



REPORT OF THE ADJUDICATOR

WASPA Member (SP): ExactMobile

Service Type: Adult Services; VAS Services; Subscription Services

Source of Complaints: Consumer

Complaint Number: 0154

Complaint

The complaint lodged by the consumer against advertisements and services offered by the SP comprised of three specific components. The first related to the failure of the SP to give notice of any age restriction for what appeared to be adult chat services; the second related to a lack of information regarding the cost of making use of the SP's helpline and the third related to the apparent supply of a free content item when subscribing to a subscription service.

SP Response

The complaint was forwarded to the SP who responded in writing to each of the three components of the complaint. With regard to the first component the SP responded that:

"Exactmobile offers an anonymous chat service. At no point does either party know the other persons number or details unless the person actually sends this information within the SMS. The service is divided into different rooms so that people with different interests can chat to others with similar interests. The different rooms specifically state the focus of each room and who should be using each room. Although there is no specific wording stating "Over 18 only" for some of the rooms, we do state adult rooms. Exactmobile will in future state next to the Adult rooms "Over 18 Only".

With regard to the second component of the complaint, the SP responded that:
"The call centre number 082 230 2222 is a standard cellular number charged at standard cellular rates. The number is not premium Rated. This number has been used for 5 years and at no stage has any body queried the cost of this number as people understand that calling a cellular number is charged at Cellular call rates. Exactmobile will however add in to it's marketing the wording as required by the Advertising guidelines. The guidelines state for IVR and Dicon "VAS Rates apply. Free Minutes do not apply". Not even here does it state the cost of the call. The cost of the call varies depending on whether the call is made during peak or off peak periods."

With regard to the third component of the complaint, the SP responded that:
"The Exactmobile subscription service does not say anywhere that the first item is

free. The ad says : HOW TO JOIN. Send an SMS to 33 333 (R5) You will then be sent a complimentary item for joining."

After receipt of the initial response from the SP, the Adjudicator requested copies of the advertisements that had given rise to the complaint. Copies were duly furnished by the SP of the advertisements in question and which appeared to have been published and distributed in a booklet format.

Adjudicator's Decision

The Adjudicator examined the advertisements supplied by the SP. The Adjudicator's rulings in respect of each component of the consumer's complaint, together with reasons therefore, are set out below.

With regard to the advertisement for adult chat services, the Adjudicator noted that the advertisement supplied by the SP read as follows:

*"Room 1
;) Teenage
Meet a new friend!*

*Room 2
;) Single adult
Chat and Flirt with other singles!*

*Room 3
;D Feeling Sexy
For those who dare to be raunchy!*

*Room 4
:> Quieter Life
Enjoy the Quieter things in life?
Share them with someone!*

*Room 5
;0) Afrikaans
Chat and Flirt with other singles!"*

The Adjudicator noted the SP's response that: *"[t]he different rooms specifically state the focus of each room and who should be using each room. Although there is no specific wording stating "Over 18 only" for some of the rooms, we do state adult rooms"* however it is evident that there is no clear notice in the advertisement that Room 3 or Room 5 are "adult" rooms.

When considering advertisements for services of an adult nature, regard must be had for section 8.1.1 of the WASPA Code of Conduct which states that *"[a]ny adult service must be clearly indicated as such in any promotional material and advertisements"*. Additionally, Section 6 subsection 1.3.2 of the WASPA Advertising Rules relating to booklet advertising requires that *"any services that would or should ordinarily be restricted to Adults – which may include Adult Content Services – or where it would be undesirable for Children to have access to those services because of the potential Adult nature of the services, must be indicated as being Age Restricted."*

Although the advertisement for Room 2 does contain the word “adult”, Rooms 3 and 5 do not clearly indicate that they are intended for adults only nor do they contain any age restriction and the advertisements accordingly breach the WASPA Code of Conduct and Advertising Rules.

With regard to the second component of the complaint relating to a lack of information regarding the cost of making use of the SP’s helpline, the Adjudicator noted the SP’s response that it would *“add in to it’s marketing the wording as required by the Advertising guidelines. The guidelines state for IVR and Dicon “VAS Rates apply. Free Minutes do not apply”.*

The Adjudicator considered Section 6 subsection 1.3.6 of the WASPA Advertising Rules for booklet advertising that provides that *“[i]f an IVR or SMS system using any premium rated or VAS rates channel provided by or through a licensed mobile operator is used for contacting the advertiser or as a helpline access, then the fact that this access number is Premium Rated or uses VAS rates must be indicated next to the access number”.*

Although it was noted by the Adjudicator that the SP undertook to add the appropriate notification to its marketing materials, its failure to do so previously amounts to non-compliance with the Advertising Rules.

With regard to the third component of the complaint, the Adjudicator considered sections 11.1.2 and 11.1.4 of the WASPA Code of Conduct which read as follows: *“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. 11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.”*

The Adjudicator also noted the response of the SP that: *“[t]he Exactmobile subscription service does not say anywhere that the first item is free. The ad says: HOW TO JOIN. Send an SMS to 33 333 (R5) You will then be sent a complimentary item for joining.”*

The Adjudicator considered sections 11.1.2 and 11.1.4 of the WASPA Code which are intended to prevent consumers from being subscribed to a subscription service through having requested specific content, or being made to believe by a confusing ad design that they are requesting Content on a once-off (non-subscription) basis. The Adjudicator did not regard the text of the advertisement supplied by the SP to be confusing as to whether content is being ordered or a whether a service was being subscribed to and accordingly does not regard the offer of a complimentary item to a new subscriber to be in breach of these sections of the Code or any provisions of the Advertising Guidelines.

Sanctions

Any breach of provisions of the Code of Conduct or Advertising Rules that are intended to ensure the protection of minors from inappropriate content or adult services must be regarded in a serious light. Furthermore, in this particular case, the adult chat rooms formed part of an advertisement that also promoted a chat room for minors. The Adjudicator therefore considers a fine of R10 000 to be appropriate and

directs the SP to pay the fine to WASPA within 5 (five) working days of notification of this adjudication.

Irresponsible provision of adult content and adult services is of great reputational damage to the WASP industry as a whole and the Adjudicator noted the response of the SP that all adult chat rooms would henceforth feature a notification that the rooms are restricted to persons over the age of 18. This response is welcomed.

Finally, the SP is formally cautioned that if it makes use of any VAS rates channel for contacting the advertiser or as a helpline access, then the fact that this access number uses VAS rates must be indicated next to the access number. The undertaking by the SP to add the appropriate notifications to all of its marketing materials is welcomed.
