



REPORT OF THE ADJUDICATOR

WASPA Member (SP) iTouch
Information Provider (IP) N/A
(if any)
Service Type Subscription
Source of Complaints Public
Complaint Number #0223

Complaint

The following Complaint was lodged on 16 March 2006:

“I downloaded a ringtone from Jippy early to mid last year. they have been subtracting R10 per month ever since.

Eventually I saw it on my account and phoned them to find out why.

Once they explained I realised that it was my fault and left it.

Then a few weeks later I was told about something called 'comfort messages' which are supposed to be sent out to people every month.

I phoned a number of people at Jippy in Cape Town and EVENTUALLY after fighting with them, i was admitted to that they actually dont send these messages to people who subscribed before some new code of conduct as there was a very high 'unsubscribe rate'. “

SP Response

No Response was received from the SP despite two reminders being delivered to it by the WASPA Secretariat.

Sections of the Code considered

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

3.1. Professional and lawful conduct

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.

4.1. Provision of information to customers

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

11. Subscription services

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.

13.3. Formal complaint procedure

13.3.1. In the case of a complaint for which it is not feasible for the member concerned to provide a prompt remedy, or a complaint that has been escalated from the informal complaint procedure, the following formal complaint procedure will be followed.

13.3.2. The member named in the complaint will be notified by the secretariat that a complaint has been lodged and that the formal complaint procedure is being followed.

13.3.3. The secretariat will provide the member with a copy of the complaint, and any additional information relevant to the complaint.

13.3.4. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint.

13.3.5. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond.

Decision

At the outset it is necessary to consider the failure of the SP to provide a Response to the Complaint. As per Section 13.3.5 of the Code the approach to be adopted in cases where the SP does not provide a response is simply to assume that the SP does not wish to respond. To my mind no adverse inference can be drawn from the fact of the failure to respond. It seems clear, however, that the absence of any evidence presented by the SP in defence of its position serves to strengthen any merit which is to be found in the Complaint.

The following appears from the Complaint:

1. The Complainant initially, in “early to mid last year”, subscribed to a subscription service for the downloading of ringtones. Although it appears that the Complainant was unaware that the service he initially accessed was a subscription service he seems to have accepted that this unawareness was of his own making.
2. These events predated the coming into force of Version 3.2 (or any other version) of the WASPA Code of Conduct on 1 September 2005.
3. Thereafter the Complainant was told of a supposed obligation on the part of the SP to send out, on a monthly basis, so called “comfort messages” to consumers subscribed to its subscription services. Presumably these message would serve to confirm the subscription and also alert the recipient of the subscription service as to how to unsubscribe therefrom.

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4. The Complainant then, after pursuing enquiries, became aware that the SP did not send out these “comfort messages” to consumers who had subscribed to its subscription services prior to the commencement of the WASPA Code on 1 September 2005.

As I understand it the nub of the Complaint is as follows: If the SP had acted professionally it would have honoured its obligations under the Code in respect of all consumers who had subscribed to its subscription services and not only those subscribing on or after 1 September 2005. If the Complainant had received such a comfort message prior to noticing the regular charges on his account, he would have realised his error in subscribing to the service at an earlier stage and immediately unsubscribed, thereby saving money.

Is there an obligation under the Code to send “comfort messages”?

The only possible reference to “comfort messages”, as I understand them is section 11.7, which reads:

“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.”

This is generally a message sent by the SP immediately after a consumer has subscribed to a service. There is no mention of any required frequency for the sending of such messages.

At the time when the Complainant first subscribed to the service there was no obligation on the SP under the Code to send a notification message as contemplated in Section 11.1.7 of the Code. Further I do not believe that the entry into force of the Code on 1 September 2005 would have created an obligation on the part of the SP to send such a notification message to all those who had subscribed to a service prior to 1 September 2005.

In the light of the above and, further, given the lack of clarity as regards the dates on which the events alleged in the Complaint transpired, I am unable to uphold the Complaint.

The Complainant is, however, invited to provide the Secretariat with any supplementary information at his disposal regarding his Complaint. In the event that such information reveals a sounder basis for investigating any possible breach by the SP after 1 September 2005, this will, no doubt, be pursued.