



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Strike Media
Information Provider (IP) (if any)	Teleplay
Service Type	Adult content
Source of Complaints	Mr B Ward
Complaint Number	6542
Date received	22 May 2009
Code of Conduct version	7.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 6 May 2009. The SP responded to the request and blocked the complainant's number from its database.

The complainant then requested that the matter be escalated to the WASPA formal complaint procedure. He alleged that there has been a breach of section 8.1.3 and 8.1.4 of the WASPA Code of Conduct.

The complainant received the following message on his phone:

Dozens of HOT & HORNY CHICKS are on the line right NOW!! CALL & CHAT LIVE!! on 0822399325

The complainant alleges that he has never subscribed to an adult service before and he has used the same number since 2001. He also alleges that the message was sent to him without any confirmation of his age beforehand.

SP's response

The SP asked the WASPA secretariat to forward the complaint to the IP directly. The IP responded to the complaint on 24 May 2009 by providing a breakdown of previous occasions when the complainant's number was used to call into its various adult services.

The breakdown reflects that the last time the complainant's number was used to call into one of the IP's services was on 24 April 2004.

The IP also stated that its Terms and Conditions stipulate that customers must approve that they are 18 years old or older by actively pressing the "1" digit on the phone handset before entering the services. A copy of the terms and conditions are available at www.3gxxx.co.za.

The IP states further that its customers agree, as part of its terms and conditions, to receive advertisements from time to time about the various services offered and can easily opt out from receiving such advertising by replying "stop" to the messages sent.

The IP states that the complainant had never asked to be removed from its advertising campaigns databases and was therefore sent the relevant marketing message.

Complainant's further response

In response to being shown proof of the previous interactions between his number and the services offered by the IP, the complainant states that he cannot check his own account to confirm this information due to the period of time that has passed.

He does state that he had a problem with a roommate using his cell phone around the same time.

However, the complainant maintains that there has been a breach of section 8.1.4 of the code in that this was the first time he had been contacted since the last interaction five years previously. The complainant argues that unless proof of an interaction within the previous 3 months can be shown, there has been a contravention of the code as alleged.

Sections of the Code considered

Section 8.1.3 reads as follows:

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 8.1.4 reads as follows:

Marketing messages (including commercial communications) may no longer be sent to a customer of an adult service if that customer has not made use of the service during the preceding three months. This is to prevent the accidental marketing of such services to children as a result of a recycled telephone number.

Decision

The IP has provided proof that the complainant's number had been used previously to call into its services. The complainant has been unable to refute this evidence. However, this evidence does not help the IP's cause as the previous interactions took place in 2003 and 2004, with the last interaction taking place on 24 April 2004.

In sending a marketing message to the complainant when he had not made use of any of its services within the previous 3 months, the IP has clearly breached section 8.1.4 of the WASPA Code of Conduct.

I am also of the view that sending the message to the complainant's number after a period of 5 years, without taking reasonable steps to ensure that the holder of the number was 18 years or older, also constitutes a breach of section 8.1.3 of the Code.

Sanction

The failure by adult content service providers to take reasonable steps to prevent such content being viewed by children under the age of 18 years must be seen in a serious light.

Section 8.1.4 is clearly worded and was introduced into the code to prevent under age cell phone users from gaining access to adult services through marketing messages received. Failure to comply with the 3 month rule introduced by this section must also be viewed in a serious light.

The following sanctions are given:

1. The IP is fined R150 000.00;
2. The IP is issued with a formal warning that section 8.1.4 must be complied with in all future advertising and marketing campaigns in respect of the IP's adult services.

Payment of the fine is not suspended pending any appeal of this decision by the IP.