



REPORT OF THE ADJUDICATOR

WASPA Member (SP) iTouch

Information Provider (IP)
(if any)

Service Type Subscription service

Source of Complaints S Stein

Complaint Number 5704

Date received 3 February 2009

Code of Conduct version 6.2

Complaint

The complainant lodged a complaint via the WASPA website in regard to the SP's Sexy Cherry adult content subscription service. The complainant alleges that the SP has breached sections 5.1.3 and 8.1.3 of the WASPA Code of Conduct in that a 13 year old was able to access hardcore porn content and was thereafter unable to unsubscribe immediately after receiving a welcome SMS which required the word "STOPS" to be used as the unsubscribed keyword instead of "STOP".

SP's response

The SP has confirmed that the user subscribed to its Sexy Cherry adult content subscription service on 31 December 2008 at 15:29:04. The user subscribed for the service via a wap site advertising the service.

The SP states that the wap page clearly states that users must be over the age of 18 years old and that by clicking on the link provided, the user declares that they are over the required age limit.

The SP alleges that it is the responsibility of each and every user to read through the wap page before agreeing to its conditions before accesses the wapsite or any other mobile wapsite which supplies mobile content. Upon subscription, the complainant did agree that he or she was over the age of 18 and agreed to the pricing as stated on the wapsite when joining the sexy cherry subscription service at R10/5days.

The SP has confirmed that the user tried unsuccessfully to unsubscribe numerous times due to the wrong unsubscribe keyword being used. The keyword the user used was "STOP" instead of "STOPS".

The SP states further that it has, since 1 January 2009, changed this keyword to "STOP S".

The SP confirmed that the complainant was unsubscribed as of 2009/02/02 11:49:10.

Sections of the Code considered

Section 8.1.3:

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

Section 11.1.6:

Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

Section 11.2.1:

Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

Section 11.2.2:

Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

Section 11.2.3:

The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

Section 11.2.4:

Members must ensure that the termination mechanism is functional and accessible at all times.

Section 11.4.1:

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

Decision

The accessibility of adult content to services both on the internet and via mobile content subscription services is an ongoing problem for parents and service providers alike. Unfortunately, it is impossible for a service provider to provide an absolute guarantee against the unauthorised access of adult content by a minor.

The WASPA Code requires its members to take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services and explicit confirmation of a user's age must be obtained prior to the delivery of an adult content service.

In the current matter, persons accessing the SP's sexy cherry wapsite are clearly advised that the service is of an adult nature and that only persons 18 years or older can access the site. The SP also requires explicit confirmation from persons subscribing to the site that they are over the age of 18 years. I am satisfied that the SP has complied with section 8.1.3 of the Code.

The SP has however contravened section 11.1.2 of the Code in that the complainant was unable to unsubscribe from the SP's subscription service via SMS using the word "STOP".

The keyword used by the SP for its unsubscribe function was "STOPS". The word "STOPS" bears no relevance or relation to the sexy cherry subscription service and, in my view, is a blatant attempt by the SP to confuse and mislead subscribers, i.e. making it more difficult for them to unsubscribe from the service.

The reasonable subscriber would not take note of the addition of the letter "s" and the misspelling would ultimately lead to a situation the same as was experienced by the complainant in the current matter.

It is noted that the unsubscribe keyword has been changed to "STOP S", i.e. with a separation between the word STOP and the letter "s". I don't believe this solves the problem as subscribers would still reasonably expect the word "STOP" to be used in association with the name of the service/club/short code involved rather than with an arbitrary letter which bears no meaning or relevance to the service.

Sanction

1. The SP is fined R25 000.00.
2. The SP is ordered to amend its termination mechanism so that it is clear, easy to understand, and readily available. E.g. "STOP Sexy" or STOP Cherry".
3. The SP is ordered to refund the complainant for any charges incurred by her arising from her subscription to the SP's service.
4. These sanctions may not be suspended pending any appeal by the SP.