



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Sybase
Information Provider (IP): mConnect
Service Type: Adult service
Complainant: Competitor
Complaint Number: 8645
Code Version: 8.0
Advertising Rules Version: 2.3

Complaint

The complainant is an anonymous competitor, which filed the following complaint against the SP:

Complaint #8645 (lodged via the WASPA website):

Affiliations: Complainant wish to remain anonymous

WASPName: mConnect Pty Ltd

OtherID: 31730

Code_Breached: Subscription Service, pricing and frequency of billing not displayed on offer page. Only found on hyperlink to T&C page.

Detailed_Description_Complaint: <http://zawap.cgirlz.com/bbe/?c=64> Offer not showing that it's a subscription service and no pricing on page.

This is an adult category offer, so it surely needs to be more compliant than anything else. Made a screen grab of this page. Please let me know if you need me to forward via email.

Tick_as_appropriate: I have not contacted the service provider and believe this matter requires WASPA's attention

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

The complaint concerns a mobile adult service, more specifically the copy of the mobile Web page, which a visitor to the service's site would encounter when browsing with a mobile phone browser. A copy of the page, which visitors to the site would find when browsing to the site is annexed to this report and is marked Annexure "A".

Service provider's response

The IP responded to the complaint. There was some confusion in the IP's initial response where the IP's Managing Director was confused about the basis of the complaint given that the content on the site contained the information the complainant alleged was not contained in the site content. It subsequently transpired that the issue complained of had already been rectified by the IP's team in Australia prior to the IP's Managing Director, based in the United States, responded to the complaint.

The complainant was not satisfied with the IP's response and wrote as follows:

This does not change the fact that they have breached the code in the first place but should count in their defense in adjudication.

Their attempt to correct this should not be to satisfy me but rather to stick to the advertising rules.

The fact that they have updated the page to show pricing etc. indicate that they are aware of being in breach but they are still deliberately adding substantial vertical space between the Submit button and required pricing etc. causing excessive scrolling on a mobile phone browser.

This is a wap site targeting mobile customers through advertising on mobile advertising networks. My point - spacing between elements on page deliberate.

The complaint continued as a formal complaint. The WASPA Monitor was tasked with assessing the content on the site and reported back to WASPA that there were

still a number of concerns with the site, citing sections 6 and 11 as sections the site appeared to have breached. The report is part of Annexure "A". The WASPA Monitor's conclusion was as follows:

*Even though the pricing information is clear on the wap page once you scroll down a little, it does not explicitly verify the "BIGGEST Breasts EVER" as a subscription service. All it says is "for instant access enter your mobile number" and "Submit" no where does it say "enter your number to **subscribe** to the BIGGEST Breasts EVER service.*

There is no explicit confirmation exchanged at all stating that the customer is of 18 years or older. All it says is "You must be aged 18+" so there is no confirmation at all hereby the customer confirming that he is in fact 18 or older.

Once a customer enters their mobile number onto a web page or WAP site, a second confirmation must be obtained from the customers mobile. The fact that the service message has a link that says "click here" and absolutely nothing about "click here to join the BIGGEST Breasts EVER service" this cannot be considered a second confirmation at all.

Although the welcome message has relevant information, the format is completely wrong, also the way the pricing information is written it is very confusing, instead of saying "R14.99/2days" it should read the full price one would pay per day, or week or per month. It reads:

"FreeMsg

Welcome to

BIGGEST BREASTS.

Loads Of naked babes

Will be sent to You!

Help 0114613222.

To Cancel SMS STOP

To 31730

Cost:R14.99/2days.

mConnect**service”**

A format like below is much clearer for the customer to understand, and the welcome message should be changed to this proposed format:

“Welcome to the BIGGEST BREASTS service. Cost Rxx.xx per week. To unsubscribe SMS STOP to 31730. Help call 0114613222. mConnect Service”

Sections of the Code considered

I have considered the following sections of version 8.0 of the Code. This version was in force at the time the complaint arose.

Code version 8.0
<p>2.1. An “adult service” is any service where the content or product is of a clearly sexual 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.</p>
<p>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.</p>
<p>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.</p>
<p>4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.</p>
<p>6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.</p>
<p>8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.</p>

Code version 8.0

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.

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

Code version 8.0

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 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

Code version 8.0

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

I have reviewed the WASPA Monitor's findings in addition to the complaint itself. Before I proceed I would like to point out that I have not been briefed with a screenshot of the site prior to its amendment. I therefore am unable to comment on the site's compliance with the Code prior to its amendment.

I disagree with some of the Monitor's conclusions. As the Monitor pointed out, the initial page a visitor sees when visiting the site contains the following text:

**BIGGEST
Breasts
EVER**

For instant access enter your mobile number

.....
Submit
Biggerst Brests Ever Mobile
Costs just R14.99 every 2
Days for unlimited access.
Service provider mConnect
Pty Ltd you must be aged
18+ Standard network date
Charges may apply.
Subscription service. Please
Check your handset is Wap
And GPRS compatible before
Joining the service. You can
Cancel anytime by texting
Stop to 31730. Help call
0114613222

Aside from poor spelling and having compressed the text in such a way that it affects readability somewhat, I note that this text notifies visitors that the service costs R14,99 every 2 days; who the service provider is; a requirement that users be aged 18 years and above; the service is a subscription service; how to terminate the service (sms'ing "STOP" to a short code) and a help number to call for assistance.

The subsequent two messages include links to terms and conditions, however they invite a user to “click here to start” rather than to “click here to subscribe” to the service. The welcome message appears to contain the information section 11.1.8 requires be contained in a welcome message and the charge deducted from the Monitor’s account is consistent with the pricing information in the messages she received when testing the service.

