



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Rate n Date
Information Provider (IP):	"Not applicable"
Service Type:	Subscription Service
Complainant:	"Public"
Complaint Number:	7842 (escalation of 25637)
Code Version:	8.0
Advertising Rules Version:	"Not applicable"

Complaint

Complainant complained of subscription process in respect of a subscription service. Following on his sending of an unsubscribe message to the WASPA member, the complainant was unsubscribed from the service and all monies deducted repaid in full.

Notwithstanding the foregoing, the complainant held that his complaint had not been resolved to his satisfaction due to the fact that he claims he was automatically subscribed to the service and that this is in effect "trapping innocent consumers" and that should be contrary to the WASPA code.

Service provider's response

The service provider responded with details of how and when the subscription had occurred as well as details of how and when billing had occurred and details of removal from subscription to the service of the complainant and consequent refunding of monies deducted.

The service provider's response was as follows:

- "According to our logs, on 9 August 2009 at 14:18pm the cellphone 0827769306 came to our WAP dating site on a Samsung SGH-F480 via a WAP banner advert that was on display on Vodafone Live
2. The advert would have taken the user to a sign up page on www.pocketflirt.com <<http://www.pocketflirt.com>>
 3. The subscription to have been created would have come about as a result of a subscription button being clicked on. In this case it is most likely that this was accidental and not intentional hence the user saying that he did not subscribe. It is for this reason that we refunded the user in full.

4. At this point in time the user would have been on a 7 day free trial and would not have been billed
5. At 14:18 pm that same day a welcome message was sent to the user with this message: Welcome to PocketFlirt! Save <http://pocketflirt.com> as a Bookmark! Go now 2 finish reg! 1st wk FREE then R7/week. 2 unsub call 0861127283 or sms stop to 31477".

Sections of the Code considered

The service complained of falls within the ambit of the definition of a subscription service as set out in the Code of Conduct. The sections of the Code of Conduct applicable to this issue are:

- a) 11.1.5 dealing with automatic subscription to an subscription service without specifically option in to that service; and
- b) 11.1.8 which deals with notification of subscription messages which should not be misleading or resembling an advert.

Decision

It is my decision after careful consideration of both the code and the intention behind the drafting thereof that the WASPA member/service provider has fallen foul of the abovementioned sections either partially or in whole.

The rational for my decision is as follows:

1. Although the service provider sets out that the complainant would have had to click on a banner add and then subsequently a "subscribe" button in order to be subscribed to the service, this process was not wholly transparent and was in part automatic. I refer to the notification of subscription message above (as provided by the WASPA member), namely- "<http://pocketflirt.com> as a Bookmark! **Go now 2 finish reg!** 1st wk FREE then R7/week. 2 unsub call 0861127283 or sms stop to 31477".
2. The message set out above requires a further action in my view in order for registration to the service to be completed (see bolded text above). The complainant asserts that they did not take this further action and the WASPA member has not provided us with details of this further action. Failing the WASPA member demonstrating that there was no automatic element to this subscription, this in my mind falls foul of the provisions of 11.1.5 of the Code of Conduct.
3. I also feel that to a user who did not intend to subscribe that the notification email could be misleading and be construed as an advert for Pocket Flirt and not a notification of subscription but merely a call to subscribe which could be ignored as spam.
4. It is my opinion that notwithstanding the fact that the WASPA member promptly unsubscribed the complainant from the service and readily refunded all sums deducted in error, the process for subscription falls foul of the Code of Conduct.

Sanctions

As this appears to be the first complaint the sanction I propose is not overly burdensome. However, due to the fact that the subscription process is automatic and consumers may not have complained because they may not be aware that they have been subscribed I feel that the partially automatic nature thereof should be reviewed. The WASPA member should amend the subscription process so that failing the further process as set out in the notification email. Subscription should not be able to occur without this further step being taken notwithstanding potential accidental clicking on the "subscribe" link.

The WASPA member is further fined an amount of R5000 which is suspended for a period of six (6) months from date of notification of the member of this Adjudication subject to the member not being found to have breached the abovementioned sections of the Code of Conduct or its future equivalent during that period.