REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Opera Interactive
Information Provider (IP)	
(if any)	n/a
Service Type	Subscription
Source of Complaints	Mr L Nagel
Complaint Number	6648
Date received	28 May 2009
Code of Conduct version	7.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 13 May 2009. The SP responded by unsubscribing the complainant but the latter was not satisfied with the response and has escalated the complaint.

The complainant alleges that he received an unsolicited sms from the SP. Without subscribing to the service offered, he was notified via sms that he had been subscribed, and would be billed R30.00 every 5 days.

The complainant contacted the SP's call centre where he was informed that he had not been subscribed. However the complainant was subsequently charged an amount of R52.00.

The complainant has confirmed that he has been refunded. However he still wants the complaint to be heard based on the fact that he was subscribed and billed without his permission.

12 September 2009

SP's response

The SP has provided details that the complainant opted in to the service on 24 April 2009.

The following free welcome message was then sent:

FreeMsg: saphonebabes is R30 every 5 days. Service Provider: MarketbyBrand 16 Text stop to 31906 to opt out. Helpline: 2711 4613 308

The SP confirmed that the complainant was then billed twice on 24 and 29 April 2009 before receiving a reminder message on 1 May 2009 which stated:

You are subscribed to Saphonetones R305days from MarketbyBrand.To stop service,text STOP to 31906 R1.Help?Call 27114613308

The SP has refunded the complainant as a goodwill gesture.

Further response from complainant

The complainant has replied to the SP's response by denying that he willingly opted-in to the service. He acknowledges that he received an SMS which stated "go to 31906". The complainant states further that as he was curious he accessed the link thinking it may have been a competition or promotion that he was interested in.

Upon discovering that it was adult content that was offered, the complainant states that he immediately left the site.

The complainant does not accept that by merely electing the "go to" option, he opted-in to subscribe to a service without knowing what it was about and the cost involved.

The complainant remains of the opinion that this is a misleading business practice and relies on consumers being unwittingly subscribed to a service.

Sections of the Code considered

8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

Decision

The complainant, in his subsequent answer to the SP's reply to the complaint, has admitted that he did access a link to the SP's service from an SMS message received from the SP. The complainant has stated that the message simply read "go to 31906" and this has not been disputed by the SP.

The promotional sms message sent to the complainant does not identify the service found at the short code 31906 to be a subscription service. It also does not state that the service is an adult service. The SP has therefore contravened sections 8.1.1 and 11.1.1 in this regard.

Sanction

The contravention of sections of the Code of Conduct relating to adult services must be viewed in a serious light.

It has been noted that the complainant was immediately unsubscribed and the charges refunded by the SP.

The following sanction is given:

1. The SP is fined the sum of R150 000.00;

2. The SP is formally warned to amend its promotional messages relating to its adult subscription services so that they comply with the WASPA Code of Conduct.

These sanctions will not be suspended pending an appeal by the SP.

12 September 2009