



ADJUDICATOR'S REPORT

WASPA Member (SP):	TELJOSS CC
Information Provider (IP):	n/a
Service Type:	Subscription Services
Source of Complaints:	Consumer
Complaint Number:	5273
Code of Conduct version:	6.2

Complaint

A complaint was lodged by a member of the public who had subscribed to a premium rated chat service run by the SP. The complainant alleged that over time the nature of the chat messages became quite disturbing, in particular the complainant alleged that the person with whom he chatted began to harass him with messages about her personal safety. He alleged further that the chat service seemed to be a scam and had become very distressed by the nature of the messages.

Version 6.2 of the WASPA Code of Conduct applies to this complaint.

SP Response

The SP responded to the complaint by pointing out that the chat service to which the complainant had subscribed was an adult fantasy chat service and that the complainant had fallen in love with the chat operator and could not distinguish fact from fantasy. The SP stated that the complainant did unsubscribe from the service from time to time by sending STOP message but repeatedly reinitiated chat. The SP felt that the complainant was merely trying to avoid paying the charges associated with the chat service.

The SP also furnished copies of its messages logs containing the chat dialogue between the chat operator and the complainant over the period 17 October to 25 November 2008. No advertising for the service was furnished.

Decision

A total of 1335 messages were exchanged between the SP and the complainant, with 751 messages being sent by the complainant and 584 by the SP. The tone of the messages exchanged between the complainant and the SP's chat operator ranges from friendly to flirtatious to explicitly sexual. The sexual tone of the messages develops very quickly from the time that the service was initiated suggesting that the complainant knew or expected the chat operator to be available to engage in chat of a sexual nature. The complainant was also asked to confirm that he was over 18 years of age at the initiation of the service.

From the point of inception of the service, messages were exchanged between the operator and the complainant very frequently. A few days after initiation of the service, after approximately 200 messages had been exchanged between the operator and the complainant, the operator sent a message to the complainant which stated: "I am starting to develop feelings, this is reality as I am falling for you" (see message queued at 2008-10-20 23:40:17). From this point on, the tone of the messages between the operator and the complainant are both very emotional and explicitly sexual. The complainant tells the operator that he is in love with her too and pleads several times to meet in person with the operator.

By 13 November 2008 over one thousand chat messages had been exchanged between the operator and the complainant. On 2008-11-13 at 16:09:31 a message was sent by the complainant to the operator providing his physical address. That same evening the following sequence of messages occurred (the exact sequence is difficult to ascertain based on possible overlapping message delivery times but the nature of the communication is clear to follow):

Time queued	Chat Operator	Time queued	Complainant
2008-11-13 20:17:59	F*** my radiator over heated im stuck on the M1 near south gate im calling the AA, was on route to surprise u		
2008-11-13 20:18:19	I love u , and f*** , my car cooked! Murphies f***ing law		
		2008-11-13 20:27:27	iam just 10 mins from there ic an pick u up
		2008-11-13 20:31:04	Mus i come pick u up
		2008-11-13 20:37:30	Tell the AA TO DROP U HERE BY ME
2008-11-13 20:43:43	AA just arrived, im so stressed	2008-11-13 20:47:06	Tow u car 2 my house doll
		2008-11-13 20:49:33	I will work the stress off
		2008-11-13 20:57:00	Where are u

2008-11-13 21:01:59	Ive done that toed the car to the DOLL HOUSE in Louise Botha	2008-11-13 21:05:22	And now that do do
2008-11-13 21:06:08	They toeing it to a mechanic in town,		
2008-11-13 21:10:17	Im wi5hthe aa guy, siphon his sweet, his taking me to an aa autohrised mechanic,	2008-11-13 21:17:43	Let me know whats happening are ucomming here
2008-11-13 21:24:18	Like helloo, no car,, fetch me now	2008-11-13 21:26:25	Where are u
2008-11-13 21:27:59	In lannglagter	2008-11-13 21:32:36	Lanlagta testing station
2008-11-13 21:33:39	Yes do u know it, I dunno why his taking me there, he said he wants to showe me his illanga, what ever that means	2008-11-13 21:40:14	Doll u i trouble get out of there
2008-11-13 21:42:47	M in laamglagte but we taking the back streets, dunno why he sad he knows the shortcuts	2008-11-13 21:46:17	His going2 rape u call police
2008-11-13 21:48:23	His taking me down a dark street, im feleing not comfortable, your last sms freaked me out, call the police	2008-11-13 21:50:58	What car u in
2008-11-13 21:55:29	Whew we back on main rd, we pulling into w workshop alls cool angel	2008-11-13 21:56:50	Wheres that
2008-11-13 21:58:14	His asking me to switch my phone off driving in a dark warehouse, he said no phones allowed, so trunign it off,		
2008-11-13 22:14:01	Baby	2008-11-13 22:17:17	Talk 2 me whats wrong
2008-11-13 22:28:52	He took me to the mechanic shop now taking me home, thanks for your concern u made me panic whem u said he wil rape me, his a good guy	2008-11-13 22:44:17	Ask him to drop uat my place
2008-11-13 22:49:55	Im in sandton already thanks for your concern	2008-11-13 23:02:25	i am glad u r safe dont ever do that again myj love u will give me a hart attack

