



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Peach Mobile
Service Type	Subscription / Unsolicited commercial messages
Source of Complaint	Public
Complaint Number	#0107

Complaint

The original complaint was submitted through the WASPA web site on 5 January 2006 and reveals two elements.

The Complainant alleges that both he and his daughter were erroneously subscribed to a service being offered through the Service Provider (SP) (as identified subsequent to the complaint by the WASPA Secretariat).

“I receive SMS messages from a number +2782007030370016 daily and the SMS's are being charged against my account without my permission. The same apply for my daughter which is on pre-paid, her number is”

In reply to the SP's response that its records showed that the Complainant had subscribed to the service and received two messages on how to unsubscribe, the Complainant stated:

“However, the statements made by the WASP is not true. I have never received a message to subscribe or to unsubscribed. The last message from them to my phone was yesterday at 13:21:16, detail below [whereafter follows a list of three messages received by the Complainant on the 10th, 11th and 12th January 2006 respectively].”

The Complainant alleges further that an amount in excess of R200 has been charged in respect of the SMS messages received, implying that charges have been levied in respect of more than 40 messages (messages were charged at R5 per message). It is presumed that this is in respect of SMS messages received by the Complainant and his daughter.

Sections of the Code considered

The following sections of version 3.2 of the WASPA Code of Conduct were considered:

Section 5.2.1

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

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- (c) the organisation supplying the originator with the recipient’s contact information has the recipient’s explicit consent to do so.”

Section 11.1.7

“11.1.7. Once a customer has subscribed to subscription service, a notification message must be sent to the customer containing the following information:

- (a) The cost of the subscription service and the frequency of the charges;
- (b) Clear and concise instructions for unsubscribing from the service;
- (c) The member’s contact information.”

Section 11.3.4

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

SP Response

The initial response of the SP was as follows:

“This complaint stands no ground, because the subscriber initiated the transaction himself, but did not unsubscribe or stop the subscriptions as per the advertised material, and as per the first SMS received as indicated above.”

The SP provided the WASPA Secretariat with detailed logs of all transactions from both the Complainant and his daughter’s numbers in support of these claims.

On 10 January 2006, after receiving notification of the Complaint from the WASPA Secretariat the SP sent a further SMS to the Complainant containing information on how to unsubscribe. The SP further alleged that the Complainant was manually unsubscribed from the service on 11 January 2006.

When it was pointed out to the SP that the Complainant had continued to receive messages despite being manually unsubscribed the SP responded as follows:

“The manual Un-subscription did not activate, and I am investigating the problem with Peach Mobile providing the interface. We will refund the customer for the last 3 days since his complaint came through. Please send his bank details to accounts.Integrat.co.za and copy me as well. The R15 will be deposited into his account.”

Decision

As regards the initial complaint the Adjudicator is faced with two irreconcilable versions. The logs provided by the SP, however, are the best objective evidence and a finding against the SP cannot be sustained in that these logs indicate that:

1. The complainant or some other person using his mobile phone subscribed to the service received on 18 December 2005;
2. The complainant's daughter or some other person using her mobile phone subscribed to the service received on 18 December 2005;
3. The SP complied with the Code¹ in respect of confirmation of subscription to the service as regards both the Complainant and his daughter.

It follows from 1 and 2 above (having accepted the SP's version) that all messages sent to the Complainant and his daughter flowed from a “direct or recent prior commercial relationship” initiated by the Complainant and his daughter respectively. There is accordingly no breach of Section 5.2.1 of the Code.

There are no allegations before the Adjudicator as to the advertisement to which the Complainant may have responded involving any confusion as to whether he or his daughter were unaware that they were subscribing to a service. It also appears that the Complainant, given his job title of “Systems Custodian, Delivery Channel Services: SMS and Business Support” should be relatively knowledgeable as to the functioning of subscription and other SMS services.

In the circumstances the complaint cannot be sustained.

There is a further issue relating to the failure of the mechanism for unsubscribing the Complainant, a potential breach of section 11.3.4 of the Code. Despite the SP's allegation that the Complainant was manually unsubscribed from the service on 11 January 2006 it nevertheless appears that the Complainant received further SMS messages from the SP on 11 January 2006 at 13:43:47 and on 12 January 2006 at 13:21:16. The last of these, at the least, contradicts the SP's claim to have manually unsubscribed the Complainant on 11 January 2006.

In this regard the SP has refunded the Complainant in respect of messages sent on the 10th, 11th and 12th January in an amount of R15.00, and I believe this is a satisfactory outcome as between the SP and the Complainant.

There is no clarification on the papers as to the exact reason for the failure of the manual unsubscribe facility as between the SP and the relevant Information Provider (IP) other than a statement that the problem with the interface is being investigated. No results from this investigation are available and there is insufficient information before the Adjudicator to make a finding as to whether Section 11.3.4 has been breached or not. It is not necessary at this time to decide whether the procedure for manually unsubscribing subscribers properly falls within Section 11.3.4. or whether the reference in the Section to "mechanism" limits the scope of the Section to automated procedures by which a subscriber initiates the termination of a subscription service.

In summary

- The Complaint is not upheld
- The Secretariat is requested to make a note of the failure of the manual unsubscribe procedure as between the SP and the IP and the SP is requested to take all reasonable steps to ensure that failures of this nature are eliminated.

¹ Section 11.1.7, Code of Conduct version 3.2