the Code

76. The full terms and conditions for the “*Flirtmob*” service, accessed from the home page, do not contain all of the information required in terms of clause 5.8 of the Code of Conduct.
77. In particular, the terms and conditions do not contain the following information:
 - 77.1 the Member’s registered company name;
 - 77.2 a customer support number;
 - 77.3 unsubscribe instructions;
 - 77.4 any handset compatibility requirements for the service;
 - 77.5 an indication that network fees may apply;
 - 77.6 an indication of how billing errors are handled;
 - 77.7 a statement that the service must only be used with the permission of the bill-payer (for paid services);
 - 77.8 the following statement: “*[member name] is a member of WASPA and is bound by the WASPA Code of Conduct. Customers have the right to approach WASPA to lodge a complaint in accordance with the WASPA complaints procedure. [member name] may be required to share information relating to a service or a customer with WASPA for the purpose of resolving a complaint. WASPA website: www.waspa.org.za*”;
 - 77.9 a statement that the service must not be used: (i) to intentionally engage in illegal conduct, (ii) to knowingly create, store or disseminate any illegal content,

(iii) to knowingly infringe copyright, (iv) to knowingly infringe any intellectual property rights, or (v) to send spam or promote the sending of spam;

77.10 a statement that the member has the right to suspend or terminate the services of any customer who does not comply with these terms and conditions or any other related contractual obligations; and

77.11 a statement that the member has the right to take down any content (hosted as part of the service) that it considers illegal or for which it has received a take-down notice.

78. The Member is in breach of clause 5.8 of the Code and the complaint is upheld in this regard.

Alleged breach of clause 15.6 of the Code

79. The Member admitted that its "STS JPC SA Adult Zonee_24" service was a subscription service and that customers would be billed R5 per day to use the service. However, it is stated in the terms and conditions for the "Flirtmob" service that users would be charged to buy credits to enable them to message other users.

80. In terms of clause 15.6 of the Code, the Member is prohibited from increasing the amount and frequency of the billing or the frequency of the service after the customer has joined the service, without the customer's explicit permission.

81. There is no evidence that the tester was, in fact, charged additional amounts after subscribing to the service.

82. It would also be reasonable to assume that if a user did purchase credits to enable them to message other users, they would do so at their own instance. Therefore, any additional charges would be levied with their explicit permission.

83. Based on the foregoing, I am not satisfied that it has been established that the Member is in breach of clause 15.6 of the Code of Conduct. The complaint is dismissed in this regard.

84. However, this issue is relevant to determining whether the Member has breached the provisions of clauses 5.4 and/or 5.5 of the Code.

Alleged breach of clause 15.17 and 15.18

85. The Member admitted that no welcome message was sent to the tester after they were subscribed to the service. However, the Member stated that this message would normally be sent by the network provider but since the "STS JPC SA Adult Zone_24"

service was still in a testing phase and may not yet have been properly configured, the message was not sent in this case.

86. The evidence presented by the Complainant clearly indicates that this service was live and freely available to consumers.
87. In its further response, the Member appears to argue that the fact that the service was functioning does not contradict its initial statement that the service was still being tested. I find it difficult to understand the rationale here and the important fact is that the service was actually available to consumers and that charges were levied for the service. I therefore do not accept the veracity of the Member's version in this regard.
88. The evidence also clearly shows that the service was properly activated on the network provider's system. The required subscription confirmation message was sent by the network provider. The provider's USSD self-help portal correctly reflected that the subscription was active. I therefore agree with the Complainant that it is highly improbable that the network provider failed to send the required welcome message after the subscription was activated.
89. Even if the Member's version is to be accepted, then no welcome message was sent to the customer and the requirements of clause 15.17 of the Code were not adhered to. The Member would also still be responsible for this breach even if it was caused by a technical configuration error on the part of the Member's own provider.
90. Furthermore, the Complainant submitted that the message sent by the Member after the subscription was activated (i.e. "*Dear Customer, welcome to our service. Click <http://am7.in/m5WBBknkqnPkP88WzWB8WBk8E8n8n8n8n840e6> to use service*") should be regarded as the "welcome message" sent to the user.
91. The Member, in turn, alleged that this message was not intended as a welcome message and that this was an additional step voluntarily taken by the Member to ensure that its customer know they have been subscribed to the service and that they are able to access the service by clicking on the link provided.
92. After considering the submissions made by both parties in this regard, I am satisfied that the only message that was received by the tester after the subscription was activated was this message sent by the Member. This message clearly stated "*welcome to our service*" and it is reasonable to conclude that this was intended as a welcome message for the purposes of clause 15.17 of the Code.
93. Furthermore, clause 15.18 of the Code requires that the message sent to the customer after the subscription has been activated contains certain prescribed information. The message sent by the Member did not meet the further requirements of clause 15.18 in that the message did not contain the following information:

- 93.1 the name of the service that the tester had subscribed to;
 - 93.2 the pricing information,
 - 93.3 a customer support number,
 - 93.4 instructions for terminating the service, and
 - 93.5 a link to a WAP landing page or a web page describing the service (optional).
94. The Member is therefore in breach of clauses 15.17 and 15.18 of the Code and the complaint is upheld in this regard.

