

REPORT OF THE ADJUDICATOR

Complaint reference number:	11247
WASPA member(s):	AMV Limited (the Member)
Membership number(s):	1013
Complainant:	Public
Type of complaint:	Adult service
Date complaint was lodged:	2010-11-29
Date of the alleged offence:	2010-10-19 until 2010-12-03
Relevant version of the Code:	10.0
Clauses considered:	2.8, 5.1.1, 5.1.2, 5.1.3, 8.1, 13.3
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	#5235; #7872; #9450

Complaint

Complaint #11247 is the escalation of unsubscribe request #711387 and relates to the promotion of adult services to a minor by the sending of WAP push messages. The complainant also alleged that the WAP push messages did not identify the sender.

The complaint was logged on the WASPA unsubscribe system on 15 November 2010. The Complainant wrote the following to WASPA on 26 November 2010:

“My 12yr old son uses a cellphone which has been receiving Push SMS’s for the past few weeks which don’t have any sender ID. Accordingly to my son, he has only been on the game sites with this phone. Regardless of which sites he may have been on (I don’t believe he requested these porn SMS’s), the problem is that I don’t seem to be able to stop these SMS’s from being sent to his phone. There is no opt out info provided on these SMS’s as required by the Waspa Code of Conduct, so I contacted the service provider – Nashua Mobile – and they told me the SMS’s originate from a company called SMSNET-SA. I called them and they undertook to remove my cell number from their database. However, the SMS’s are still arriving on his phone. The URL always starts with the same domain names but the files seem to change. The URL’s provided are similar to *[examples redacted]* I have also

noticed on the WASPA website that companies such as *[examples redacted]* have been found guilty by Waspa of the very same contraventions I have raised above – and these companies have been fined and threatened with further action. Obviously this has not been a deterrent to them. When will you be taking stronger action against such offenders or enforcing the sanctions already imposed?”

The Complainant also alleged a breach by the Member of a number of sections of the Code. In this regard, he stated as follows:

“Pretty much the whole of Section 5: Push SMS’s unsolicited; Pornographic in nature; No opt out on sms; No contact information of sender on sms. Section 7.2: Pornographic SMS’s originate as a result of contact with a games site aimed at children. Section 11.9: I have been unable to cancel the SMS’s sent to the cell number – even after having called the company concerned. I’m sure there are other contraventions too.”

The Complainant wrote again to WASPA on 1 December 2010 as follows:

“Below please see copies of emails I have sent to committee members of WASPA (Mr Perlman) as well as to directors of MTN explaining my concern regarding unsolicited pornographic Push SMS’s being sent to my 12 yr old son’s cell phone and my difficulty in getting them stopped. I have also highlighted the lack of proper response from the WASP industry to effectively implement their own Code of Conduct. I would appreciate it if you could investigate my complaint further and provide answers – as I cannot believe that the industry can continue to knowingly be complicit in providing a platform for pornography to be peddled to children. I have also attached a copy of a complaint adjudication related to AMV to give an example (one of many) of how this company has been fined for similar transgressions, but continues to commit the same offence 2 years later. Thank you”

The following is an extract from the abovementioned email correspondence sent by the Complainant to a contact at MTN, which is included in the above communication to WASPA on 1 December 2010:

“...Regardless of the sites he may have gone onto though, since then he has been receiving unsolicited push SMS’s which have links to pornographic websites and contain text such as: *“DIRTY babes online at the FILTH DIRECTORY! View now? [http://local.oit.co.za/1168a/8qoi**](http://local.oit.co.za/1168a/8qoi)”* or *“Is this your mum? [**http://mob3.net/x7ng9ai/975o**](http://mob3.net/x7ng9ai/975o)”* and many others of a similar nature, all of which have no identification on them or means of opting out – which is in contravention of the WASPA code of conduct for members. They have also made no real effort to confirm the recipient’s age.”**

The formal complaint notification was sent by WASPA to the Member on 2 December 2010. On the same day, the Member acknowledged receipt to WASPA, and informed it that it had contacted the Complainant directly to ensure him that the user’s number had been blacklisted from their services and all future messages. The Complainant responded on 3 December 2010. An extract from his response reads as follows:

