



REPORT OF THE ADJUDICATOR

WASPA Member (SP) iTouch

Information Provider (IP)
(if any)

Service Type Subscription service

Source of Complaints R Willis

Complaint Number 5708

Date received 4 February 2009

Code of Conduct version 6.2

Complaint

The complainant lodged a request via the unsubscribe facility on the WASPA website. The complainant was subscribed to the SP's Sexy Cherry Club, an adult content subscription service.

The complainant was unsubscribed and proof of subscription was furnished by the SP. The complainant does not accept the proof of subscription and denies that he accessed the relevant wapsite on the date and time logged by the SP.

The complaint has been escalated to the formal complaint procedure.

SP's response

The SP has responded to the complaint by stating that the service was subscribed for via WAP when a link to the service was accessed via the Sexy Cherry wapsite. A

copy of the relevant page was provided by the SP and reference was made to the message with the link that clearly states that by clicking the link the user acknowledges that he or she is over 18 years of age and accepts that they are entering into a subscription service at the pricing indicated on the page. Once the user clicks on the link, they subscribed to the service.

Further confirmation messages were sent to the user's number and the SP has provided logs of the date, time and content of such messages. The messages clearly state how to unsubscribe from the service.

Sections of the Code considered

Section 11: Subscription services

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".

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.

11.1.3. Where possible, billing for a subscription service must indicate that the service purchased is a subscription 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.

11.1.5. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.6. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.1.7. 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.

11.1.8. A monthly reminder SMS must be sent to all subscription service customers containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

11.1.9. The monthly reminder SMS must adhere to the following format:

- (a) The monthly reminder must begin with either "Reminder: You are a member of NAME OF SERVICE" or "You are subscribed to NAME OF SERVICE".
- (b) Any marketing for a new service must appear after the cost and frequency of the existing service and the service provider's telephone number.

11.1.10. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.1.11. The format of the both the initial notification message and the monthly reminder should comply with the relevant section of the WASPA Advertising Rules.

11.2. Termination of a service

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

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

11.2.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

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

11.2.5. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

11.2.6. If a user ports their number from one operator to another, that number must be removed from all subscription services.

11.3. Subscription service directory

11.3.1. Members must register all subscription services with WASPA, by providing the following information:

- (a) the name of the service;
- (b) the shortcode or access method (e.g. WAP) the service uses;
- (c) the price and frequency of billing for that service;
- (d) the customer support number associated with the service; and
- (e) unsubscribe instructions for the service.

11.4. Marketing of subscription services to children

11.4.1. Promotions for subscription services must not appear in publications or other media specifically targeted at children.

Decision

The SP has provided sufficient proof of subscription to the adult service in question, if not by the complainant then by someone accessing the wap site using his handset.

Sufficient proof has also been submitted to me that a confirmation message was sent to the complainant's number on 16 November 2008 confirming the subscription. Further reminder messages were sent to the same number on 16 December 2008 and 16 January 2009 respectively.

The SP has provided adequate proof of subscription and is accordingly not required to provide the complainant with a refund.

The complaint is accordingly dismissed.
