



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno
Originator	N/A
Service Type:	Subscription Service
Source of Complaint:	Public
Complainant:	Carola Slatter
Complaint Number:	10486
Date Received:	01 November 2010
Code Version:	08
Advertising Rules Version:	Not applicable

Complaint

The complaint is the escalation of the unsubscribe request #385715 logged by the complainant on the 10th of August 2010 via the WASPA unsubscribe facility.

The subscription services pertained to the downloading of music for a subscription service fee of R6 per day via WAP. The complainant asserted that she did not subscribe to the relevant subscription services.

In accordance, the Service Provider was requested to attend to the following:

- *To unsubscribe the customer (complainant);*
- *To send an SMS communication to the complainant confirming that the complainant has been unsubscribed;*
- *To provide the complainant with proof of the complainant's subscription to the relevant service;*
and
- *To contact the complainant regarding the refund requested by the complainant.*

The SP:

- *unsubscribed the customer (complainant);*
- *sent an SMS communication to the complainant confirming that the complainant has been unsubscribed;*

The complaint was escalated because the SP failed to refund the complainant and provide proof of subscription which was unsatisfactory to the complainant.

Service provider's response

Following the issue of the formal complaint to the SP, the SP:

- *produced screenshots and a description of the subscription process that would have been followed by the complainant to subscribe to the service as a manner of evidencing the complainant's subscription;*
- *responded to the question of a refund to the complainant by stating that the SP did not deem a refund in order as in the opinion of the SP, the complainant was "during the entire process" "kept in the loop" regarding the nature of the service being a subscription service.*

The screenshots and description were supplemented by the complainant's subscription history and logs produced by the SP on the 14th of September.

From the detailed logs, it appears that the complainant accessed a WAP page on her phone, received a pin code which was entered into the wap page, received a welcome message and second message pertaining to downloading content. The complainant appears to have received reminder messages pertaining to the complainant's subscription service on:

11 March 2010;

11 May 2010;

13 July 2010;

10 August 2010;

The reminder message sent on the 13th of April reads as an error message.

I further note that the complainant attempted to unsubscribe on the 14th of April 2010. The attempt was listed as an error message on the subscription history produced by the SP. The unsubscribe request was sent to the phone number and not to 36060 as instructed by the SP in the reminder messages.

Complainant's Reply:

The complainant was unsatisfied with the response of the Service Provider.

Additional Information Requested by Adjudicator:

The itemised billing of the complainant was requested by the Adjudicator which was subsequently added to the available documents on file.

The itemised billing indicates that the complainant had not downloaded any content.

Sections of the Code considered

2. Definitions

2.24 "subscription service" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

4.1. Provision of information to customers

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.

11. Subscription services

11.1.1 Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”. This includes any promotional material where a subscription is required to obtain any portion of a service, facility or information promoted in that material.

11.2 Subscription process

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.

11.2.4 If a subscription service is initiated by entering a customer’s mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer’s mobile handset in order to prove that the number entered matches the customer’s mobile handset number. This message may either:

- (a) contain a PIN number which is then confirmed or validated on the web page; or**
- (b) contain a URL with a unique identifier, which, when clicked, validates the handset number.**

11.5 Reminder messages

11.5.1 A monthly reminder message must be sent within 30 days of the initial notification message and once per calendar month thereafter.

11.9 Subscription service directory and logs

11.9.2 When requested to do so by WASPA, a member must provide logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
- (b) proof that all required reminder messages have been sent to that customer;
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (d) any record of successful or unsuccessful unsubscribe requests.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her.

With reference to (i) the complaint, (ii) the SP's response to the complaint, (iii) the complainant's reply and (iv) the sections of the Code considered:

On the issues of legitimate subscription by the complainant to the service and the compliance of the SP with the subscription process stipulated in the WASPA Code of Conduct:

With reference purely to the logs produced by the SP, I would find that the subscription process is in compliance with the Code. However, the facts presented to me are not restricted to the logs of the SP. Whilst I cannot infer that the absence of content downloads on the part of the complainant (as represented in the complainant's itemised billing) indicates that the complainant did not subscribe to the service, I can infer that the complainant had no interest in the service. I am further influenced by the complainant's attempt to unsubscribe from the service in April 2010 which again, leads me to deduce that the complainant had no interest in the service. The conflicting but convincing information in this complaint alone, means that I may find in favour of either party.

Read with the numerous complaints against the SP, however, I call into question the subscription process used by the SP and, find that the complainant did not subscribe to the service notwithstanding the records produced by the SP.

On the issue of compliance with the provisions on the sending of reminder messages:

I find, in respect of the logs produced by the SP that no reminder message was sent to the complainant in June in direct contravention of 11.5.1. The delivery of the reminder message in April reads as an error message and I abstain from a pronouncement in respect of actual delivery of such message. I further view the failure of the SP's systems to adequately address the requirements of the WASPA Code of Conduct discouraging.

Sanctions

The SP is:

- Fined the sum of R 30 000.00 payable to WASPA Secretariat within five (5) days of the date of notification of this Adjudication;
- Ordered to take immediate steps to ensure that the complainant is refunded in full; and in any event confirm in writing to the WASPA Secretariat that it has done so within five (5) days of the date of notification of this Adjudication; and
- The SP shall ensure that all reminder messages are sent to the SP's customers in compliance with the requirements of the current Code of Conduct.

Further, the WASPA Secretariat is to instruct the WASPA Monitor to investigate and report to the Secretariat regarding the accuracy of the logs produced by the SP in this complaint. In this regard, the SP shall:

- Provide the WASPA Monitor with access to all logs and information necessary for the WASPA Monitor to determine to the Monitor's satisfaction the accuracy of the logs produced by the SP in this complaint.