“My original complaint included a number of issues, including the inability to get any promotional sms’s which include links to adult sites stopped, but also the fact that the sms’s which were received contained no identification or opt-out facility, and were sent out without a proper age verification process – which are in contravention of the Waspa Code of Conduct. AMV contacted me yesterday to tell me that they had blacklisted my son’s phone number – so he will not be able to subscribe for any content or receive any promotional material from any of the AMV sites. However, I would still like to have the AMV investigated for sending out sms’s which do not conform to the Code of Conduct and the fact that pornographic sms’s were sent to a minor. This part of my complaint has not been explained to me and I would like and independent adjudicator to deal with this.”

Information provider’s response

The Member’s first response on the unsubscribe request document generated by WASPA is dated 26 November 2010, and states that the user received free marketing messages only. The Member stated further as follows:

“On the 19th October 2010 at 15:15:58 the user accessed our mobile content site through an advertisement on an affiliate’s website. While browsing the internet the user responded to an advert for our Blue Tube WAP site. The user did not purchase any content and was not charged however they did click on a “claim your free item” link which offered a choice of one free item. The site states that content purchasers or users who access free content may receive future promotions from us, and that they should sms STOP ALL to 31922 to opt-out, or to call our helpline number. We have not had an opt-out request from this user. We have since contacted the user with (free) promotions in relation to other services we offer however the user has not responded to these promotions and was not charged. We have now ensured the number has been removed from all future messages. If you require further assistance, please let me know.”

After receipt of the formal complaint, the Member provided a full reply to WASPA on 9 December 2010. Extracts therefrom are quoted below:

“While browsing the internet on their SAMSUNG-GT-S5233A cell phone the user responded to an advert for our Hot Content WAP site. Having clicked on the site banner, the user was presented with our 18+ Confirmation page. By clicking the “Enter” button the user confirmed their age and was diverted through to the Hot Content WAP site. The user did not purchase any content and was not charged however did click on a “claim your free item” link which offered a choice of one free item. The site specifically states that the content purchasers or users who access free content will receive future promotions from us, and that they should sms OPT-OUT to opt-out, or to call our helpline number. From this time we have contacted the user with free promotional information relating to our services. We have received no stop requests from the user. We note that the consumer states that he was unable to cancel the services. As per the first site accessed consumers are provided with clear instructions that *By accessing / purchasing content*

on this site you agree to receive marketing messages. And that should they wish to stop these services they may do so by: *To opt-out, reply OPT-OUT to 33299.* Promotional messages are sent to consumers via a valid originating address which allows a consumer to reply directly to the messages should the user wish to remove themselves from marketing promotions. In addition all commercial communications also contain express opt out instructions within the body of the WAP push homepage along with full contact information for the company. We therefore believe our services to be compliant according to the WASPA Code of Conduct. [...] We therefore feel the matter to be resolved.

