



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch
Information Provider (IP) (if any)	AME
Service Type	Adult Content Subscription Services
Source of Complaints	Competitor
Complaint Number	00631
Date received	6 November 2006
Code of Conduct version	4.7

Complaint

The complaint was submitted to WASPA via its website on 6 November 2006 regarding the following transactions that took place between 1 and 3 November 2006.

On 1 November 2006 the following series of messages were delivered to the complainant's handset (27836472298) from +27839210107:

Message1

PORN QUEEN! Get XXX pics of Jenna Jameson & her porn friends NOW! Join the PORNSTAR CLUB! sms SUB PORN to 31518. R6 daily. 18+ sms STOP PORN to 31518 to OPTOUT

The complainant then sent an SMS using the words *SUB PORN* to 31518. The following confirmation was then received:

Message2

Welcome 2 the PORNSTAR Club! Get 1 XXX Porn Pic daily at R6/delivery!! Now thatΔs a deal! 2 unsubscribe sms STOP PORN to 31518 (50c) 4help call 0822327600.AME

The complainant then sent a further SMS using the words *STOP PORN* to 31518. The following message was received in response:

Message3

Sorry, we could not find the specified category that you have subscribed to. To unsubscribe: sms STOP and 'category name' to 31516 eg. STOP LOGO(50c)

The complainant then sent a further SMS using the words *STOP PORN* to the new short code number, i.e. 31516. The following SMS response was received:

Message4

Sorry, according to our records, you are not a Jippii subscriber. To subscribe to awesome Jippii categories, go to www.jippii.co.za

The complainant then sent an SMS using the words *SUB PORN* via SMS to 31518 for a second time, which was sent 36 hours after the first request. The following response was received:

Message5

Dear customer, you are already subscribed to the requested package

As at the date of the lodging of the complaint, i.e. 6 November 2006, the complainant had still not been unsubscribed from the service nor had he been advised on what steps were required to access the advertised content.

The complainant specifically cites breaches of 11.2.4 and 11.16 of the Advertising Rules for Message 1 and a breach of 11.15 of the Advertising Rules for Message 2. He also refers generally to the fact that he has not been able to unsubscribe nor has he received instructions on how to access the advertised content.

SP Response

After considerable delay and a number of requests to it from the Secretariat, the Service Provider issued the following response to the complaint on 29 November 2006:

“Thank-you for contacting WASPA regarding your subscription to AME. According to our records, you are no longer subscribed to the service, and will not be receiving any more material.

We have tested our termination service for subscription services, and it is working optimally. I apologise for any inconvenience. Rest assured you are no longer a member of that particular subscription service.”

The Service Provider was given a further opportunity by the Secretariat to supplement their response before it was referred for adjudication. The Service Provider confirmed that its initial response was its final response to the complaint.

Sections of the Code considered

1. The code

“11. Subscription services

11.1. Manner of subscription

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

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11.3. Termination of a service

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

11.3.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

11.3.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be ‘STOP’.

11.3.4. Members must ensure that the termination mechanism is functional and accessible at all times.”

2. Advertising Rules

11.2.4. Contact details of the sender are obligatory. The contact details must not use any premium rated fax, PSMS, USSD, WAP, or IVR lines. A web site address is the preferred method.

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11.15 PRICING:

Show component, bearer and total cost // Cannot use term Standard Rate when no free/discounted SMS/Minutes cannot be utilised.

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11.16 SUBSCRIPTION SERVICES:

Show Total Subscription Charge, Frequency of Charge, any Bearer charges and any additional charge/s.

(i) Must Use The Words "Subscription Service"

If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words "Subscription Service" must be prominently displayed at the top section of the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed.

No acronym, letter (eg "S"), number, abbreviation (eg "Subs"), icon, or any other mark may be used as an alternative to the words "Subscription Service" anywhere in the advertisement when that Content is only available at all and/or at a particular cost as part of a subscription service.

(ii) Must Indicate Charge/s:

The advertisement must indicate:

(a) The TOTAL charge that the consumer will incur for the subscription component of their access to that subscription service.

(b) The frequency (and the minimum frequency, if applicable) at which they will be charged for the subscription component of access to that subscription service.

(c) Whether, in addition to the periodic subscription charges in (a) & (b) above, there are any additional charges applicable to obtaining any particular service, Content or class of Content on the advertisement. [See (iii) below]

This indication must include the potential and cost of any (additional) bearer charges.

(iii) Must Indicate Cost Of Any (Additional) Per-Content Access

If in addition to a periodic subscription charge the consumer could additionally be charged on a per-access basis for access to any particular service, Content or class

of Content on the advertisement within the subscription period and terms, then the advertiser must make it clear to the consumer that access this Content or service will, over and above the periodic subscription cost, incur additional charges per Content or service access.

The periodic subscription cost, the frequency of the periodic charge, and where applicable, the additional access cost must all be displayed clearly and TOGETHER, in a position immediately above, below, or to the side of the Content, service, or class of Content. There must in particular be an indication whether bearer charges are included or not in the access cost. [See also 'BEARER CHARGES' above]

Decision

The Service Provider has breached the code and/or the Advertising Rules in the following ways:

1. It has failed in its initial promotional SMS to prominently and explicitly identify the services being promoted as *subscription services*. (11.1.1 of the Code read together with 11.16 (i) of the Advertising Rules).
2. It has failed to ensure that the termination mechanism for its subscription service is functional and accessible at all times. (11.3.4 of the code)
3. It has failed to provide contact details in message 1. (11.2.4 of the Advertising Rules).
4. It has failed, in its promotional SMS (message 1) to properly display the total cost of the service. (11.15 of the Advertising Rules)

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5. It has failed, in its promotional SMS (message 1) to indicate:
 - a) The total charge that the consumer will incur for the subscription component of their access to that subscription service.
 - b) The frequency (and the minimum frequency, if applicable) at which they will be charged for the subscription component of access to that subscription service.
 - c) Whether, in addition to the periodic subscription charges in (a) & (b) above, there are any additional charges applicable to obtaining any particular service, content or class of content on the advertisement. (11.16 of the Advertising Rules)
 6. It has failed to make it clear to the consumer that access to the advertised content or service will, over and above the periodic subscription cost, incur additional charges per content or service access.
 7. It has failed to unsubscribe the complainant after the complainant had followed the instructions given to unsubscribe from the services.
 8. Alternatively, it has failed to provide further instructions to the complainant to access the advertised content within a reasonable time.

Sanction

The Service Provider has committed multiple breaches of the WASPA Code of Conduct read together with the Advertising Rules. In particular, the failure of the Service Provider to unsubscribe the complainant after receiving an instruction to do so, and alternatively its failure to provide instructions on how to access the content advertised within a reasonable time must be viewed in a serious light.

The Service Provider has previously been found guilty of similar breaches of the Code and a suspended fine of R45 000 was issued against the Service Provider under complaint number 0056.

Notwithstanding the seriousness of the complaint, the Service Provider also failed to provide any substantial response to the complaint despite being given an extended opportunity to do so.

The Service Provider is therefore ordered:

1. to immediately pay the suspended fine under complaint 0056 in the sum of R45 000.00.
2. to immediately terminate any adult content subscription services offered by any information provider (or itself) which contravenes the Code of Conduct and/or the Advertising Rules.

The sanction contained in 2) above will not be suspended if an appeal is lodged by the Service Provider.