Notwithstanding the above, there are a few concerns about 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.

Although the initial message on the site’s landing page does mention the service is a subscription service, the text on that page (if fairly represented by the Monitor in her report) is formatted poorly and must be reformatted in such a way as to adequately and clearly inform visitors to the site what the IP’s access terms are. Furthermore, visitors should be advised that the service is a subscription service on each page on the site. This is not the case on the two pages subsequent to the initial page I quoted above or from the welcome message itself.

I do agree with the Monitor that the welcome message should be reformatted in the format she recommended in her report, namely:

“Welcome to the BIGGEST BREASTS service. Cost Rxx.xx per week. To unsubscribe SMS STOP to 31730. Help call 0114613222. mConnect Service”

While I do not believe that the pricing information contained on the service is unclear, section 11.2.5 of the Code prescribes formatting for pricing information and appears to require that pricing be expressed in daily, weekly or monthly terms. The IP’s pricing information must be modified to meet this requirement and be expressed either in daily, weekly or monthly terms.

The IP should also note that the current version of the Code, version 9.0, contains additional and specific provisions dealing with the subscription process (section 11.2

of version 9 of the Code) and WAP confirmation pages (section 11.3 of version 9 of the Code).

I partially uphold the complaint.

Sanctions

The IP has not taken adequate steps to notify visitors and subscribers that the service is, in fact, a subscription service. I therefore fine the IP the sum of R10 000, payable on demand by the WASPA Secretariat.

The IP is required to amend the content on its site to make the subscription nature of the service explicit on each page or message prospective subscribers and actual subscribers receive from the IP. This content must also be amended to bring it into compliance with the current version of the Code. The IP shall take these steps and the SP shall ensure that these steps are taken no later than one week after being given a copy of this report by the WASPA Secretariat.

The IP shall send all current subscribers a reminder message compliant with 11.5.2 of the current Code version (version 9) within 24 hours of receiving a copy of this report.

The IP shall further ensure that its welcome message is reformatted as the WASA Monitor has recommended and that all messages it sends to prospective and actual subscribers comply strictly with the formatting requirements set out in the Code, as amended from time to time.

DATE: 5 February 2010
PHONE NUMBER: 0712291256
STARTING BALANCE: R64.65
WAP SITE:
<http://zawap.cgirlz.com/bbe/?c=64>

I went to the above wap site in question.

The web page read:

**BIGGEST
Breasts
EVER**

For instant access enter your mobile number

.....

Submit

**Biggerst Brests Ever Mobile
Costs just R14.99 every 2
Days for unlimited access.
Service provider mConnect
Pty Ltd you must be aged
18+ Standard network date
Charges may apply.
Subscription service. Please
Check your handset is Wap
And GPRS compatible before
Joining the service. You can
Cancel anytime by texting
Stop to 31730. Help call
0114613222**

I entered my cell number and then clicked on Submit.

The screen changed to:

**BIGGEST
Breasts
EVER**

**A link was sent. Click on it to
Confirm.**

I then received a service message:

Title:
Click here

Address:
<http://zawap.cgirlz.com/bbe/confirm.jsp?pn=LppqLLKqLxA&pas=jhqgh&sid=60>

I clicked on **Retrieve**

It took me to the BIGGEST breasts EVER wapsite. When scrolling down it said:

Click here to start!
Confirm
Terms&Conditions

I clicked on **confirm**
And the screen changed to:

BIGGEST
Breasts
EVER
You will soon receive a WAP
Link via SMS. Click this link
Terms&Conditions

I then exited the wap page and received a welcome message:

FreeMsg
Welcome to
BIGGEST BREASTS.
Loads Of naked babes
Will be sent to You!
Help 0114613222.
To Cancel SMS STOP
To 31730
Cost:R14.99/2da
ys.mConnect
service

I then checked my balance and it was R49.57 so R14.99 had been deducted.

I also received another service message with a link to the BIGGEST Breasts EVER wap site to be able to start downloading content.

Conclusion:

Even though the pricing information is clear on the wap page once you scroll down a little, it does not explicitly verify the “BIGGEST Breasts EVER” as a subscription service. All it says is “for instant access enter your mobile number” and “Submit” no where does it say “enter your number to **subscribe** to the BIGGEST Breasts EVER service.

There is no explicit confirmation exchanged at all stating that the customer is of 18 years or older. All it says is “You must be aged 18+” so there is no confirmation at all hereby the customer confirming that he is in fact 18 or older.

Once a customer enters their mobile number onto a web page or WAP site, a second confirmation must be obtained from the customers mobile. The fact that the service message has a link that says “click here” and absolutely nothing about “click here to join the BIGGEST Breasts EVER service” this cannot be considered a second confirmation at all.

Although the welcome message has relevant information, the format is completely wrong, also the way the pricing information is written it is very confusing, instead of saying “R14.99/2days” it should read the full price one would pay per day, or week or per month. It reads:

**“FreeMsg
Welcome to
BIGGEST BREASTS.
Loads Of naked babes
Will be sent to You!
Help 0114613222.
To Cancel SMS STOP
To 31730
Cost:R14.99/2days.
mConnect
service”**

A format like below is much clearer for the customer to understand, and the welcome message should be changed to this proposed format:

“Welcome to the BIGGEST BREASTS service. Cost Rxx.xx per week. To unsubscribe SMS STOP to 31730. Help call 0114613222. mConnect Service”

Breaches of the Code:

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.2.4. **Pricing contained in an advertisement must not be misleading.** If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

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.**7.93

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

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.

11.1.8. 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.

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

obtained from that customer's mobile handset before any billing may take place for that service.