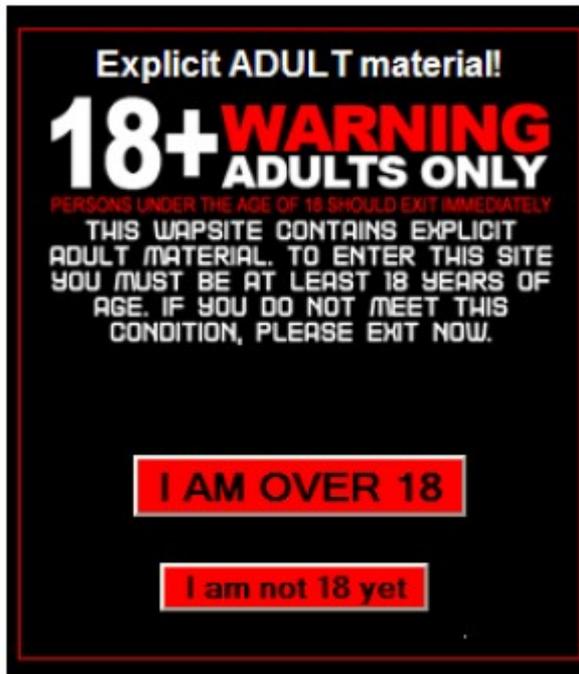
This response was sent by WASPA to the Complainant, who replied on 9 December with a detailed email in which he points out that the Code states that commercial messages must contain a valid originating number and/or the name or identifier of the message originator (section 5.1.1), and that this does not appear on the push SMS's sent to his son's phone. He states further that he had to identify the Member by contacting MTN. Similarly, he was not able to remove his son's details from the message originator's database so as not to receive further messages – a requirement of section 5.1.2 of the Code. He quotes section 5.1.3 of the Code which provides amongst other things that a recipient of SMS and MMS communications should be able to stop receiving messages from any service by replying with the word "STOP". He states that this is not possible with the push SMS's sent as there is no short code attached and no identifier in the body of the message, or any clear instructions as to how to unsubscribe or opt-out. He goes on to cite section 8.1.3 of the Code which provides that members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services, and that explicit confirmation of a user's age must be obtained prior to the delivery of an adult content service. He argues that merely providing a tick box to confirm age does not in his opinion amount to a "reasonable step". Lastly, he cites section 13.3.1 of the Code which provides that in respect of WAP push messages, a short code or some other means of identifying the member providing the service must be included in the message. He states that there are no identifiers in the title, body or details of the push SMS message sent by the Member.

On 4 January 2011, the Member responded by email to the Complainant's arguments above. On 7 January 2011, the Member submitted a lengthy and formal response to WASPA incorporating its email response of 4 January 2011, asking that the formal document be considered for the purposes of this adjudication.

The critical parts of the formal response are set out below. I quote directly in some instances, and summarise other parts of the response where appropriate.

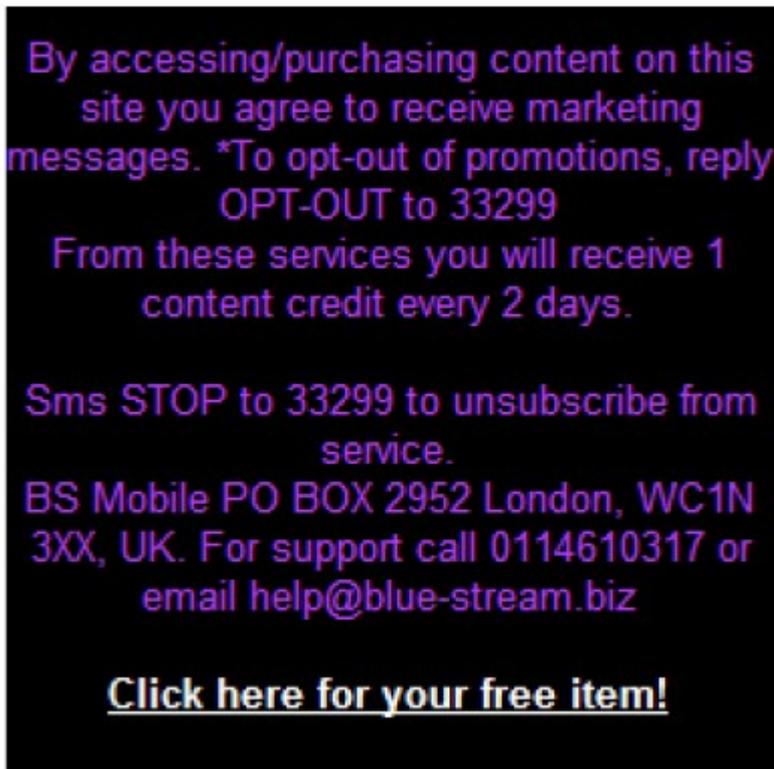
"Access to the AMV Service

...More specifically the user browsed the mobile internet using a SAMSUNG-GT-S5233A mobile and responded to an advert for AMV's 'Hot Content WAP site'. Having clicked on the site banner within the affiliate site the user was presented with the AMV age verification (18+) page. The user clicked on the "ENTER" button and thereby (pursuant to the terms on the WAP page) confirmed through their action they were over 18. The user was duly directed to the Hot Content WAP site as requested.



