

WASPA Member (SP)	Integrat
Information Provider (IP)	N/A
Service Type	Misleading Advertising
Source of Complaint	WASPA Monitor
Complaint Number	#3629
Code of Conduct Version	5.7
Date of Adjudication	09/04/2008

Complaint

The Complainant raised a complaint highlighting that the mentioned advertisement that is displayed on a website is misleading advertising by implying an actual person as one's secret admirer, where it is in fact generated via an automated process and no real people exist.

SP Response

In its response the SP gave a detailed account of its actions:

- 1.** The service offered and provided by the content provider subsists of love connection messages which involves that the consumer will be receiving love connection messages that subsist of predictions that show who the consumer's secret admirer should be at the special instance in time when making use of the service. This may vary from time to time taking into account the above mentioned algorithms as explained by the IP. The IP's service then proceeds sending the consumer love connection messages that should be of assistance in their love lives and help them to connect with potential love in their lives but the service never implies to be a live service. As such there can be no breach of Clause 3.3.1 of the Code of conduct as discussed more clearly below. The only conclusion that could be drawn from this complaint is that the complainant was referring to the clause as defined below, but as is clearly indicated in the advertising guidelines this is only relevant to Live Services.

2. **“LIVE SERVICES:** [In relation to live Contact-type services only] Advertisements may not use the word ‘live’ to describe systems where a recording or an automated system is used in place of a real-time interaction with a human
 - No advertisement may be designed or worded in a manner that may create an expectation by a reasonable person that there is real-time or near-real time communication with a human offered as part of the service, where in fact there is no live real-time or near-real-time interaction whatsoever with a human available as part of that advertised service, or where the real time interaction with the human does not constitute the essence of the service.”
3. The complaint is brought in terms of clause 3.3.1 of the Code of Conduct which provides that: **“Members will not offer or promise services that they are unable to provide”**. In this case in point the content of love connection messages are offered and they are provided additionally as is set out more clearly below.
4. The consumer then receives the following welcome message:
Welcome 2 the love connection. U'll get daily love connection msgs. Cost R4.99/msg. To unsubscribe sms STOP to 31947. Support: 0822350499

This welcome message notifies the consumer of the fact that he/she has subscribed to a subscription service, and that he will receive the latest love connection messages for his / her specifically entered star sign as supplied by the consumer while applying for the service. When receiving this welcome message the consumer is also given the uncomplicated process of unsubscribing.
5. More over the Terms & Conditions as displayed on the website displays that the content will be love connection messages, which is exhibit on the site as per the WASPA advertising guidelines standards. This is exhibit before the consumer can start entering any information on the website and in so doing subscribing. These Terms and Conditions also clearly states that: **“You will receive your daily Love Connection Messages at R4, 99 per msg, until you unsubscribe.”**- Showing the consumer that this is a service providing love connection messages and as such clarifying any confusion of the type of subscription service that is offered. In amplification of the fact that this is clearly stated in the Terms & Conditions it should be mentioned that in the present medium of discussion of an Internet Website the viewer (consumer) of the website has more of a unlimited viewing of the terms and conditions than a consumer that for example views a TV advertisement where the terms and conditions are only displayed for a few seconds. In this scenario the consumer can take as much time as is needed to conform themselves with the terms and

- conditions before continuing with the use. Considering what is more that the at hand Internet Website's terms and conditions was not an extensive time-consuming list, but a minuscule to the point list of terms and conditions which could easily be processed by any consumer.
6. So the consumer is well informed that the subscription service entails receiving Love Connection Messages. Love Connection messages cannot be defined as contact type service but rather messages consisting of love messages.
 7. In magnification of the foregoing, it does not appear from the above mentioned information that the IP either intentionally or negligently offered a service which it could not deliver.
 8. The following extract from the complaint at hand provided by WASPA illuminates the fact that there is no breach of the code if the complainant can not specify how the code was breached and makes it difficult and just about unreasonable to require a response to such a vague complaint which is not clearly specified:
"Misleading advertising i.e. implying an actual person is your secret admirer, but it's clearly generated via an automated process and no real people exist - the code does not clearly specify the nature of this complaint."
 9. We would like to refer the adjudicator to ***complaint number #106*** which was adjudicated on the same Clause 3.3.1 of the Code of Conduct and the following extract from the adjudication of same:
"The Adjudicator is not a court of law and submissions by the parties are not tested by way of oral evidence or otherwise. As such the Adjudicator was not able to make a determination of a breach of Clause 3.3.1 of the WASPA Code of Conduct as there is a divergence between the complainant and the SP regarding whether the SP is in fact able to provide the service requested, or not."
 10. In the current complaint it can clearly be seen as portrayed in the above mentioned paragraphs that the sms's sent to the consumer and the Terms & Conditions that is provided on the website clearly illuminates the fact that it is a subscription for love messages, which is clearly and unambiguously named before the consumer is subscribed therefore as in complaint number **#106** the SP or IP is in fact able to provide the service requested by the consumer and the consumer is well informed of this before subscribing - by the above mentioned SMS they receive and the fact that the love connection messages is also clearly named in the Terms & Conditions of the website.

11. The SP is further of the firm belief that the IP would not have deliberately misled customers in any way or under any circumstances and therefore this complaint should be dismissed.

Sections of the Code of Conduct considered

3.3.1. Members will not offer or promise services that they are unable to provide.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him. In this particular instance after reviewing the website, the complaint lodged and the SP's eventual response, it is unlikely in the opinion of the Adjudicator to assume that the SP has misled the consumer or offered or promised any services it is unable to provide.

On the second page of the website it is quite clearly stated that the name of your secret admirer will be "calculated", therefore not implying any real people involved. It is also clear that this is indeed not a live service and therefore the Adjudicator cannot held that there has been any breach of section 3.3.1 of the WASPA Code of Conduct.

The Complaint is dismissed.
