



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Opera Telecom and Sybase 365
Information Provider (IP) (if any)	AMV Holdings t/a Antiphony
Service Type	Content and Chat services
Source of Complaints	WASPA Monitor
Complaint Number	9450
Date received	6 May 2010
Code of Conduct version	9.0

Complaint

The WASPA Monitor states that they received a promotional SMS on 5 May 2010 as follows:

WHY WOULD HE DO THIS TO ME?! <http://wap.mob365.net/xmxws7/dizm>

The Monitor clicked on the link and entered a WAP site advertising an adult content subscription service (“Barely Legal”) and a premium adult chat service (“Naughty Chat”). When going through the list of advertised content, the Monitor noted that not all the listed content was accompanied by the required 18+ age notification.

The Monitor successfully downloaded an adult movie clip from the site. However, when choosing and clicking on “Erotic private message”, they received another downloaded movie clip instead.

The Monitor then tested the PREMIUM CHAT option by clicking on the link provided. The pricing for this chat service was stated to be “R10 per chat alert received”, which

the Monitor alleges is a prohibited service in terms of section 13 of the WASPA Code of Conduct.

The Monitor chose to chat with a man ("*Andreis, 25 Mpumalanga*") by clicking on the icon provided. The WAP page then changed to a notification page which stated that a message had been sent, even though no message had been sent.

The Monitor then exited the site and noted that R10 had been deducted from their cell phone account (initial balance was R119.39, closing balance was R109.39).

After accessing the WAP site, the Monitor received the following two welcome messages:

Welcome to Barely Legal. Subscription costs R6/1day. Helpline: 011-4610317. To unsubscribe sms STOP to 40977. 18+ only. SP OPERA

Naughty Chat! Hi JEREMIAH285. We'll match u to some new dates! 2 chat with someone txt their NICKNAME, a SPACE then your msg. For more matches txt MORE.

The Monitor then received six SMS's and R60 was deducted from their account, i.e. R10 per sms. The following are the SMS's received:

1 new alert from Naughty Chat – view here!

<http://69844.cc/cf/P2/ChtMsg?Mid=134561317&Did=2574106>

1 new alert from Naughty Chat – view here!

<http://69844.cc/cf/P2/ChtMsg?Mid=134569154&Did=2574106>

1 new alert from Naughty Chat – view here!

<http://69844.cc/cf/P2/ChtMsg?Mid=134570066&Did=2574106>

1 new alert from Naughty Chat – view here!

<http://69844.cc/cf/P2/ChtMsg?Mid=134571045&Did=2574106>

1 new alert from Naughty Chat – view here!

<http://69844.cc/cf/P2/ChtMsg?Mid=134574752&Did=2574106>

1 new alert from Naughty Chat – view here!

<http://69844.cc/cf/P2/ChtMsg?Mid=134574752&Did=2574106>

1 new alert from Naughty Chat – view here!

<http://69844.cc/cf/P2/ChtMsg?Mid=134576293&Did=2574106>

The Monitor clicked on one of the “chat alert” SMS’s received and accessed a message from a girl named Gina which read: “*Hi darling, I want to talk, are you ready?*”

Despite choosing a male chat option, the Monitor was now directed to a completely different chat service, with a different short code being used (31833). This code belongs to a different service provider, i.e. Sybase.

The username “*Hi JEREMIAH 285*” which was contained in the welcome message for the chat service was also not based on any details the Monitor had themselves registered on the site.

The Monitor alleges that the IP, an affiliate member, has breached sections 4.1.2; 8.1.2; 8.1.3; 8.1.5; 8.2.3; 11.1.1; 11.2.6; 11.3.4; 11.3.5; 13.4.1 and 13.4.2 of the WASPA Code of Conduct.

IP’s response

The IP initially responded by suspending the chat service and stopping all related promotions to ensure that any consumer harm was reduced to an absolute minimum.

The IP then sent a comprehensive response to the complaint. The response distinguished between the two services and dealt with the respective complaints against each one separately.

Adult content service

The IP states that this service was still being compiled and tested and should not have been released to WASPA (or any third party) for test purposes as the service was not yet live. As part of the integration process, the IP submitted a test link to its service provider, Integrat, to enable it to run integration trials. This test link was only in its infant stage and at no time did the IP state/confirm to Integrat that it was complete or ready to be sent to the general public.