It is important to note at the outset that the user is not the complainant. The complainant is not in fact the party who first requested and accessed the service. Nor is the complainant the party who downloaded the free content (see below). The complainant therefore did not see the initial 'home page' information (content provider, stop details and helpline number etc) presented clearly to the user at this time."

The Member's response goes on to confirm that the user did not purchase any content from the WAP site, and that neither the user nor the Complainant was charged by the Member for access to the service. The user did, however, click on a link entitled "claim your free item". On the page where this link appears (see below), terms and conditions state that by accessing content on the site (which would include the free content made available by clicking the link), users agree to receive marketing messages. Details are provided to opt-out of the promotions. The support / help details are also cited at the bottom of the terms.



The Member states further that it never received any opt-out request or call on the helpline number from the user / Complainant, and hence certain marketing and promotional messages had been sent to the user, in consideration for the "free content downloaded." These promotional / marketing messages are what the Complainant is complaining of, namely the WAP push messages citing URL addresses to access adult content.

In relation to the complaint that the Complainant / user were unable to stop the service, the Member states that the user was not in receipt of a continuing service, and it had not been charged for any service at any point. It was only receiving marketing messages promoting the service pursuant to the terms of access on the WAP site, as set out above. It confirms again the opting out steps set out on the page above. It also states that all promotional messages are sent to consumers from a valid originating address that allows the consumer to reply OPT-OUT directly to the messages should the consumer wish to do so. In addition all "commercial communications" contain express opt-out instructions within the body of the WAP push homepage along with full contact information of the company. It seems that the Member does not view the WAP push messages sent to the user as commercial communications but views the page accessible by link contained in the messages as the commercial communication.

It is the view of the Member that the "**Complainant at this point is addressing specific requirement[s] of text based services, not the WAP services with which he / his son was engaged.**" The Member states that the Complainant's reference to section 5.1.1 of the Code which deals with commercial messages containing a valid originating number and/or the name or identifier of the message originator (which the Complainant states does not appear in the push messages sent to his son's phone), is incorrect for the following reason: "...**the protocol used with regards to the free promotional messages was not SMS or MMS but WAP push.**"

The technical limitations regarding the content of the visible url are well known to the WASPA industry. That said, in the event that the Complainant had replied OPT-OUT to the message the user would have been unsubscribed from future promotions.

The Member goes on to explain that had the user actually accessed the commercial content of the promotional messages (which he never did), he would have seen clear identifying information pertaining to the service as well as a customer services number and opt-out instructions. The Member responds to the Complainant's references to section 5.1.2 (a message originator must have a facility to allow the recipient to remove himself from the database) and section 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") with the same argument: the messages sent were WAP push messages, not SMS's. The Member states further:

"It is not technically feasible for the 'push' message header to include the details regarding content provider identity, customer services details and opt-out information in that url. As stated above the opt-out functionality was operation[al] with regards to all promotional messages received by this complainant. The commercial message itself carried the content prescribed, including the AMV details, customer services helpline number and stop/opt-out instructions. Such information had been supplied to the user (the Complainant' son) on originally accessing the service also."

In relation to the Complainant's citation of section 8.1.3 of the Code (dealing with members taking reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services), the Member responds that there are technical and practical limitations as to how certain any content provider of mobile services may be that a user of that service is in fact the age they claim to be. However, the Member did discuss the service design and process with the Complainant when the matter originally arose and the Complainant did admit that his son had undertaken the age verification process and falsely certified that he was indeed over the age of 18. The Member states "***This is an industry accepted method for age verification. AMV has acted in good faith and [in] accordance with the Code in this regard. Media publishers use all commercially reasonable efforts to inform their consumers as [to] the nature and age appropriateness of the content. Parental responsibility is also key to the effectiveness of these measures.***" In its earlier email response of 4 January, the Member had also stated: "***A false declaration by the consumer is not the responsibility of the content provider.***"

Finally, in response to the Complainant's citation of section 13.3.1 of the Code (for any WAP push messages, a short code or some other means of identifying the member providing the service must be included in the message), the Member simply states that "***All promotional messages are sent via a valid originating address, however again to confirm, full details of the service are also contained within the commercial content of the message***".