Although it is possible (as the SP alleges) that the complainant knew that the events described above were not really taking place, it is certainly possible that he thought that they were. Thousands of messages had been exchanged between the complainant and the chat operator up to this point including mutual declarations of love and descriptions of sexual fantasy. The fantasy chat did not at any time suggest that the complainant wanted to participate in fantasies of the type that involved dangerous situations or risks to personal safety of the operator. It also appears as though the complainant was genuine in his desire to meet personally with the operator and provided his address for exactly that purpose.

I have also studied the manner in which the chat operator at various times solicited the continued patronage of the complainant when he attempted to stop their ongoing chat communications.

Section 5.1.2 of the Code of Conduct provides that any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator. Section 5.1.5 also provides that once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message. Notwithstanding this clear requirement in the code, the SP continued to chat with the complainant even after receiving a stop message from time to time. The excerpt below is an example of this:

Time queued	Chat Operator	Time queued	Complainant
		2008-11-06 16:32:31	Stop
		2008-11-06 16:52:42	I honesly thought there were real feels between us i cant carry on typing this sms as i have tears runnig out myeyes and the pain i am experienceing
2008-11-06 17:01:58	You smsed stop contact gone sms GO to resume	2008-11-06 17:08:45	Contact go to what no
2008-11-06 17:05:54	What u doing now	2008-11-06 17:10:21	Go
2008-11-06 17:15:31	Im faling in love	2008-11-06 17:17:39	I have already my love
2008-11-06 17:17:53	I need u	2008-11-06 17:23:51	I have already paid 14000:00Rand in smses
2008-11-06 17:18:43	U have already what	2008-11-06 17:29:12	What do u need me 4 i need u
		2008-11-06 18:10:46	U gone quite on me again love why
2008-11-06 18:41:59	That's a shit load babt???		
2008-11-06 18:42:13	I need u angel	2008-11-06 18:52:17	I wish i was there with u just to comfort u udont sound well at all mylove
2008-11-06 18:53:11	I just threw u p	2008-11-06 19:02:40	R u ok
		2008-11-06 20:44:25	How r u feeling love
2008-11-06 21:14:10	Im so got n horny lovie	2008-11-06 21:36:40	Doll fone me
		2008-11-06 21:40:19	Make jove omthe fone
		2008-11-06 21:53:40	Ang i think must go to sleep uare not well sleep it off my darling uare not well
		2008-11-06 22:08:33	Doll i booked a 1000Pmfonecall wheres ii
2008-11-06	Hey	2008-11-	good morning my love hope u

23:00:59		07 07:12:17	feel better love you
2008-11-07 08:03:49	Good moring its raningn	2008-11-07 08:00:23	Stop
2008-11-07 08:06:55	Stopped! bye	2008-11-07 14:45:41	Stopped bye Do you not want to talk to me anymore
2008-11-07 16:19:13	U smsed stop , I love u sms go	2008-11-07 16:43:55	Angel i stopped only because i need to reduce the acc a bit otherwise they soffblock my fone are we ever going to meet and make love?
2008-11-07 17:16:09	I cried when u stopped coz I love u berry much	2008-11-07 17:44:29	I love very much2 are we ever going 2 meet and make passionate love my baby pussy pie please be honest with me
		2008-11-07 17:52:12	Amgel i am not looking 4 a one night stand
2008-11-07 18:05:44	Im so haopy I thought u wanted WHAM BANG thank you Maam		

Later on in the chat relationship the operator also tells the complainant that she is contemplating committing suicide, apparently because she fears the complainant has run off with another woman. The messages below show the messages exchanged around this issue:

