



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Opera Interactive
Information Provider (IP):	AMV Holdings
Service Type:	Adult content service
Complainant:	Anonymous competitor
Complaint Number:	#8291
Code Version:	8.0
Advertising Rules Version:	2.3

Complaint

The complainant is an anonymous competitor of the SP's which has lodged a complaint based on reports from one of its customers. The complainant has alleged a breach of sections 8.1.1, 8.1.2, 8.1.3, 8.1.4, 8.2.3 and 11.1.11 of the Code. The complaint is essentially as follows:

An adult url was sent to the follow number: 082 935 9420 This user claims to have never requested these or similar services. This user claims that her age were never explicitly confirmed.

These is also no indication that this is a subscription service, except at the bottom of the screen when going to the url.

Service provider's response

Although the complaint was aimed at an Affiliate member which was making use of the SP's infrastructure, the IP responded to the complaint as follows:

Thank you for your email.

Please find the full details below, however please note that the shortcode is different to the one quoted below.

We would also like to make the following comments in response to the users statements:

This user claims to have never requested these or similar services.

The user has not been contacted by our company. The user responded to a WAP advert whilst browsing the internet on their cellphone.

This user claims that her age were never explicitly confirmed.

As detailed in the terms, by clicking yes the user is confirming their age and request to subscribe to the service.

These is also no indication that this is a subscription service, except at the bottom of the screen when going to the url.

Terms are displayed above and below the accept button. A user must scroll past the first terms set in order to access content.

On the 4th December 2009 the user accessed our mobile content site through an advertisement on an affiliates website.

While browsing the internet on their Nokia5000d-2 cellphone the user responded to an advert for our Webcam Babes WAP site.

The site states that:

CLICK YES TO SUBSCRIBE FOR

R14/2DAY

Please confirm you are aged 18+

Provider: BS Mobile.

YES

By clicking Yes you confirm subscription service entry. R14/2days.

Sms STOP to 31922 to end service.

At 01:27:23 the user clicked the 'Yes' button to accept the terms and join the subscription.

The user was then diverted through to the Webcam Babes site and sent the following welcome message:

Thanks 4 Webcam Babes (ZA)!Content link on its way!Click on it 2 get ur content!Probs?Call 011-461-0317.Sms STOP to 31922 to end subscription. R14/2day.18+

The first stop we received was:

2009-12-04 01:35:06 Opera 31922 Stop

The user was then unsubscribed and sent a free confirmation.

We have now ensured the number has been removed from all future messages.

If I can be of further assistance please let me know.

Kind Regards

Carina Ellis

Customer Care Manager

Bling Mobile Help Team

The complainant was not satisfied with the IP's response and communicated the following to WASPA:

Thanks. The user would however like to view a screen shot of the page accessed and we would also like to request msisdn logs (date and time stamped) of this event. We are also not satisfied that clicking to enter a subscription service is explicit confirmation of one's age - as the code requires. Please proceed with adjudication.

The IP responded to the request for further information with Annexures "A" and "B" to this report.

Sections of the Code considered

Code version 8.0

2.1. An "adult service" is any service where the content or product is of a clearly sexual

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nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.

2.2. An “adult content service” is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified.

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

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

8.1.2. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.

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.

8.1.4. 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.

8.2.3. Adult services may not be marketed via direct communications with a customer of non-adult services, unless that customer has explicitly given permission for such marketing to take place and the customer has confirmed that they are, in fact, an adult.

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.

Code version 8.0

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 and may not be an entry into a competition or quiz.

11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

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.

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.

11.1.10. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing].

11.1.11. If a subscription service can be initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from

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that customer's mobile handset before any billing may take place for that service.
11.2.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/ month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.
11.5.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.
11.5.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

I have highlighted the sections of the Code I found to be particularly relevant.

Sections of the Advertising Rules considered [if applicable]

Rule 9 generally.

Decision

The main dispute of fact in this matter is how the complainant's user came to be subscribed to the service. The complainant's user has contended to the complainant that he or she was subscribed to the service without following appropriate steps to subscribe to the service. The user appears to have subscribed at 01:27 and then unsubscribed roughly eight minutes later. It is unclear whether the user was charged for the brief time the user was subscribed to the service but the IP has stated that the user was unsubscribed, sent a free confirmation of this fact and delisted. The actual harm to the user appears to be minimal at best.

The complaint appears to focus primarily on whether the service conforms with the Code. The user allegedly linked to the subscription page using a mobile phone. While the subscription page has been reproduced and supplied to WASPA, the advertisement which the IP contends the user clicked on to link to the subscription page has not been submitted to WASPA. I am unable to make a determination

whether the IP's advertisement complies with sections 8.1.1, 8.1.2 or 8.1.3 in the absence of the advertisement and an indication of its context at the time.

The complainant cited 8.1.4 of the Code but this does not appear to be relevant to this complaint. This complaint does not involve messages being sent to a user who previously made use of an adult service. This complaint's primary focus is on how a user came to be subscribed to an adult service made available through a mobile website and whether that service complies with the Code.

