



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP):** Marketel (Pty) Ltd

**Information Provider (IP):**  
(if applicable)

**Service Type:** Adult services; advertising

**Complainant:** WASPA Monitor

**Complaint Number:** 3627 & 3669

**Code version:** Code v5.7 and Ad Rules v1.6

**Date:** 4 June 2008

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### Complaint

1. On the 7<sup>th</sup> of March 2008 the WASPA Monitor submitted the following complaint:

DateBreach : 22 & 23 Feb 08

WaspService : 42654 - Marketel

ClausesBreached : 2.2.1

1.2.3

DescriptionComplaint : On 22/02/08 and 23/02/08, an ADULT television ad flighted on Action X:

PROBLEM 1: it flighted during a 13pg age restriction programme. Adult advertising are to appear only in appropriate age restricted programming.

PROBLEM 2: T&C\'s are too small and moving visuals appear in the background of the T&C\'s, resulting in even further difficult reading.

A copy of the commercial is not available, but copy read: SMS LIVE, R30/SMS.

2. On the 24<sup>th</sup> of March 2008 the WASPA Monitor submitted a further complaint:

Date of breach: 7 & 8 March

WASP or service: Marketel - 38650

Clauses breached: 2.2.1

Description of complaint:

On 7/03/08 and 8/03/08, an ADULT television ad flighted on Action X during a 13pg & 16pg age restriction programme. Advertisers choose their advertising times from a schedule provided by DSTV, hence, flighting during "Supernatural" is inappropriate, even though during watershed hours. The ad displays nudity of a girl and inappropriate touching.

Adult advertising are to appear only in appropriate age restricted programming.

A copy of the commercial is not available, but copy read: SMS "Me Live" to 38650. A copy of the commercial is not available as it flighted on Action X.

The WASPA Monitor has indicated that this is a serious offence and cannot be resolved informally. The service provider is requested to provide a formal response to the alleged breaches so that this matter can be reviewed by an independent adjudicator.

3. The IP is not identified in the correspondence, but it is apparent from the SP's response that it was the SP that placed the advert, so the identity of the IP is not material.
4. Given that the complaints relate to the same conduct in respect of the same television channel, they will be dealt with together.

## Response

5. The SP submitted a response in respect of the advertisement screening times that included input from both the media placement agency and the television station (Action X). The response can be summarised as follows:
  - 5.1. No response is given as to the advertisements screened on the 22<sup>nd</sup> of February.
  - 5.2. On the 23<sup>rd</sup> of February there were three slots booked for the SP's advertisement and the station admits that it moved one of them to an earlier time, presumably because it had difficulty accommodating all three in later timeslots.
  - 5.3. It is clear that the schedule according to which advertisements were screened was determined by the television station, and it would appear that neither the SP nor the media placement agency were consulted in moving one of these adverts to an earlier slot.
  - 5.4. The response to the advertisements screened on the 7<sup>th</sup> and 8<sup>th</sup> of March was simply that it was a result of the same problem that caused the incident on the 23<sup>rd</sup> of February.

- 5.5. The representative of the television station apologised for the inappropriate timing of the advertisements and advised that the station was doing everything in its power to ensure that this did not happen again.
6. A schedule of advertisement screening times was also provided which confirmed the above in respect of the 23<sup>rd</sup> of February.
7. As to the problem of the T&Cs in the advert being obscured by moving visuals, the SP took some time to revert as it had to obtain a copy of the advert. When it did respond, its representative had the following to say:

I have finally received a copy of the ad and acknowledge the moving visuals in the background. I have made sure that it will not be flighted again.

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### Portion of the Code Considered

8. The following clause in the WASPA Code of Conduct was considered:
- 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.
9. Clause 2.2.1 of the Advertising Rules summarises clause 2.3.1 thereof as follows:

No Content Services that may directly or indirectly allow persons under 18 years of age to obtain Adult Content and/or any Age-restricted Content may be advertised in media of general distribution, unless an adult verification process (implemented or approved by the mobile network operators) is in place to prevent - as may be reasonably possible - access to that content service by children.

Advertising material for content services may not contain visual images and/or words or phrases that constitute or depict sexual conduct as defined in the Films and Publications Act 65 of 1996 unless contained in media that has been lawfully authorised to be distributed to and/or viewed by persons over the age of 18 only, and/or media that is distributed under restricted conditions.