The IP also did not request or authorise Integrat to provide the link to WASPA for test purposes. The site was not ready, complete, tested or checked for regulatory compliance.

The IP tracked the MSISDN history and states that the Monitor entered its system originally on 29 April 2010 at 13:27:47 via the test link that had been submitted by Integrat. This should not have happened and it was submitted to the WASPA compliance team prematurely. The IP denies that this test SMS was spam and states that this can be verified by Integrat.

The IP's records indicate that the Monitor browsed the test site homepage using a NokiaE52-1 handset. The site stated that:

R5/day SUBSCRIPTION SERVICE

JOIN

R5/day Subscription Service

By clicking JOIN you agree subscription entry billed at R5/day.

You will receive 1 content credit every day

At 13:28:45 the Monitor clicked the 'Join' button to accept the terms and join the subscription. They were then diverted through to the test site and sent the following message:

U are subscribed to BLING! billed at R5 per 1day from Bluestream Mobile.To stop service, SMS STOP to 42903. Help? Call 011-461-0317.

The IP re-iterates that this site was not complete and the above 'welcome' message was incorrectly sent as a reminder message. There was never any intention for the testers to subscribe to the service, therefore this element of the site had not been approved by the IP.

Similarly because the site was incomplete and still being tested, the confirmation page was disabled. When the IP first looked at this case, it was worried there might be a wider technical problem. However, it has confirmed this is not the case. The 18+ confirmation page was not displayed because it has not yet been set-up for this service as the service was still in its test phase.

The IP states that all of its services that require 18+ age verification are linked with a 18+ age confirmation page.

The IP also states that as a result of the error, the MSISDN was automatically included in a male broadcast list, instead of the female option that was selected by the Monitor.

On 2 May 2010, the user was sent the following promotion for the IP's Barely Legal WAP site:

WHY WOULD HE DO THIS TO ME?!

The site was then accessed by the Monitor on 5 May 2010 using a NokiaE52-1 handset. The Barely Legal site is only made available or promoted to users whom the IP had already received a positive 18+ confirmation.

The IP confirmed the following:

1. The MSISDN entered its male broadcast list after accessing a test link.
2. This link was not available to any member of the general public.
3. As the site was unfinished the 18+ confirmation was deactivated.

4. This resulted in the user being included in the incorrect broadcast link, which in turn resulted in an adult promotion being delivered to the handset.
5. All other recipients of this message would have provided a positive 18+ age confirmation previously, in order to receive this promotion.
6. The Barely Legal site contains the correct terms and conditions, and according to our checks there is nothing else wrong with it.

Chat service

The IP's chat service is a WAP-based chat portal. Users can send messages to other users using the WAP site, and have to log into the WAP site to view their inbox of received messages.

SMS notifications are sent to users to inform them of activity taking place on their chat home page, and that they should log-in to view their inbox. These notifications are billed at R10 per message received.

Section 13.4.2 of the Code of Practice states that....

“Prohibited services...(a) Chat services where a customer is billed for receiving a message rather than being billed for sending a message.....For the avoidance of doubt, this excludes notifications (covered by Section 12, above) relating to permitted chat services, provided that these are notifications relating to the chat service and not conversational messages.“

The IP argues that the section allows for notification messages to be billed within the framework for notification services established in section 12 of the Code.

The IP denies that it is operating an MT-billing based chat service. The MT billing is for notifications. The notifications are to alert the user that they have received a message or other new event on their site home-page and the IP believes the service is operating within the current rules.

In line with section 12, the service has a strict limit of 20 notification messages per user per month (R200 max). The service has a welcome message as follows:

[Free msg]Welcome to <Brand name> Chat! SMS MORE to 31833 4 girls!.R10/alert,max 20 alerts/month. STOP to 31833 to quit. 18+ Help:0114610317.

The IP states that it will update this message to read as follows:

[Free msg]Welcome to <Brand name> Chat! SMS MORE to 31833 4 girls!.Notification messages cost R10 /max 20 month. SMS STOP to 31833 to quit. 18+ Help:0114610317.

The service has a monthly reminder message as follows:

[Free msg] You are part of <Brand name> Chat! SMS MORE to 31833 4 girls!.R10/alert,max 20 alerts/month. STOP to 31833 to quit. 18+ Help:0114610317.

