



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Buongiorno UK

Information Provider (IP)
(if any)

Service Type Adult subscription service
Source of Complaints D Curry
Complaint Number 5568
Date received 15 January 2009
Code of Conduct version 6.2

Complaint

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

The complainant received the following welcome message when subscribing to the service:

*Congrats! U r our new Sexy Cherry VIP Guest. U have access 2 UNLIMITED UNCENSORED HARDORE porn @ just =30/5days. 2end sms **stops** to 31191, but stay & I'll cum 4 u.*

Upon receiving this message, the complainant immediately tried to unsubscribe by sending a sms message with the word "stop" to the shortcode number 31191. The

complainant tried on two further occasions to unsubscribe by sending “stop” and “stop club” to the same shortcode number without success.

The complainant has now been unsubscribed but the requested refund has been refused by the SP. The complaint has now been escalated for formal adjudication.

SP's response

The SP has unsubscribed the complainant from the service but has failed to offer any refund.

The SP responded to the formal complaint on 23 January 2009. The main basis for the SP's response is that the complainant did not follow the correct unsubscribe instructions which were originally sent with the welcome message and in further reminders which were sent to the complainant after the incorrect “stop” messages were sent.

Sections of the Code considered

11. Subscription services

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.*

11.2. 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.

Decision

The SP contends that the complainant was not unsubscribed from its adult service because the word "stop" was used in an unsubscribe request instead of the word "stops". However, the wording of section 11.2.2 of the WASPA Code is pre-emptory and the complainant should be able to unsubscribe from the service via SMS using no more than two words, one of which *must* be 'STOP'.

The complaint is accordingly upheld.

Sanction

The SP is ordered to refund all charges to the complainant's account which were charged from the date of the first unsubscribe message, which according to the SP's logs was 22 December 2008.

The SP is ordered to amend the unsubscribe function for this service to respond correctly to unsubscribe requests which include the word "STOP".

The SP is fined R25 000.00.