



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Tanla Mobile SA (Pty) Limited

Service Type: Subscription service

Complainant: Media Monitor

Complaint Number: 7246

Code/Ad Rules version: 7.4 and 2.3

Introduction

In order to understand the rationale for this finding, it is necessary to understand the web of relationships that seem to have given rise to the services complained of.

- (a) Tanla Mobile (www.tanlamobile.com) appears to offer various web and mobile services, including VAS services and content. It owns a short code, 39828, and it is reflected on the WASPA full members list as an SP. The Tanla Mobile Limited subsidiary in South Africa is Tanla Mobile SA (Pty) Ltd.
- (b) The website describes Tanla in the following way: "Tanla offers end-to-end mobile commerce, mobile entertainment, mobile Internet and mobile advertising solutions. The company is a global provider of mobile commerce, mobile entertainment, mobile marketing and advertising solutions to the Telecommunications, Media and Digital Content industries... Today, telecom companies face the challenge of integrating various IT systems, technologies, communication methods and applications to benefit from convergence. Tanla aims to bridge this gap for customers by "connecting the various dots" and providing fully managed services, including end-to-end mobile content management, billing, messaging and delivery of mobile services.
- (c) The website also describes its WAP service offering: MINT, Tanla's WAP Builder application, lets content owners create a mobile internet site to monetize mobile transactions and deliver services via branded mobile portals. With Mobile Internet today being almost as popular as conventional voice services & brands, content owners have an unmatched opportunity to use this simple drag-and-drop system to tap into their consumer base. Part of Tanla's integrated multi-serve platform CREAT, the WAP Builder can upload content via the integrated Content Management System. A rendering engine ensures proper formatting of all the content according to each handset specification, be it static or dynamic content. As a complete mobile portal solution, MINT includes content management, portal publishing, content billing and delivery.
- (d) The www.phonerotica.com website, which the complaint is concerned with, is "owned" by www.phonebox-e.com. The website describes this entity as: "PhoneBox is the first and foremost provider of **mobile adult entertainment services**. High quality content is made available to network / virtual operators and mobile Internet portals throughout the world. Our distribution platforms are designed to render pictures, clips, videos and stories on wireless Internet phones and PDAs: delivering screen filling and **ultra-sharp color content**. PhoneBox offers only the best there is on the market. We have extensive experience in integrating our content delivery systems to carrier's premium billing platforms: our responsiveness and professionalism have won praise from all of our customers.... With the amount of traffic that PhonErotica and affiliate sites generates, we can run effective and massive mobile advertisement campaigns covering all desired markets. If you are looking for **massive traffic**, and whether you want to pay by **CPM or CPC**, contact luc.prieur@phonebox-e.com for prices, volume estimates and availabilities. Buy direct from us and avoid brokerage fees".

- (e) It would appear from all the facts that PhonErotica is an IP in this matter, generating mobile content for transmission across services offered by Tanla, as SP.
 - (f) However, I note too that www.mobilecontentking.com also offers various mobile services including the Cherry Sauce service referred to in the SMS sent to the complainant, as described below. It seems quite likely that this too is an IP for Tanla Mobile. This entity appears to offer services in South Africa, indicating a local Johannesburg number for contact purposes. I will separately be noting to WASPA the lack of compliance by this entity with any of the provisions of the Code in relation to adult services, wireless application services, and websites.
 - (g) I deal with the averments of the SP in relation to these IPs, below.
 - (h) The finding in this matter has been made on a balance of probabilities. This is unusual and perhaps extreme. However, in all the circumstances and in the absence of a detailed and acceptable explanation from the SP, the conclusion is justifiable.
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Complaint

The complaint was lodged by Media Monitor regarding automatic subscription, adult content and lack of age verification on a wapsite (www.phonerotica.com). Specifically the Monitor complained that on accessing the wapsite and attempting to download a movie by title, all that happened was that he received an SMS saying "Thanx for subscription of R7.50/4 days to CherrySauce. Text STOP CH to **39828** to cancel. Download content at <http://mobilecontentking.com/hotchix>" and an amount of R7.50 was added to his mobile account.

On trying to download a video by clicking on "Movies Niche" he was offered a list of sub-categories to choose from and on clicking on the download button was immediately debited R10, but no pricing information had been given to him, and he was not able to actually watch the video. He subsequently chose another video which he was able to watch, but a further R10 was deducted, again without being given pricing information prior to the deduction or in fact at any time in relation to videos.

In neither case was he asked to verify his age, although the wapsite carried the text "Phone Erotica.com
Explicit Sexual Content
User must be 18+
Enter".

In a third test, the Monitor clicked on the banner "Teens" and selected a movie which permitted him to download it, but in this case the complaint is twofold. First, the site did not request an age confirmation from him, and second, the site suggests that children are involved, which contravenes the requirements of the Code in relation to adult services.