Following the assignment of this complaint for formal adjudication, and having considered the documentation before me, it appeared that the Complainant had only ever cited the content of two of the promotional messages received by his son (this was done indirectly, in correspondence sent by him to a contact at MTN, which he later quoted in correspondence to WASPA, as cited above). The examples he quoted were: "****DIRTY babes online at the FILTH DIRECTORY! View now?***

****<http://local.oit.co.za/1168a/8qoi>**** and **"Is this your mum? **<http://mob3.net/x7ng9ai/975o>**"**. The Member also never quoted any of the promotional messages sent to the user. Accordingly, on 23 June 2011 I requested that WASPA obtain from the Member, within 5 working days of the request, a copy of all WAP push messages sent to the relevant cellular number over the period 19 October 2010 to 31 December 2010, including the precise content of each such WAP push message, such as any visible URL addresses, words etc. contained in the WAP push messages themselves.

The WASPA Secretariat confirmed that this request was sent to the Member on 27 June 2011. The Member responded on 4 July, reiterating the following:

- the consumer only received WAP push messages, not SMS messages;
- all promotional messages are sent via a valid originating address;
- it is not technically feasible for the 'push' message header to include the details regarding content provider identity, customer services details and opt-out information in that url;
- clear identifying information pertaining to the service, including their content provider details, customer services number and opt-out instructions was all contained within the *commercial content* of the message (see below);
- the consumer was able to view the commercial content free of charges in order to obtain the information;
- the same information was supplied to the consumer as at the time of entering the service and was available on accessing the service;
- the Member never received any stop requests at any time.

The Member continues by showing an example of the *commercial content* of one of the WAP push messages. The dark screen shot makes reproduction in this report difficult, suffice to say that the commercial content is the detail that would be revealed to a consumer once he/she had clicked on the URL link in the WAP push message. This does give opt-out details and other information. The Complainant, however, does not reference the actual content of the links in the WAP push message, and is only complaining about receipt of the actual push messages, and his inability to identify the Member from such push messages, or do anything to prevent his son from receiving any more, based on the information available in the push messages alone.

The Member also provided an excel spreadsheet detailing the push messages sent to the user's handset (see below).

Search results for phone: 27788027875						
Date	Phone	Country	Type	Table	Gate	Text
22-Nov-2010 Mon 18:00	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	Careful..Extreme Vids Revealed! Dont forward to others. http://wap.mob365.net/x1ocwst/fi1f
19-Nov-2010 Fri 20:50	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	Careful..Extreme Vids Revealed! Dont forward to others. http://wap.mob365.net/x1nsm9/f13g People you might know on Back Alley Action!!
15-Nov-2010 Mon 20:30	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	http://wap.mob365.net/x1mojky/l6ls People you might know on Back Alley Action!!
12-Nov-2010 Fri 20:50	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	http://wap.mob365.net/x1ixfn/5h57 Jana has sent you a poke...poke back?
11-Nov-2010 Thu 17:50	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	http://wap.mob365.net/x1j811/2rpc Youve been sent a MATCH on Flirty Chatters!!
8-Nov-2010 Mon 18:00	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 37977	http://wap.mob365.net/x1kr4nc/jz3w Youve been sent a MATCH on Flirty Chatters!!
5-Nov-2010 Fri 19:50	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 37977	http://wap.mob365.net/x1k139a/527h One new secret waiting for you...
3-Nov-2010 Wed 19:40	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	http://wap.mob365.net/x1jfh7r/1967 You have a friend request waiting to be confirmed...
31-Oct-2010 Sun 14:20	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	http://wap.mob365.net/x1izo0l/2mrn 10 girls online at the Adult Cell Network.
28-Oct-2010 Thu 17:50	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	http://wap.mob365.net/x1i09y0/7e4z Careful, dont forward this video to others.
22-Oct-2010 Fri 18:40	27788027875	South Africa	Free/WAP Push	DELIVERED	Dialogue SA - 33299	http://wap.mob365.net/x1gmef1/3zvl

Sections of the Code considered

Section 2

“2.8. A “commercial message” is a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.”

