



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Airborn Messaging
Information Provider (IP) (if applicable)	MDG London Ltd / Bombasties / Stixi
Service Type	Content Downloads (Java Games, ring tones, wallpapers, logos etc)
Source of Complaints	Competitor
Complaint Numbers	#0064

Complaint

A complaint was received from a competitor of the SP, concerning advertisements placed by the IP (which appears to be MDG London Ltd, trading under both the names Stixi and Bombasties) in Huisgenoot magazine dated 3 November 2005.

The complainant states:

“The advertisement contains advertising for adult games. Although no pictures are shown, the ad says adult games and has names such as Kamasutra. There is no warning that these are for over 18 only.

Huisgenoot is a family magazine with articles for young children and therefore these children will have easy access to these adult games.”

A copy of the advertisement was not included.

The Complaints concern the appearance of adult content in a magazine with a mass-market circulation.

The following breaches of the WASPA Code of Conduct were raised:

8. Adult services

8.1. Required practices

8.1.2. 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.

8.1.3. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult service.

The Secretariat investigated the Complaint and determined that there may be an additional breach of the WASPA Code of Conduct, namely:

8.2. Prohibited practices

8.2.2. Promotions for adult services must not appear in publications or other media specifically targeted at children.

Investigation

This complaint follows complaints against the same SP in respect of adult targeted content advertised by the same IP in the same publication.

The Adjudicator issued a report in respect of these previous complaints (complaints #0004, #0012 and #0036) on 31 October 2005. The IP, through the SP submitted an appeal in respect of the Adjudicator's decision, which appeal was rejected by the Appeal Panel in a report dated 29 March 2006 (incorrectly referred to therein as 29 March 2005).

It must be noted that the complaint was submitted at 13:20 on 1 November 2005, one day after the Adjudicator's report was issued in respect of complaints #0004, #0012 and #0036 to the SP.

The SP made a submission indicating:

“... this is to confirm that the content provider has been contacted about the WASPA Code of Conduct complaint number #0064. According to the content provider, the Magazine in question has approved the advertising as provided to them by the content provider. In addition to the above the magazine in question has also commented to the content provider that their advertising for the content they offer is acceptable to them as a family magazine.”

Decision

The IP, through the SP has previously been found to contravene the WASPA Code of Conduct in respect of this same issue and this decision was upheld on appeal. Nevertheless, this complaint relates to an advertisement placed while complaints were being adjudicated and prior to a report being issued. The advert in question was already published on 31 October 2005 and copies of the magazine on retail shelves a day later when the complaint was submitted.

The WASPA Code of Conduct does not in any way require an SP or IP to terminate or suspend a service once a complaint has been issued.

In the absence of a copy of the advertisement, the Adjudicator was unable to assess if any mitigating or aggravating circumstances existed in respect of the particular service.

The Adjudicator accordingly upheld the complaint, but imposed no sanction, the sanction imposed in respect of complaints #0004, #0012 and #0036 being deemed to apply to this complaint as well.
