

REPORT OF THE ADJUDICATOR

WASPA Member (SP): Teljoy (Pty) Ltd

Information Provider

(IP):

(if applicable)

Service Type: Subscription service

Complainant: Member of the public (Mr C Chauke)

Complaint Number: 0284

Adjudicator: Kerron Edmunson

Complaint

This is a somewhat protracted complaint but in essence the facts are the following:

- The complainant submitted a complaint by email to WASPA on 18 April 2006 as he had been subscribed to a service which he did not recall subscribing to and had since been charged for that service
- The complainant received a weekly bill “almost 3 times” from Vodacom for a service called b-mobile provided by the SP
- The complainant sought a refund of the amounts charged to him on his mobile phone account together with consequential damages of a further 50% of the total charge to compensate him for inconvenience encountered in attendances on his bank and on the SP and Vodacom, as a result of the SP’s error
- The SP was not able to explain by what method the complainant had subscribed to the service for which he was billed.

The SP has in the interim, requested Vodacom to credit the complainant’s account with an amount of what appears to be R40 (R10 twice as a refund of the service charges plus an additional R20 compensation). However WASPA has decided to proceed with an adjudication to formalise the matter.

SP Response

The SP’s initial response stated:

- The complainant subscribed to our Loadin service in January.
- At the time his account did not have sufficient funds and therefore he was not charged. Our service is configured to re-try billing 5 times. At the beginning of February (on the 5th attempt) he had sufficient funds and was billed R10 for 10 days service. 10 days later he was billed the next R10.

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- He called our customer care and asked to unsubscribe. This was done immediately and to date he has only been charged R20.
- When he called to complain I authorised our customer care to refund him his full R20.... contacted Vodacom and arranged to credit his account with the R20 (June 2006).

The SP also called the complainant several times to check that he was happy with the outcome and discussed his compensation claim with him. There was then some confusion between Vodacom and the SP in trying to prove that a refund had in fact been carried out by way of credit to the complainant's Vodacom account, but this was finally dealt with in July 2006. It would appear that the delay was occasioned by the ongoing claim for compensation and the difficulties in reconciling credits to the complainant's account.

In the final correspondence on this matter, dated 17 July 2006, the SP indicated that it had called the complainant who stated that "he doesn't want to speak to anyone any more regarding this. He stated that as far as he is considered the case is closed and he doesn't want me to call him...".

Consideration of the WASPA Code

This dispute is clearly about subscription services. However, it could fall within the ambit of spam as well, given that the complainant avers that he did not subscribe to the Loadin service, and the SP has not addressed the manner in which subscription took place.

For the sake of completeness I have considered the relevant parts of both sections 5 (commercial communications) and 11 (subscription services) of the Code:

Section 5.1.1: all commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

Section 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.

Section 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 5.3.1: members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

Section 5.3.2: members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

Section 11.1.12: any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service.

Section 11.1.7: once a customer has subscribed to a 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 service provider's contact information.

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The right to privacy is a constitutionally protected right and it is therefore important that WASPA members protect and uphold the privacy of their customers and the public in general.

Decision

In the absence of an explanation from the SP as to how the complainant was subscribed to the service, it would appear that the SP is in contravention of section 5.1 and section 5.2. In the circumstances as they are set out in the complaint and response from the SP, I am not going to make a finding in relation to section 5.3.

Even if the complainant had subscribed to the service it would appear that section 11.1.7 and 11.1.12 were not complied with.

The key offence in this case is, however, the sending of unsolicited communications.

Sanction

The SP has already taken action to refund the complainant and has also, of their own accord, responded to his request for additional compensation. However, as the matter was referred to WASPA, it is incumbent on us to consider the complaint as it stood at the time of submission.

The SP is therefore directed to pay a fine of R1,000 to WASPA within 5 days of the date of publication of this adjudication, payment to be suspended for a period of 6 months from the date of the complaint provided no other complaints in this regard are received against the SP.