Section 5

“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.”

Section 8

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

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

(a)

(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)..."

Section 13

"13.3.1. For any WAP push messages, a short code or some other means of identifying the member providing the service must be included in the message."

Decision

A number of issues arise in this adjudication and each of them will be dealt with in turn.

Firstly, the Complainant has alleged that sections 5.1.1, 5.1.2 and 5.1.3 of the Code have been breached. As appears from these sections as quoted above, 5.1.1 and 5.1.2 deal with the requirement that commercial messages must contain a valid originating number and/or the name or identifier of the message originator (section 5.1.1); there must be a facility to allow the recipient to remove him or herself from the message originator's database, so as not to receive any further messages from that message originator (section 5.1.2). 5.1.3 specifies, amongst other things, that a recipient of SMS and MMS communications should be able to stop receiving messages from any service by replying with the word "STOP" and that, if it is not technically feasible for the recipient to reply to a message, then clear instructions for unsubscribing must be included in the body of that message.

I have accepted the Member's answer that the WAP push messages contain a valid originating number and find no breach of section 5.1.1.

I have also accepted the Member's response that, it offered an opt-out facility to message recipients, even if this facility was not offered in the body of the messages concerned. I therefore find no breach of section 5.1.2.

When it comes the complaint of the breach of 5.1.3, it would appear that the Member's defence is grounded on an argument that the messages sent to the user were WAP push messages and not SMS or MMS messages, that there are technical limitations on what the WAP push messages can contain and that WAP push promotional messages do not have to comply with sections of the Code that are applicable to commercial SMS messages.

Section 16 of the Code advises that "WAP" stands for Wireless Application Protocol and "SMS" stands for "Short Message Service".

A “commercial message” is defined in section 2.8 of the Code as being “a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.”

The key question to be answered is therefore whether a WAP push message falls within the meaning of either or both of the terms “commercial message” or “SMS communication” as used in section 2.8 and section 5.1.3 of the Code.

“WAP push” messaging generally enables the identification of the user’s terminal, the inclusion of a hypertext reference (URL) and the ability of the initiator to deliver content that can cause an application to execute a certain command or accomplish a specific task when the application is initiated by accessing content in the WAP push message.

However, notwithstanding any distinction between WAP and SMS protocols, a “WAP push message” is ultimately delivered to a recipient by Short Message Service where the push initiator uses SMS as the message bearer.

I am of the view that a promotional WAP push message can fall within the ambit of a “commercial message” in section 2.8 of the Code even where delivered in non-SMS format and, where delivered by SMS, also within the meaning of an “SMS message” in section 5.1.3.

In the present matter, it appears to be the case the WAP push messages in question were in fact delivered by Short Message Service.

The Member ought therefore to have complied with section 5.1.3 of the Code by providing the recipient with a means to stop receiving further messages by replying with the word “STOP”. The Member’s facility only provided a means for recipients to stop receiving further messages by replying “OPT-OUT” to 33299. This is a breach of section 5.1.3 of the Code.

Section 13.3.1 of the Code deals further with WAP push messages, and provides as follows:

“13.3.1. For any WAP push messages, a short code or some other means of identifying the member providing the service must be included in the message.”

This section requires a short code or some other means of identifying the member to be included in the actual promotional push message itself and not merely contained in a linked web page. The Member has not addressed this issue at all in its formal response, and has merely pointed to all the details that are contained on the WAP homepage and in the content of what it calls the “commercial” message. There is accordingly a clear breach by the Member of section 13.3.1 of the Code.

