



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Peach Mobile
Service Type	Subscription
Source of Complaints	Public
Complaint Number	0143

Complaint

The Complaint, submitted on 23 January 2006, alleged a breach of section 5.1 of the WASPA Code of Conduct in the following terms:

“I keep getting sms's from 082007030370016 which is costing me R 3.00 each. I've treid to cancel, but without any success. The sms's just keep coming. ”

SP Response

The SP, on behalf of the IP, set out, with supporting logs, its Response to the complaint as follows:

“This subscriber has subscribed to two different services, and only unsubscribed to one of the services.

As per below, the subscriber subscribed to BUST on 2005-08-06 23:22:12, and unsubscribed successfully to BUST on 2005-08-06 23:27:31. The unsubscribe request was sent the same day.

They however subscribed to NB on 2005-08-06 23:25:32, but never unsubscribed to this service.

The subscriber was manually unsubscribed to NB on 21/02/06 @ 13:40 on receipt of the complaint from WASPA. They were successfully unsubscribed by 13:45 on the same day.”

This is borne out by the logs provided.

Of substantial pertinence to this matter is the following log extract showing that the Complainant subscribed to NB on 6 August 2006:

88	20720104	R	YELLO	27828488034	27820070303	013	Welcome to our subscription service. U'll get a wallpaper daily. R5 ea. To unsubscribe sms NB STOP to 31993. Try a kama sutra tip, sms KS now. R5 ea. ENJOY!	2005-08-06 23:25:32
----	--------------------------	---	-----------------------	-----------------------------	-------------	-----	--	---------------------

Furthermore the SP, on 4 November 2005, sent the following SMS to the Complainant:

48	35581285	R	YELLO	27828488034	27820070303	70016	To unsubscribe sms NB STOP to 31993. To receive a daily sexy poem sms SP to 31993. R3 ea. go 2 www. peachmobile.co.za. Help:0828873359	2005-11-04 11:17:11
----	--------------------------	---	-----------------------	-----------------------------	-------------	-------	--	---------------------

Sections of the Code considered

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

“5.1. Sending of commercial communications

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. Where feasible, customers should be able to unsubscribe from any subscription service using no more than two words, one of which must be 'STOP'.

5.1.4. Any mechanism for allowing a recipient to remove his or herself from a database may not be premium rated.

5.1.5. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.

5.1.6. Commercial communications may not be timed to be delivered between 20:00 and 06:00, unless explicitly agreed to by the recipient, or unless delivery during this period forms part of the up-front description of the service."

"11.3. Termination of a service

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

11.3.2. All subscription services must have an unsubscribe facility available at no more than one rand.

11.3.3. Where feasible, customers should be able to unsubscribe from any subscription service using no more than two words, one of which must be 'STOP'.

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

Decision

I have considered, in addition to section 5.1 of the Code as requested in the Complaint, section 11.3 of the Code with particular reference to section 11.3.4 which appears to be of potential application in this matter.

The response of the SP, together with the evidence provided by the supporting logs, is accepted. By necessary implication it is further accepted that the Complainant subscribed to the NB service but did not unsubscribe – there appears to have been some confusion with the other service subscribed to and possibly the Complainant attempted repeatedly to unsubscribe from this service as opposed to the NB one. This was the cause of the continued receipt of the SMS messages complained about.

Neither the Complaint, SP's Response nor the logs reveal any breach of sections 5.1 or 11.3 or any other provisions of the Code.

The Complaint is accordingly not upheld.