The IP will update this message to read as follows:

[Free msg] You are part of <Brand name> Chat! SMS MORE to 31833 4 girls!.Notification messages cost R10 /max 20 month. SMS STOP to 31833 to quit. 18+ Help:0114610317.

The IP admitted that the terms quoted on its WAP site are incorrect as the service does not operate as a subscription. The only form of billing is MT notifications. There is also no premium MO element.

All the chat takes place on the WAP site, so is effectively free of premium charges. Users pay only for notification messages. The IP apologised for this error in pricing terms, caused by a technical fault. The subscription wording should not have appeared.

Regarding the WASPA Monitor clicking on the male option, but ending up in a chat conversation with a female, the IP states that whilst it is possible that users of the service may receive messages from members of the opposite sex, it takes into account the complainant's comments, and are improving the service to ensure that the user is put in touch with their first choice of match, before anyone else.

The IP concluded by acknowledging the following:

1. The pricing fault - the service is not a subscription service, and should not have been advertised as such.
2. The combination of the two services (WAP content and Chat) within the same site could have been more clearly arranged, however the IP does not believe there was anything misleading, and points out that it is normal industry practice to advertise a combination of services from the same landing-page. The IP is undertaking a re-design process and will submit designs to WASPA compliance for guidance. In the meantime, the IP has completely removed advertising for Chat services from all its WAP sites.

The IP believes it is operating the service legitimately as a WAP Chat service with notifications for WAP Site activity, and that under section 12 of the Code it is legitimate to bill such notifications at R10.

The IP believes that its welcome messages and monthly reminders are compliant with the Code, and that their cost cap is R200 per month.

SP's response

The two service providers involved with these 2 services were Sybase 365 and Opera Telecom. Sybase, the SP for the Naughty Chat service, sent a response which did not take the matter further and referred to the response from the IP. Opera Telecom, which was the service provider for the "Barely Legal" subscription service offered by the IP, referred to the IP's response but also provided their own additional comments.

With reference to the initial WAP link that was sent, Opera referred to the IP's explanation as to why this was not spam.

Opera argued that the IP's contact details and opt-out details were clearly and accurately displayed on the IP's WAP site.

Opera also believes that the IP has accurately displayed the relevant pricing information (i.e. "R6/DAY SUBSCRIPTION + R6 SIGN UP"), and has therefore done nothing to contravene section 4.1.2 of the Code.

Opera states further that the IP has done nothing to contravene section 11.1.1 of the Code.

Regarding the alleged contravention of sections 11.2.6, 11.2.4, 11.3.4, and 11.3.5 of the Code, Opera refers to an email notification sent by WASPA on 31/3/2010, stating that section 11.2.6 of version 9.0 of the Code will only become effective from 01/07/2010 (see <http://www.waspa.org.za/code/schedule.shtml>).

Opera argues further that the entire section 11.3 is based on 11.2.6 and the IP cannot be held responsible until the section becomes operative. Opera stated further that it is in the process of developing systems to comply with the new provisions.

Finally, Opera refers to the free welcome message sent to the Monitor which it believes is compliant with the Code.

Complainant's reply

The Monitor disputes the IP's allegation that the site wasn't live and refers to the fact that they were able to download content from the site.

The Monitor also denies that they first accessed the site on 29 April 2010. Instead they accessed another WAP site titled: "*Hot cell content for Girls*" on that date. The promotional SMS sent thereafter was for a completely different adult site.

The Monitor did receive an email from Integreat on 29 April 2010 to test a WAP site, but it was for different site to the one which forms the subject of this complaint.

Sections of the Code considered

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.

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.

2.11. A **“content subscription service”** includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a "club" or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.

2.18. A **“notification service”** is any service where there are ongoing charges for the service that are not individually authorised by the customer, but which are not subscription services, because the billing is not repeated/regular.

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.

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.

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word '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. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator;
- or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

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.

8.1.5. A marketing message sent to initiate or re-initiate adult services may not:

- (a) include any graphical or photographic content that includes full frontal images or portrayal of intimate parts of the body; or
- (b) include any words or phrases that may be considered profane, including common popular or slang terms for excretory functions, sexual activity and genitalia; or
- (c) include any links to any content described in (a) or (b).

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.

10.1.5. Promotional material for contact and dating services must make clear any restrictions on the location, gender and age range of callers to the service.

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.

