

REPORT OF THE ADJUDICATOR

WASPA Member (SP): Teleplay South Africa

Information Provider (IP): Teletouch IVR
(if applicable)

Service Type: Absence of age restriction on adult service

Complainant: Member of the public

Complaint Number: 0119 (as amended)

Adjudicator: Kerron Edmunson

Code version: Code v3.2 and Ad Rules v1.6

Complaint

The complainant sent a complaint to WASPA on 23 January 2006 in which he stated that he had received an SMS saying “call me” with an advert pointing to a mobile number, without an age restriction. The complainant further states in the complaint that his handset could have been picked up by a minor and “I do not advocate this kind of marketing from Vodacom. They say they are so called reputable company but let filthy marketing an pornography filter thought [sic]”.

The heading of the complaint is “Pornography ads spammed on a call me!” however the complainant does not refer to spamming as part of the main body of the complaint.

This adjudication has been amplified by a response received from the SP on 27 September 2006. The complainant was also invited to submit additional details, but has not done so. The additional information sought from both the complainant and the SP was requested in the following way:

To ensure that WASPA has all relevant facts before it in considering the complaint, the SP is requested to assist further by providing:

- *a copy of the advertisement sent which invited calls to the relevant mobile number;*
- *a script of all terms and conditions referred to;*
- *a process description of the advertisement sent to a mobile phone and if dialled, the order of the script containing terms and conditions;*
- *an indication of when and where the customer is warned as required under sections 10.1.2 and 10.1.4.*

I also invite the complainant to clarify the complaint in relation to the following matters:

- *whether the complaint is actually in relation to spamming*
- *what about the complaint led the complainant to believe that it was an adult service.*

SP Response

The SP responded to the complaint both initially and subsequently in exactly the same way, by saying that:

“Teleplay acts in accordance with WASPA guidelines. Subsequently all our services contain Terms and Conditions drawn by our Lawyers acting in accordance with Vodacom and MTN Code of Conduct that can be heard by pressing the star key on the main menu. In addition, details on how to reach our customer service are included. Our dating service is not “adult content”, in spite of that we do not let people under the age of 18 leave personal voice mailboxes, our “Terms and Conditions” are very clear, every personal voice box gets reviewed by our staff before being entered into the box list, and we monitor the system daily in order for indecent material not to be heard over the line.

Here is a transcript of our Terms and Conditions as they are heard on our systems: “you will now listen to the terms and conditions of the system: This is a computerised interactive voice system integrated with live chats, which contents are not suitable for any person under the age of eighteen. By using this system you declare, that you are at least eighteen years old.”

In its subsequent response, the SP also attached a copy of the advertisement which was complained about. This consists in a picture of a man and woman close together, almost kissing, headed “FREE LOVE”, with the words “FIND LOVE NOW” in a heart-shaped figure between the people. At the bottom of the page are the words “LIVE CHAT – CALL NOW 082-2-399-499” and on the right-hand side in a vertical box are the words “VAS rates apply”. There are no other terms and conditions appearing on the picture.

Consideration of the WASPA Code

On the complainant’s version the service is an adult service. On the SP’s version it is a dating service. In either case the service appears to have been marketed in an unsolicited way, but this is not dealt with specifically in the complaint.

As the complainant has not raised this issue I will focus on the 2 matters complained of in relation to an analysis of the Code:

1. no age restriction in the advertisement;
2. pornographic marketing; and

the matters forming the basis of the response:

1. not an adult service;
2. terms and conditions contain an age restriction.

It is useful to begin an adjudication with a look at the general provisions of the Code and particularly section 3.1 (professional and lawful conduct), which states at 3.1.1 that “members will at all times conduct themselves in a professional manner in their

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dealings with the public, customers, other wireless application service providers and WASPA”.

An “adult service” is defined in section 2 as “any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.” “Contact and dating service” is defined as “any service intended to enable people previously unacquainted with each other to make initial contact and arrange to meet in person”.

The SP has denied that the service is an adult service.

Section 10 deals with the requirements for a contact and dating service. The most relevant provisions would appear to be these:

- section 10.1.2 provides that “providers of contact and dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.”
- section 10.1.4 states that “providers of contact and dating services must obtain explicit consent from a customer prior to making his or her contact information available to third parties.”
- section 10.1.5 provides that “promotional material for contact and dating services must make clear any restrictions on the location, gender and age range of callers to the service.”
- section 10.2.2 states that “providers of contact and dating services must take reasonable steps to ensure that no children use the services”.

Decision

On the basis of the response given by the SP, it would appear that the service is in fact a contact and dating service and not an adult service.

In the light of the response received from the SP, however, I note that the Code has in fact been breached, even if not in the manner complained of, in that the SP has not complied with sections 10.1.4 or 10.1.5. Section 10.1.4 states that “providers of contact and dating services must obtain explicit consent from a customer prior to making his or her contact information available to third parties” and section 10.1.5 states that “promotional material for contact and dating services must make clear any restrictions on the location, gender and age range of callers to the service.”

The advertisement does not mention any restrictions, and the advertisement constitutes “promotional material”, therefore the SP has breached section 10.1.5 of the Code. Since the SP did not avail itself of the opportunity to make a full disclosure of the facts relating to this particular complaint, I must find that on the SP’s own version it would also appear to have contravened section 10.1.4. However, as the complainant has not expanded on his complaint either, I am not able to make any other findings.

As an aside, I note that the SP has not complied with the advertising and pricing guidelines set out in section 6 of the Code.

Sanction

The SP is directed to:

1. amend the advertisement complained of so as to comply with section 10.1.5 of the Code and to submit the amendment to WASPA for approval within 5 days of the date of publication of this amended finding; and
2. pay a fine to WASPA within 5 days of the date of publication of this amended finding, of R2,500 in relation to the breach of section 10.1.4 and a further R2,500 in relation to the breach of section 10.1.5 of the Code.