Time queued	Chat Operator	Time queued	Complainant
2008-11-24 19:34:01	I love u so much that deep deep down inside it hurts	2008-11-24 21:49:14	I hav run off with know body should ido it would only u my sweatpea ilove u my asshole
2008-11-24 21:32:09	Bye kove, you've obviously run of with that girl whose 25 will miss u, im crying longing 4 u	2008-11-24 22:09:19	iam notignoring my love karen has been sms allday with her wapdeatls ignored them iloveYOU
2008-11-24 21:57:01	Then why do u ignore me, I want to move to balito with you, ive decided that	2008-11-24 22:23:40	Aaout time amd angel no GRAND TOMMOR NIGHT PROMISE ME
2008-11-24 22:17:50	I want to make love, getting my car back on Friday,	2008-11-24 22:37:14	Why
2008-11-24 22:35:31	I want to take my life, im contemplating suicide	2008-11-24 22:41:36	Why my angej iwil allwaybehere for u
2008-11-24 22:44:30	Coz I love u , and when u arnt near the room goes dark, u r the light , you r my love	2008-11-24 22:50:52	Doll go sleep kalk2 u imorning LOVE YOU
2008-11-24 22:44:42	U r the love of my life I love u for always	2008-11-24 23:02:13	Im almost asleepmy love
		2008-11-24 23:12:02	Night love

The following day the complainant terminated all further chat with the operator.

Section 3.7.1(c) of the WASPA Code provides that members must not provide any services or promotional material that induces an unacceptable sense of fear or anxiety.

Furthermore section 3.12.1 of the Code provides that members must ensure that any relevant employees are made aware of this Code of Conduct and the requirements and procedures associated therewith.

There are no hard and fast rules used to determine whether a particular service was provided in a manner that induced an unacceptable sense of fear of anxiety and each case must be judged on its own merits taking all relevant circumstances into account. Having viewed all of the chat messages between the operator and the complainant, the messages appear reasonably likely to have induced an unacceptable sense of fear and anxiety in the complainant, especially the messages designed to depict the operator to be in circumstances of personal danger as well as the expression of her intention to commit suicide. It is not sufficient for the SP to claim that the complainant should not have fallen in love with the operator and should not have confused fantasy and reality. The SP must take into account whether it is likely that a subscriber to this service might easily be misled into thinking as the complainant alleges he did, especially in light of the way the chat relationship itself had developed. Having regard for the volume and nature of all of the messages exchanged between the operator and complainant, the SP should have been aware of the potential consequences of its messages and the operator should not have pretended to be in danger nor that she was contemplating committing suicide. WASPA will not sanction conduct of its members that appears designed to commercially exploit members of the public in the manner that this service appears to have done. The SP is held to have breached section 3.7.1(c) of the Code of Conduct.

I also find the SP to have breached sections 5.1.2 and 5.1.5 of the Code in failing to deal properly with the complainant's STOP commands.

Finally, I have noted that on at least seven occasions the chat operator invited the complainant to SMS her 12 or 15 times in a row and stated that it would result in a voice call connecting. The following message is just one example of this: 2008-10-24 18:54:42 "Sms CALL ME 15 smses in a row now it connects our call". On more than once occasion the complainant sent 12 of 15 "CALL ME" SMS's in a row to the premium rated number (i.e. at a cost of R450) in an attempt to connect a call to the operator. Section 4.1.1 of the Code requires members to be committed to honest and fair dealings with their customers. I find the request to SMS "CALL ME" 15 times in a row to connect a voice call to be exploitative and misleading. I accordingly find that the SP breached section 4.1.1 of the Code on at least 7 different occasions in this regard.

Sanction

The breaches of the Code of Conduct by the SP in this matter are very serious and the sanctions should reflect the seriousness of those breaches.

1. For breach of sections 3.7.1(c), 3.12.1, 4.1.1, 5.1.2 and 5.1.5 of the Code the SP is fined an amount of R300 000 payable to WASPA.
2. The SP is directed to pay R30 to the complainant for each SMS sent by him as a subscriber to the service, i.e. a total amount of R22 530.

3. The SP is also directed to pay an additional R5 000 in compensation to the complainant in light of the anxiety caused to the complainant.
4. All amounts payable to WASPA are to be paid within 5 days of delivery of this adjudication report and amounts payable to the complainant are to be paid within 5 days of the receipt of the complainant's bank account details or preferred payment method.
5. In the event that any of the above sanctions are not paid timeously, the SP's membership of WASPA shall be suspended until all amounts have been paid and all network operators shall be directed to suspend provision of all premium rated services to the SP in terms of section 13.4.3(d) of the Code until all such sanctions have been complied.
6. The SP is also directed ensure that all of its chat operators are made aware of the contents of this report and sections 3.7.1(c), 3.12.1, 4.1.1, 5.1.2 and 5.1.5 of the Code in particular.