SP Response

The SP responded to the complaint by stating that it too had tested the services and found that they did not belong to Tanla Mobile SA. The SP submitted logs to WASPA in support of the interactions by the Monitor, which they claimed indicated that they had not delivered messages from their system to the Monitor, as alleged.

Tanla alleged that “we have no direct dealings or relationship whatsoever with www.phonerotica.com or its contents.... The above breaches [as cited by WASPA] are related to the experience on phonerotica.com and not Tanla’s WAP site. We do not provide and [sic] Teen/children content.”

The logs submitted by the SP confirm that they own the short code 39828 but more than that I am not able to assess from the information provided.

Vodacom also submitted a log to WASPA which indicated deductions of R7.50 marked to Tanla in response to activity by the Monitor’s number on two occasions, identified as the “Glomac” service. Although this tends to suggest an error in relation to billing, it does not detract from the fact that Tanla’s short code was presented in response to a download request by the Monitor on a third party website, and that Tanla received funds from the account belonging to the Monitor.

The SPs last response was to the effect that “Our initial investigation shows that the website does not belong to Tanla. It belongs to:

The owner’s name is Luc Prier

luc.prier@phoneboxentertainment.com

company called Phonebox Entertainment

Canada: +15144146191

Tanla short code and WAP site has nothing to do with Phonerotica.com. There is a mix up on the monitor report. Our records shows no message sent out to your test numbers on 30 July but on as per the attached log file [sic]”.

This “investigation” accords with our own findings, save in that the short code referred to on accessing the service was that of Tanla.

Consideration of the WASPA Code

The Monitor described the relevant provisions as including:

Section 3.1.2 Members are committed to lawful conduct at all times.

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

Section 4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

Section 6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

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 8.2.1. Adult services must not contain references that suggest or imply the involvement of children.

Section 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.

Section 11.1.2: any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.

Section 11.1.5. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

Section 11.1.8. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

Section 11.1.5. Instructions on terminating a subscription service must be clear, easy to understand and readily available.

The adjudicator notes that the following additional provisions of the Code are also relevant:

Section 4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

Section 4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

Section 4.1.6. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

Section 4.1.7. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

Based on our investigations, the SP failed to comply with these provisions, or to the extent that they may have done so, it is not possible to determine this with certainty. The overwhelming purpose of the Code is to protect the unwary consumer. It is for this reason that a finding must be made conservatively with a view to ensuring that other consumers are not prejudiced. not

In many other adjudications I have considered the relationship between SP and IP. This relationship requires the SP to exercise care when contracting with an IP for content, and to ensure that the content meets the requirements of the Code. The definition of "*information provider*" in the Code states that this is "any person on whose behalf a wireless application service provider may provide a service, and includes message originators". A "*wireless application service provider*" is "any person engaged in the provision of a mobile service, including premium-rated services, who signs a WASP contract with a network operator for bearer services enabling the provision of such services."

Section 3.9.1 of the Code (*information providers, general provisions*) states that “members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene this Code of Conduct”. Section 3.9.2 provides that “the member must suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct”.

The SP is a member of WASPA. The obligation to comply with the Code and to ensure that the IP complies, rests with the SP and it is against the SP that the finding will be made.

Decision

Tanla operates websites and wapsites, offers mobile content services, and enters into relationships with content providers. On the facts it would appear that the Monitor did in fact access a website which did in fact subscribe him to a service that he did not want to be subscribed to, and that the services did not comply with the Code in all the respects set out above.

On the facts it would appear that the SP had some relationship with both IPs, whether “direct” or not, and that links were established technically that enabled the transmission of messages to users referring to the Tanla short code, whether or not accessed through Tanla-branded or hosted services or websites. Save in the instance I mention immediately below, there is no possibility, in my understanding, of the text messages received by the Monitor being received other than as a result of a technical relationship between SP and IP. Whether or not the appropriate contractual relationship existed cannot be determined, but on all the facts the parties’ respective services would appear to be related and/or linked to one another.

The only other possibility is that the IPs somehow obtained the short code from Tanla or used it without Tanla’s express permission, which unfortunately would still render Tanla liable for the associated breaches of the Code in my view given that Tanla is the registered user. It also appears that payment was made by Vodacom to Tanla on or about the relevant date in relation to access by the Monitor to the first service complained of.

There is no evidence at this point that the complainant’s version is not correct, and therefore no reason not to uphold the complaint. Given the purpose of the Code and the likelihood that intentionally or negligently, Tanla or its IPs failed to comply with the provisions in a serious and repeated way, an adverse finding seems unavoidable.

Sanction

The SP is directed to pay a fine to WASPA in the amount of R100,000 in relation to the numerous breaches of the Code by IPs in possession of or using its short codes, alternatively for the SP’s own breaches of the Code in failing to ensure that services offered using or referring to its short code, are compliant.

50% of the fine must be paid to WASPA within 7 days of date of publication of this report. The balance of the fine will be suspended for a period of 6 months but payable immediately in the event that the SP is found to have committed similar or the same breaches within that period, in addition to any other fine imposed in relation to those breaches.