



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Teleplay Communications

Information Provider (IP)
(if any)

Service Type Adult subscription services

Source of Complaints E Scheepers

Complaint Number 9354

Date received 26 April 2010

Code of Conduct version 9.0

Complaint

The complainant lodged a complaint via the WASPA website on behalf of their father regarding the following promotional SMS:

M2M chatting live right now! 082 239 9449 xxx reply stp to opt out xxxx dial 082 239 9449.

The complainant alleges that the SMS offer from the SP contravenes a number of provisions of the WASPA Code of Conduct, read together with the Advertising Rules. In particular, the complainant alleges that the SMS does not:

1. Identify the SP;
2. Notify users that this is an adult service;
3. Contain any pricing information.

The complainant also alleges that a “stop” instruction was sent from the same cellphone, but no feedback was received confirming that the user had been removed

from the SP's database.

SP's response

The SP sent a response on 10/05/2010 stating that the user (i.e. the complainant's father) had used the SP's IVR services previously and had verified his age and assented to the SP's terms and conditions. It was for this reason that he was listed on the SP's marketing database and thus the reason why he received the promotional SMS.

The SP states further that there is a provision in its terms and conditions whereby the user agrees to receive occasional marketing material via SMS. Users may request, at any time, not to receive SMS messages from the system by replying STOP. This user agreed, by actively pressing the phone keys while using the SP's various IVR services, to be notified by SMS about updates /notifications of the service.

The SP also states that a further authentication method is where the user has spent more than 60 seconds on the line.

The SP alleges that the user actively called the service and spent more than 60 seconds on the line on 30 December 2006 at 13:48. As a result, the user's number was sent further promotional messages which contain an option to opt-out.

The SP states that, in addition, anyone who calls its lines is notified that it has a customer service, which is available for any questions and requests.

The SP does not regard the content of the current message which forms the subject of this complaint as offensive or graphic.

The SP states that "xxx" notification appears in the message - *xxx reply stop to opt out xxx*. However, the SP goes on to say that due to a mistake on the part of one of its employees, the use of "xxx" in the current message was aimed at alerting users to the opt-out option. The SP undertook not to use XXX in this manner in future.

The SP confirmed that the user had now been blacklisted and removed from its database and will not receive any advertisement / notifications from the system in future.

The SP states that all users who reply “stop, cancel etc.” are automatically entered on the black list. Unfortunately, because of that employee mistake mentioned previously, this user was in the black list but never received a confirmation SMS.

The SP states that the message has a valid originating number (Strike Media).

The SP states that as a result of a mistake by one of its employees, an old database was mixed up with its current database and then a message (with old text) was sent to the user.

Sections of the Code considered

Section 3.1.1

Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

Section 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.

Section 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.

Section 5.1.5

Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

Section 5.2.1(b)

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

(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;

Section 6.2.2

All advertisements for services must include the full retail price of that service.

Section 8.1.1

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

Section 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.

Advertising Guidelines

Clause 11.2.1

Text clearly Showing Access Cost and T&C for each service or Content type offered.

Clause 11.2.3

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.

Decision

I am not satisfied with the SP's explanation regarding human error on the part of one of its employees.

The promotional SMS received by the user in this complaint does not comply with the requirements of the Code. I therefore find that the SP has contravened sections 3.1.1, 4.1.1, 4.1.2, 5.1.5, 5.2.1(b), 6.2.2, 8.1.1 and 8.1.4 of the WASPA Code of Conduct. The SP has also contravened rules 11.2.1 and 11.2.3 of the Advertising Guidelines.

Sanction

I have taken note of the previous adjudication report for complaint 6542 where the SP was found to have contravened sections 8.1.3 and 8.1.4 of the Code. The SP's fine in that matter is recorded as being unpaid.

I would also reiterate that contraventions of the Code relating to adult services are viewed by WASPA in a very serious light.

The following sanctions are given:

1. The SP is fined the sum of R300 000.00.
2. The SP's membership of WASPA is suspended until this fine, together with the fine for complaint 6542, have been paid in full to the WASPA Secretariat.