



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Strike Media
Information Provider (IP):	MobiJobs
Service Type:	Subscription service
Complainants:	Anonymous
Complaint Number:	10279
Code Version:	9.0
Advertising Rules Version:	2.3

Complaint

The Complainant wrote:

“The following number was auto-subscribed to the mentioned service:

*****9888 never opted into the service but received a monthly reminder and was billed R13 The subscriber and I requested the MO logs from Strike media. They responded that they will get an explanation from their client. We are still awaiting feedback. They have offered a refund - but this is hardly the issue. We have requested emergency action from WASPA – we are also awaiting their feedback.

Mobijobs has a history of non-compliance - we have made the aggregator aware of this. This company also worked through other aggregators who currently have their billing suspended for the reason that they have been auto-subscribing users.

The following number received a reminder message though the number was opted out in February:

***** _

- The following message was sent to the handset: This is a reminder that you are subscribed to the mobiJOBS SMS Job Alert Service @ R6.99 a week. To unsubscribe reply STOP or to 38523. Help: 0729962573 The user unsubscribed and the following message was returned: U r not a subscriber. JOBS JOBS JOBS! Get Daily SMS Job Alerts! SMS JOBS to 38253 at R2/day. View Jobs now: <http://m.mobijobs.co.za> Note the pricing inconsistency.”

In response to the SP’s response the Complainant stated the following:

“Please review correspondence between Mobijobs and Integrat. The last correspondence we had with Strike Media was to request an explanation which we never received - see previously submitted correspondence. We do not view the nature of the client's services or his BEE status as relevant here.

This is the 3rd time that this provider has 'accidentally' auto-subscribed users who either never subscribed or who unsubscribed ages ago. We would like to request that this complaint be adjudicated. We do not see the relevance of the aggregator pointing out that they manage required MT messages, this is a case of auto-subscription which they cannot technically manage. Note that there is no MO from the complainant to MobiJobs' service whatsoever. Feel free to confirm this with MTN - so that explanation is also not sufficient.

We view auto-subscription in a very serious light and we have suspended Mobijobs' billing code with Integrat.

Integrat indemnifies and holds itself harmless against any claims or actions as are referred to herein, from any party whatsoever, arising from compliance advice which advice is at all times given as a courtesy to clients and is not guaranteed in any way to be accurate or to constitute formal legal advice. Note that compliance is the responsibility of each client, please peruse the WASPA Code of Conduct and Advertising Guidelines (<http://www.waspa.org.za/index.shtml>) before offering service in the mobile space.”

Service provider's response

In its response the SP wrote:

“In mitigation of mobiJobs service I would like to submit the following:

1. mobiJobs is operated by a struggling Black Entrepreneur Paul Manjanja
2. mobiJobs was previously a client of Integrat
3. As he was short of funds, Paul approached Strike Media to assist him get his service off the ground.
4. Strike Media was satisfied that the Paul's product had merit and was impressed with Paul as an individual and decided to philanthropically assist mobiJobs under Strike Media's requirements for B-BBEE Scorecard ELEMENT Enterprise Development. As such, Strike Media provides its services to mobiJobs either at cost or at no charge depending on the service.
5. mobiJobs went live on the Strike Media platform on 3 August 2010, just 17 days ago.

6. Strike Media's subscription service platform automatically handles all of the regulatory requirements of a subscription service. This is never left up to the client as with many other aggregators. I.E.

- a) When an MSISDN is subscribed to a service our system automatically handles the double opt in and sends the welcome message.
- b) The monthly reminders are sent automatically by our system
- c) Spend threshold messages are automatically sent by our system
- d) If a subscriber terminates a subscription our system automatically sends the confirmation.

This gives us the confidence that no-one can automatically be subscribed to any of the services that we operate and are properly unsubscribed.

7. In the case of mobiJobs, because they had an existing database, some of the automatic services needed to be circumvented.

- a) The existing subscriber database had to be imported into our system – bypassing the Welcome message. These were individuals who had already subscribed to the service while mobiJobs was a service of Integrat. As the database was imported into the system, Strike Media will not be in possession of any of the original MO messages.
- b) The STOP messages needed temporarily to be handled by mobiJobs to remove the subscribers from the existing database. There is clearly a bug in the mobiJobs STOP request handler which has been pointed out to Paul.

8. Once imported, before billing commenced, we triggered monthly reminders to be sent to all subscribers to give them the opportunity to opt out.

9. I suspect that the Integrat employees numbers found their way into the subscriber database during initial testing when they were operating the service.

10. Paul responds to emails and service requests timeously.

11. A refund has been offered to the subscriber.”

Sections of the Code considered

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

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

6.2.2. All advertisements for services must include the full retail price of that service.

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent response.

The Adjudicator won't allow him / herself to be drawn into lengthy arguments that do not pertain to the relevance of the alleged breaches.

The Adjudicator does therefore not feel that the SP in this matter has provided a sufficient response to the alleged breaches conducted by the IP in this matter.

In the reminder message that was sent to the Complainant in this matter, there are very clear indications of price inconsistencies that contradicts sections 4.1.1 and 6.2.2 of the Code.

The Adjudicator concomitantly finds the IP to be in breach of sections 4.1.1 and 6.2.2 of the Code.

The SP in this matter has not categorically denied any of the allegations pertaining to section 11.2.1 of the Code and the assumption of a technical bug on behalf of the IP does not justify continuous malfunctions which are seemingly at the order of the day.

The Adjudicator finds the IP to be in breach of section 11.2.1.

Although the Adjudicator is not of the opinion that these malfunctions do not occur, he / she is not convinced that the SP should continue providing a service on behalf of the IP when it is indeed aware of the malfunction, and where it has actually made the IP aware of the malfunction without any subsequent rectification thereof.

The SP has an obligation in terms of the Code to bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

This section is not upheld by the SP and the SP is found to be in breach of section 3.9.1 of the Code.

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP and IP with regard to breaches of the relevant sections of the Code of Conduct;
 - The SPs' subsequent response; and
 - The IP's technical difficulties
1. The SP is required to suspend the IP's mentioned service until such time as the SP and IP complies with the orders set out below:
 - 1.1. The SP may not initiate any new or existing billing transactions for the said service during such period of suspension; however it may process any unsubscription requests;
 - 1.2. The IP shall send an sms notification, detailing such suspension, to all existing subscribers of the said service (the SP shall furnish the WASPA Secretariat with confirmation that it has notified the IP's subscribers);
 - 1.3. The SP must ensure that the IP resolves its technical errors;
 - 1.4. The IP must ensure that it conforms to all aspects of the Code; and
 - 1.5. The SP must uphold section 3.9.1 of the Code.
 - 1.6. The SP and IP are formally reprimanded for its various breaches of the Code.

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the SP and IP are indeed complying with this.