I deal lastly with the adult nature of the content advertised in the WAP push messages. This is dealt with in section 8 of the Code and the following sections are applicable to the present matter:

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

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

- (a)**
- (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)...**”

Clearly the WAP push messages amount to promotional material, but nothing in the promotional messages gives a clear indication of the adult nature of the content offered by the service. In fact, some of the messages appear quite platonic, for example, the message dated 31 October 2010 which simply provides a URL and states “You have a friend request waiting to be confirmed”. This is a clear breach of section 8.1.1 of the Code.

Finally, and with regard to section 8.1.5(b), I have considered the content of the WAP push messages provided by the Member. I do not find that they include any words or phrases that may be considered “profane” (the Oxford English dictionary defines profane in relation to language use as “blasphemous or obscene”) nor do they contain any other words prohibited by the section.

In summary, the Member is in breach of sections 5.1.3, 8.1.1 and 13.3.1 of the Code.

Sanctions

The Member has been found to be in breach of the provisions of the Code relating to commercial messages and the provision of adult services. This present complaint is a particularly serious one since it involves the provision of non-compliant adult messaging to a 12 year old boy.

I have noted that in complaint 4673, the Member, along with Sybase 365, was fined R100 000 for non-compliance relating to marketing adult services to an 8 year old boy. In that matter, the adjudicator made the following pertinent comments:

“In the opinion of the Adjudicator it is imperative that the rights of children are protected and duly enforced. It would be negligent and unjust if we allow providers to exploit the credulity and innocence of children. Having said that, it must also be noted that parents who allow their children access to the use of mobile handsets, have an equal and even more important task to fulfil. Although it remains almost impossible to control children’s access to every medium that may contain harmful or unwanted material, certain measures can be taken. Seen from this light and having the WASPA Code of Conduct as a guideline, Service and Information Providers must take full cognizance of [their] responsibilities in achieving the necessary results in protecting children.”

I can do little better than to endorse the comments of the adjudicator in the above matter.

I have also noted:

- that in complaint 5235, the Member was fined R100 000 for non-compliant adult service marketing to a 14 year old and that this fine was paid by the Member;

- the involvement of the Member in complaint number 7872 (where the Member was an information provider working through another service provider) in which the service provider was fined R250 000 for non-compliant adult services and that the fine remains unpaid;
- that in complaint 9450 a fine of R150 000 was imposed on the Member for non-compliant adult services (although that matter appears to have been taken on appeal).

I have noted the probability that in the present matter, the user may have misrepresented his age to the Member. That is the only mitigating factor that can possibly be considered in this matter and it does not detract from the fact that the promotion and marketing of the Member's adult service failed to comply with the provisions of sections 5.1.3, 8.1.1 and 13.3.1 of the Code. After so many incidents of non-compliance with the Code pertaining to the promotion of adult services, there can certainly be no excuse for non-compliance with the express requirement that all promotional material for adult services must be clearly marked as such. The delivery of messages containing phrases such as *"You have a friend request waiting to be confirmed"* and *"Jana has sent you a poke... poke back?"* are plainly suggestive of regular social media invitations and communications. These promotional messages are therefore grossly misleading and, when delivered to minors, they are predatory.

Light sanction would clearly not be appropriate in the present matter.

I therefore impose the following sanctions:

1. The Member is required to pay compensation to the complainant in the amount of R1 000. The complainant may elect to receive this money from the Member by means of direct deposit into a bank account nominated by the complainant or by means of a non-transferable bank guaranteed cheque payable to the complainant to be delivered to an address nominated by the complainant in writing.
2. The Member is required to pay a fine of R150 000 to WASPA.
3. The above amounts must be paid within 10 business days of delivery of this report, failing which the Member's membership of WASPA shall be terminated and the WASPA Secretariat shall advise all licensed mobile network operators in South Africa of such termination and shall request such network operators to cease the provision of any online billing services to the Member and to withhold and pay over to WASPA such funds as may be required to pay the amounts referred to in paragraphs 1 and 2 above.
4. In the event of the termination of the Member's membership as contemplated in terms of paragraph 3 above, the WASPA Secretariat shall furthermore direct all other Members to indefinitely refrain from providing any services to the Member.