If on TV, any advertising of adult content on broadcast channels may only be done during the watershed hours defined by a licensed broadcaster and may not contain any sexual content or nudity in excess of that displayed within the programme the advertisement is placed in.

10. Clause 2.2.3 of the Advertising Rules reads as follows:

#### **2.2.3 T&C TEXT DISPLAY RULES**

##### **Trigger:**

At any display of, or mention by a voice-over, of a unique access number

**Display Length:**

- Minimum 10 seconds
- If applicable, of the 10 seconds display time for T&Cs, a minimum of 5 seconds must be allocated to informing the user that they will be subscribing to a subscription service.

**Display Text Font:**

'Zurich' font

**Display Text Font Size:**

15 points MINIMUM

**Display Text Position:**

On bottom edge of title face of the screen

**Display Text Type:**

- No CAPS-only or Italics-only text is permitted for the T&C font.
- The T&C text must be static and horizontal for the requisite minimum display time, changing as is necessary to show all the T&Cs in equal time proportion
- The T&C text may not scroll on the screen, either right to left, left to right nor any other direction.
- The T&C text must not be positioned or formatted in a manner where it may be obscured by other text or visual information that may be displayed as part of the ad
- The T&C must be formatted so that each sentence is distinct. Each sentence must end with a period.
- The T&C text must not be part of a colour scheme that may obscure easy reading of complete details of the T&C
- The T&C text must not be obscured by any background flashing or other visual animations that practically and objectively obscures easy reading of complete details of the T&C text.

11. The Advertising Rules are given force by reference to clause 6.1.1 which incorporates them into the Code of Conduct by reference.

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**Decision**

12. It is common cause that the advertisements in question were in respect of adult services. As a result of this the SP has at least *prima facie* breached clause 8.1.2

of the Code of Conduct, and also clause 2.3.1 of the Advertising rules read with clause 6.1.1 of the Code of Conduct because they were clearly broadcast at inappropriate times.

13. It is however apparent from the record that the SP had every intention that the advertisements in question should be screened during breaks in broadcasts of an adult nature - during the "watershed hours" referred to in the Advertising Rules.
14. It is equally apparent that the advertisements in question were screened at inappropriate times due to the actions of the television station and not those of the SP or of the media placement agent.
15. I refer to the adjudicator's report in respect of complaint 3147 which involved the same SP and television station. While it is suspicious to find the same parties again referred to adjudication for essentially the same offence, I am satisfied that the SP acted *bona fide* throughout and the inappropriate airing of the advertisements was entirely the fault of the television station.
16. I can accordingly not find that the SP has breached clause 8.1.2 of the Code of Conduct, or clause 2.3.1 of the Advertising rules read with clause 6.1.1 of the Code of Conduct. The first head of the first complaint and the whole of the second complaint are accordingly not upheld.
17. The SP's response to the second head of the first complaint does not amount to an admission that the moving visuals in the background obscured the T&Cs, merely that they were there. On examination of the advertisement in question it is apparent that white patches occasionally do appear in the background, which has the effect of obscuring isolated patches of the T&Cs momentarily. The effect is not particularly serious, but is nonetheless a breach of Clause 2.2.3 of the Advertising Rules.
18. The Complainant also alleged in the first complaint that the font size for the T&Cs was too small. As set out in the adjudicator's report to complaint number 3545, an adjudicator is unable to meaningfully determine the font size in a television advertisement with reference to the Code of Conduct and Advertising Rules as they currently stand. Accordingly the complaint in respect of the font size of the terms and conditions in the advertisement is not upheld.

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## Sanction

19. The SP is issued with a formal reprimand in respect of its breach of Clause 2.2.3 of the Advertising Rules relating to the obscuring of the advertisement's terms and conditions by moving visuals on the background.
20. In complaint number 3147 the same SP was accused of the same misconduct alleged in these complaints and involving the same television station. In that complaint the adjudicator determined that the inappropriate screening of the advertisement in question was the fault of the television station. In the instant complaints I have found that the screening of advertisements for adult services by

the same television station was again the fault of the television station itself. WASPA has no jurisdiction over television stations, and the WASPA Monitor is hence requested to bring the facts of these complaints as well as those of complaint number 3147 to the attention of the Advertising Standards Authority of South Africa (ASASA).

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