



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	TIMw.e. New Media Entertainment South Africa / Mira Networks
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	Dr A Michael
Complaint Number	10628
Date received	22 September 2010
Code of Conduct version	9.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 6 September 2010. The SP actioned the unsubscribe request and uploaded proof of subscription. No refund was offered as the SP held the view that the complainant had validly subscribed to the service.

The complainant denies that he ever subscribed or used the service. He states that if he had subscribed to this service, he would have used it at least once. He also states that he does not have download facilities on his cell phone.

The complainant believes that the SP has not provided proper proof of subscription and is claiming a refund of all amounts that have been debited to his cellphone account.

The complaint has been escalated for adjudication according to the formal complaint procedure.

SP's response

The SP states that the subscription service was initiated when the complainant's mobile number was entered on its web page. The SP then sent the following message to the complainant's mobile number on 11 November 2009:

*Your password is: 8876 ull subscribe to Top Club from Natta.com@R4,99/day.To unsubscribe?Dial *120*33535# and follow the menu(1c/sec)Helpline(0)11 4470357*

The SP states that the given password was then entered on the website and the following confirmation message was sent:

*Well done!U Subscribed TopMusic Club. 3Tones+4Wallpapers/week, R4.99/day.Stop?Dial *120*33535# & follow the menu(1c/sec).Helpline(0)861106472!www.za.natta.com*

The logs provided also show that the following monthly reminder message was sent to the given mobile number during the period December 2009 to May 2010 and then again in August 2010:

FreeMsg: You are subscribed to Top Music Club.Cost R4.99/day. To Stop Subscription, SMS STOP to 33535. Helpline (0) 861106472 (VAS Rates). Total Tim

Sections of the Code considered

Section 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.

Section 11.2.5

Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

Section 11.4.1

Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

Section 11.5.1

A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

Section 11.5.2

The reminder messages specified in 11.5.1 must adhere exactly to the following format, flow, wording and spacing:

You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

or

You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

Section 11.5.3

The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.5.2.

Section 11.5.4

The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

Section 11.5.5

The cost of service and frequency of billing must use the format “RX/day”, “RX/week” or “RX/month” (or RX.XX if the price includes cents). No abbreviations of “day”, “week” or “month” may be used.

Section 11.5.6

The text “(VAS)” must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

Section 11.5.7

Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

Decision

Regular complaints are made from consumers that they had been subscribed to a service without having entered their number anywhere. There have also been reported cases where no verification of the activation code has been done, meaning that anyone could have entered any activation code to sign up someone else to a service.

Section 11.2.4 of the WASPA Code is intended to avoid the possibility of a third-party entering a subscriber's number on a web site and causing that subscriber to be subscribed to a service without their consent.

The monthly reminder messages required by section 11.5.1 also provides a further opportunity for subscribers to be notified that they are subscribed to the service.

I am satisfied on the basis of the logs provided that the SP has complied with section 11.2.4 and 11.5.1. The complaint is accordingly dismissed.

However, it should also be noted that no content was ever downloaded by the complainant after the subscription was activated. It is highly improbable that a

subscriber who intentionally subscribes to a content subscription service would then not use that service to download any content.

Although not applicable at the date of this complaint, the latest version of the Code (version 10.0) requires the SP to set up a confirmation web page regardless of whether section 11.2.4 has been complied with. This amendment is intended to avoid situations where anyone could enter someone else's mobile number on a page, as may be the case in the current complaint.

In light of the foregoing, and in the interests of fairness, the SP is encouraged to offer the complainant a refund of all amounts charged to the complainant's account.
