Wireless Application Service Provider Association

REPORT OF THE ADJUDICATOR

Complaint reference number:	12016
WASPA member(s):	TMobileSA
Membership number(s):	0116
Complainant:	Public
Type of complaint:	Subscription Services
Date complaint was lodged:	2011-01-26
Date of the alleged offence:	Not ascertainable
Relevant version of the Code:	10.0
Clauses considered:	Clause 3.1.1, 11.2.1, 11.5, 11.6 and 11.10.2.
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	
Related cases considered:	Previously adjudicated cases 10549 and 10822. Pending cases 11749, 11844, 11883, 11957, and 12010.

Complaint

Complaint 12016 is the escalation of unsubscribe request 1047540 regarding requesting refund and proof of subscription. The complainant alleges that he never subscribed to the service offered by the SP and accordingly requested a refund.

Service provider's response

The SP offered a refund without providing proof of subscription.

Sections of the Code 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.

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.

11.2.5. 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].

11.6. Reminder messages

11.6.1. 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. The customer may not be charged for these reminder messages.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

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

or

Reminder: 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 unsub, sms STOP [service keyword] to [short code].

11.6.3. 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 11.6.2.

11.6.4. 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.

11.6.5. 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.

11.6.6. 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.

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

11.10. Subscription service directory and logs

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

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

Decision

In that the SP failed to provide the proof of subscription and in that they failed to comply with the provisions of the Code of Conduct as set out above, and finally, in bearing in mind the previous adjudications and decisions against the SP it is clear that the SP breached the Code of Conduct several times and in a manner indicative of a lack of respect for both WASPA and the Code demonstrating what in my view amounts to contempt and utter disregard for compliance with the Code.

Sanctions

Due to the fact the in the time that has lapsed between this compliant being sent for adjudication and this decision being made the SP has been sanctioned in terms of cases 10549 and 10822 my hands are tied and I am accordingly bound by those decisions and the sanctions therein.