11.2.4. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- (a) contain a PIN number which is then confirmed or validated on the web page, or
- (b) contain a URL with a unique identifier, which, when clicked, validates the handset number.

11.2.6. For any subscription services that are initiated via WAP, and which are not confirmed by the customer using the validation process set out in 11.2.4, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

11.3.1. The WAP confirmation page must display the following information in a clear and easy to read manner:

- (a) The name of the service
- (b) The price and frequency of billing
- (c) A phone number for customer support.

11.3.2. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:

[Application name] has requested that your mobile number be made available.

11.3.3. The information listed above must be presented as text and not as an image.

11.3.4. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.5. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.6. The WAP confirmation page must offer all languages used in the promotional material for that service.

11.5.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

11.5.2. The reminder messages specified in 11.5.1 must adhere exactly to the following format, flow, wording and spacing:

You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

or

You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

11.7.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.5.2 or the the following format must be used:

You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, click here [WAP link].

11.7.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.7.3. The WAP link in the reminder message must begin with "www" to ensure that all phones recognise this as a clickable link.

11.7.4. All of the other requirements set out in section 11.5 of the Code continue to apply to services where the primary means of interacting with the service us via WAP.

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

- (a) The name of the notification service;
- (b) The cost of the notification service (price per notification) and the maximum number of notifications that will be sent in any one month;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

12.3.1. Instructions on terminating a notification service must be clear, easy to understand, and readily available.

12.3.2. Customers must be able to unsubscribe from any notification 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.

13.4.1. No WASPA member may provide a service described in this section or facilitate the provision of such a service by an Information Provider.

13.4.2. Prohibited services:

- a. Chat services where a customer is billed for receiving a message rather than being billed for sending a message. "Chat services" includes any service where facilities are provided for any form of conversation or dialogue between the customer and other customers of the service, between the customer and a software application, or between the customer and staff of the chat service provider. For the avoidance of doubt, this excludes notifications (covered by section 12, above) relating to permitted chat services, provided that these are notifications relating to the chat service and not conversational messages.

Decision

The IP, an affiliate member of WASPA, promotes two different adult services from the same WAP site situated at <http://wap.mob365.net/xmxws7/dizm>. These services are:

- a) the “Barely Legal” adult content subscription service; and
- b) the “Naughty Chat” adult chat service.

The WASPA Monitor received an SMS from the IP on 2 May 2010 with a link to this WAP site. The Monitor has alleged that this SMS was unsolicited. The IP’s response to this allegation is somewhat ambiguous. The IP alleges that the Monitor was sent the link in error by another service provider, Integrat, without authorisation and before the site was ready for compliance testing. The IP states that the MSISDN had already accessed the site on 29 April 2010 and had verified their age as being 18+.

However, the IP then goes on to refer to a different subscription service (“BLING”). The Monitor has confirmed that it did access another service on 29 April 2010, but this service was unrelated to the site and services which are the subject of this complaint.

Based on the foregoing, I cannot accept the IP’s version that it was entitled to send the Monitor the promotional SMS on 2 May 2010, or that it had previously verified the Monitor’s age as being 18+ before it provided a link to advertised adult content.

The IP has also acknowledged in its response that the Monitor was not redirected to an age verification page before accessing the Barely Legal content service. However, the IP has again stated that its non-compliance in this regard was due to the link being prematurely sent by Integrat to the Monitor when the site was not yet operational.

Unfortunately, I cannot accept the IP’s version in this regard as it is clear from the Monitor’s account of events that they were able to download content from the site and interact with the site in all respects as if it was a live site.

The Monitor has alleged that not all advertised adult content on the site is accompanied by the 18+ notification. However I am satisfied that there is reasonable

and sufficient notification on the site that the content available is of an adult nature. However, this does not excuse the IP's failure to obtain age verification prior to allowing users access to such content.

It appears from the Monitor's complaint that the Barely Legal subscription service was not initiated by them entering their mobile number on the WAP site. Instead the service was initiated via WAP, and the new provisions of section 11.2.6, read together with section 11.3 would be applicable. However, I am in agreement with Opera Telecom in this regard that this complaint was lodged against the IP prior to 1 July 2010, which is the date on which section 11.2.6 comes into operation.

Finally, the Monitor states that they tried to access content which referred to an erotic message and instead received an unrelated adult movie clip. This allegation has not been challenged by the IP.