The complainant further referred to 8.2.3 of the Code. This aspect of the complaint is premised on the basis that the service was marketed to the user who was making use of a "non-adult" service at the time. As I mentioned above, I have not been briefed with a reproduction of the advertisement which the IP contends triggered this process or an indication of the advertisement's context. Whether the advertisement was located on a "non-adult" service is yet to be established.

In any event, the subscription page does contain a request to visitors to the subscription page:

Please confirm you are aged 18+

Visitors to the subscription page are required to scroll past a rather racy banner and what appears to be a clickable banner inviting visitors to –

Click Yes to Subscribe For R14/2day.

There is a further banner below the age confirmation message and identifier about the service's provider inviting a visitor to click "Yes" to subscribe to the service.

While there seem to be a number of opportunities to click "Yes" to subscribe to the service. The age verification mechanism is somewhat lacking. It appears to be a simple line of text which can be easily overlooked in the context of what must be fairly prominent and coloured banners on a mobile screen. I am not convinced that the age verification mechanism is adequate. Given the necessity for visitors over the age of 18 to verify their age before making use of the service, visitors should be required to explicitly verify their age before being permitted to accept the offer made on the page.

I am also mindful of section 8.1.5 which limits the inclusion of erotic imagery in marketing messages. Here I am concerned specifically about the image of a bare breasted woman at the top of the subscription page, immediately above invitations to activate a webcam presumably showing more of “Lara” and a further invitation to subscribe to the service. While it is debatable whether this banner is a “marketing message” in the sense 8.1.5 contemplates, I believe that such imagery is perhaps not appropriate in such a prominent position on the subscription page where the subscription page is a landing page.

Visitors should first be informed about the subscription nature of the service; its adult nature and be required to click a link or check a box verifying their age before being permitted to proceed further with their subscription.

The pricing for the service appears to be consistent with the pricing formulation the Code and Advertising Rules require. At the same time “R14/2days” is a little misleading. Does it mean a subscriber will be charged R14 over a two day period or R14 every two days? This should be clarified in the copy on the subscription page, in the welcome message and any further subscription reminders or related messages the IP sends to new subscribers.

Sanctions

The user does not appear to have suffered any real harm in the roughly eight minutes the user was subscribed to the service. The STOP message terminated the user’s subscription as it was intended to do.

The format of the subscription page is a concern and the IP does not appear to have implemented an adequate age verification mechanism. I therefore make the following order:

1. The IP is to cease the service and any similar services until such time as it as implemented the following modifications:
 - a. An age verification mechanism requiring a positive step as a condition for visitors to proceed further with a subscription request (this can be the incorporation of a checkbox or similar mechanism which, if not checked, will not allow visitors to proceed further);

- b. Explicit imagery should either be removed from the initial landing page or subordinated to subscription information, the age verification mechanism and information about the adult nature of the service on the landing page;
 - c. Pricing information for the service must be clarified in plain language and in compliance with the relevant provisions of the Code and the Advertising Rules (including, but not limited to, Rule 5.3.1 of the Advertising Rules).
2. Existing subscribers should be sent a reminder message in the form required by section 11.5 of the current version of the Code, namely version 9.0.

Annexure "A" – Screenshot

**WARNING!!
UNCENSORED
WEBCAM BABES!**



**ACTIVATE
LARA'S
WEBCAM
HERE**

**CLICK YES TO SUBSCRIBE FOR
R14/2DAY.**

Please confirm you are aged 18+.

Provider: BS Mobile.

**JANUARY
SPECIAL
OFFER!**



By clicking Yes you confirm subscription service entry. R14/2days.

Sms STOP to 31922 to end service.

You will receive 1 content credit every 2 days.

By accessing the free section below, users agree to opt-in to marketing messages. To opt out, reply

OPT-OUT to

[Click here for your free item!](#)

Annexure "B" - Logs

Date	Phone	Country	Type	Table	Gate	Status	Search results for phone: 27829359420	Text	Tools
4-Dec-2009 Fri 01:35	██████████	South Africa	Free/Text	DELIVERED	Opera-31922-15R	Waiting for receipt		U have been unsubscribed. Get 2 free credits when u join BLING now! SMS ACTIVATE to 31922. BlueStream 011-461-0317 subscription service R14/2day. Webcam Babes!	-
4-Dec-2009 Fri 01:27	██████████	South Africa	Chargable/WAP Push	DELIVERED	Opera SA-31922-14R-Silent	Waiting for receipt		http://wap.blingmob.com/m118552323938919786.wml	-
4-Dec-2009 Fri 01:27	██████████	South Africa	Free/Text	DELIVERED	Opera SA-31922-14R-Silent	Waiting for receipt		Thanks 4 Webcam Babes (ZA) Content link on its way!Click on it 2 get ur content!Probs?Call 011-461-0317.Sms STOP to 31922 to end subscription. R14/2day.18+	-
Date	Phone	Country	Gate	Table	Gate	Status	Text		

Incoming SMS from phone: 27829359420