Alleged breach of clause 20.1 of the Code

95. The service that is the subject of this complaint, whether it is called “*STS JPC SA Adult Zonee_24*” or “*Flirtmob*” (or “*Find em Locals*”), is to be regarded as a contact or dating service for the purposes of the Code of Conduct.
96. It is evident from a review of the promotional elements used to promote this service that potential users are not warned of the risks involved when contact information is given out to other individuals. They are also not given clear advice on sensible precautions to take when meeting people through the service.
97. The Member is in breach of clause 20.1 of the Code and the complaint is upheld in this regard.

Alleged breach of clauses 21.3 and 21.5 of the Code

98. No evidence was presented regarding the nature of the “*STS JPC SA Adult Zonee_24*” subscription service or a description of the content or services that would be offered to subscribers to this service.
99. There was also no evidence presented to indicate that the “*Flirtmob*” contact or dating service included any content or product that was of a clearly sexual nature, or that the service was of a sexual nature.
100. There was also no evidence presented to indicate that 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, was made available to users of this service.

101. It therefore cannot be established whether the service offered by the Member in this case was an "adult service", as defined in clause 21.1 of the Code, or an "adult content service", as defined in clause 21.2 of the Code.
102. The complaint in respect to the alleged breach of clauses 21.3 and 21.5 cannot be upheld and is accordingly dismissed.

Alleged breach of clauses 5.4 and 5.5 of the Code

103. For the purposes of determining whether the Member has breached the provisions of clause 5.4 and 5.5 of the Code, I will evaluate the conduct of the Member as a whole as it pertains to the manner in which the service and related promotional material which are the subject of this complaint were promoted and offered.
104. The tester was subscribed to a R5 per day service after entering their MSIDN on the "Find em Locals" landing page. No pricing information was conveyed to them prior to this happening. The required information, which should have been contained in a welcome message sent after the subscription was activated, was also not provided.
105. The terms and conditions for the service that was activated indicated to the customer that the service was a free service and that they would only incur charges when they purchased credits to enable them to message and interact with other users of the service.
106. However, the true state of affairs was that the customer would continue to be charged for a R5 per day subscription service.
107. There is no evidence to suggest that any other person was responsible for disseminating the information relating to the Member's service or that information about the service was disseminated without the Member's knowledge.
108. The primary objective of the WASPA Code is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. This clearly did not happen in this case.
109. I am satisfied on the evidence provided, and for the reasons highlighted above, that the information that was disseminated by the Member was false and was likely to mislead users by ambiguity and omission.
110. I am also satisfied that it has been established that the Member did not act honestly and fairly in its dealings with the customer (in this case the Complainant's tester).

111. Therefore, I find that the Member is in breach of clauses 5.4 and 5.5 of the Code of Conduct.

Summary of findings

112. The complaint is therefore accordingly upheld in respect of clauses 5.4; 5.5; 5.8; 12.1 (read with clause 8.2); 12.4; 12.5; 15.17; 15.18; 20.1 and 20.1B of the Code of Conduct.

113. The complaint is dismissed in respect of clauses 15.6, 21.3 and 21.5 of the Code of Conduct.

Sanctions

114. In determining appropriate sanctions against the Member for its breach of the WASPA Code of Conduct, the following has been taken into consideration:

114.1 any previous successful complaints made against the Member in the past three years;

114.2 any previous successful complaints of a similar nature;

114.3 the nature and severity of the breach; and

114.4 any efforts made by the Member to resolve the matter.

115. In determining appropriate sanctions, I must also take account of previous precedent set by WASPA adjudicators and appeal panels in previous complaints for the same or similar contraventions.

116. According to WASPA's published database, there have been no previous successful complaints made against the Member within the past 3 years. This is taken into account as a mitigating factor.

117. However, the findings made in this complaint relate to a number of very serious breaches of the WASPA Code of Conduct and the threat of harm or prejudice to consumers is high.

118. Based on the evidence provided in this complaint, it would also not be unreasonable to conclude that the Member may have intentionally set out to deceive consumers by the

way that the service in question has been promoted and charged for. However, I will stop short of drawing a definitive conclusion in this regard and I will give the Member the benefit of the doubt in this case that it has not acted with intent to deceive.

119. I have also noted with concern the manner in which the Member has answered this complaint. In particular, the Member made a number of incorrect statements or averments without any supporting evidence in an attempt to obfuscate the issues raised by the Complainant and to avoid responsibility for the various breaches of the Code that have taken place.
 120. These factors are taken into account as aggravating factors in determining appropriate sanctions.
 121. Based on the foregoing factors, the following sanctions are imposed:
 - 121.1 The Member is fined an amount of R15 000.00 for its breach of clauses 5.4 and 5.5 of the Code.
 - 121.2 The Member is fined an amount of R5 000.00 for its breach of clause 5.8 of the Code.
 - 121.3 The Member is fined an amount of R15 000.00 for its breach of clause 12.1 (read with clause 8.2) of the Code.
 - 121.4 The Member is fined an amount of R5 000.00 for its breach of clause 12.4 of the Code.
 - 121.5 The Member is fined an amount of R5 000.00 for its breach of clause 12.5 of the Code.
 - 121.6 The Member is fined an amount of R15 000.00 for its breach of clauses 15.17 and 15.18 of the Code.
 - 121.7 The Member is fined an amount of R15 000.00 for its breach of clause 20.1 of the Code.
 - 121.8 The Member is fined an amount of R15 000.00 for its breach of clause 20.1B of the Code.
 103. The Member is also formally warned that if any complaints of the same or a similar nature are upheld against the Member in future, an appropriate sanction may be to suspend its membership of WASPA.
-