Therefore, I find that the IP's Barely Legal adult content subscription service contravenes the following sections of the WASPA Code:

- a) Section 8.1.1 in that the SMS sent to the Monitor on 2 May 2010 did not clearly indicate that adult content was being promoted.
- b) Section 8.1.3 in that the IP failed to take reasonable steps to ensure that only persons of 18 years of age or older have access to its adult content services. The IP also failed to obtain explicit confirmation of the user's age prior to the delivery of the content.
- c) Section 8.1.5(c) in that the SMS sent to the Monitor on 2 May 2010, which initiated the IP's adult content service included a link to content described in section 8.1.5 (a) and/or (b).
- d) Section 8.2.3 in that the Monitor had not explicitly given permission to the IP for marketing of its adult content service to take place and the Monitor had not confirmed that they were, in fact, an adult.

It would also appear that content chosen by a user from IP's WAP site is not always the content that is provided to the user. The service therefore contravenes section 3.3.1 and/or section 4.1.2 respectively in that the IP is offering services that it is

unable to provide and is knowingly disseminating information that is false or deceptive, or that is likely to mislead users.

I now turn to the “Naughty Chat” adult service which the IP itself describes as a WAP- based chat portal, where users can send messages to other users using the WAP site. They have to log into the WAP site to view their inbox of received messages. SMS notifications are sent to users to inform them of activity taking place on their chat home-page, and that they should log in to view their inbox. These notifications are billed at R10 per message received.

The Monitor alleges once again that this adult chat service was provided without any prior age verification. I have already made a finding in this regard which applies equally to this service, i.e. the IP has contravened sections 8.1.1, 8.1.3, 8.1.5 (c) and 8.2.3.

This chat service is not explicitly identified as a separate subscription service on the WAP site. The IP has acknowledged that the services are not clearly distinguished from one another. It is only once a user receives two separate welcome messages after accessing the site that they are made aware that they have subscribed to two different subscription services.

I therefore find that the Naughty Chat service contravenes section 4.1.2 of the Code in that the users will be misled by the manner in which the two services are offered simultaneously without clear notification that the Naughty Chat service is a separate subscription service.

A user who accesses the site seeking adult content may inadvertently be subscribed to the chat service without intending to join this service. I therefore find that the IP has contravened section 11.2.2 of the Code.

The allocation of a user name (e.g. JEREMIAH285) to a user without any input from that user is also a serious concern. The IP has not provided any adequate explanation for this. I therefore find that the service contravenes section 4.1.2 in this regard also.

The Monitor selected a particular person to chat with using the service. However, they received a response from a completely different person, and of a completely different gender. The IP has responded to this complaint by advising that the Monitor was inadvertently added to its male database and therefore received a message from a female. As per my previous finding, I cannot accept the IP's version in this regard.

The chat service charges users a fee every time they are notified of activity on the site. The Monitor believes this to be a prohibited service under the Code. The IP appears to argue that the service is more of a notification service than a chat service, i.e. users are charged for the notifications sent to them about activity on their chat home page.

I do not accept the IP's version in this regard and find that this is simply an artificial attempt to circumvent the provisions of section 13.4.2. A user is being billed for messages received rather than for messages sent.

Finally, when the Monitor accessed a link from a "chat alert", they were directed to a completely different chat service from a different service provider. Once again I find that the service is in contravention of sections 3.3.1 and/or 4.1.2 respectively, in that the IP is offering services that it is unable to provide and is knowingly disseminating information that is false or deceptive, or that is likely to mislead users.

The complaint is accordingly upheld.

Sanction

It has been emphasised in many previous adjudications how serious contraventions of the Code are taken when adult services are involved. In particular, allowing adult services to be promoted and/or offered without prior age verification poses serious risks to minors.

I have taken into account the IP's quick response to the complaint and the steps that were taken by it to minimise any harm. However, I cannot ignore the IP's attempt to exonerate itself by stating that the Monitor was allowed to access the site as a result of an error on the part of its service provider and that the site was not yet live and

operational, when this clearly was not the case. The IP's response to the complaint is fraught with ambiguity and contradictions.

In light of the foregoing, the following sanctions are given:

1. The IP is ordered to terminate the Barely Legal and Naughty Chat services with immediate effect.
2. The IP is fined the sum of R 150 000.00.

These sanctions may not be suspended pending any appeal by the IP.