



REPORT OF THE ADJUDICATOR

Complaint reference number:	13397
WASPA member(s):	TIMw.e. New Media Entertainment South Africa
Membership number(s):	1067
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	2011/06/17
Date of the alleged offence:	2011/04/18
Relevant version of the Code:	10.0
Clauses considered:	11.2; 11.3; 11.5; 11.6; 11.8; 11.9; 11.10
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	11922; 11361; 11339; 10739

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 18/04/2011. The SP unsubscribed the complainant and uploaded subscription logs. However the SP did not grant the complainant's request for a refund. The matter was therefore escalated to the formal complaint system for adjudication.

The complainant denies that he ever subscribed to the service and was not happy with the proof of subscription provided by the SP. The complainant maintains that there is no evidence that he confirmed his willingness to sign up for the service.

Service provider's response

The SP responded by confirming that the complainant was validly subscribed to the service on 02/02/2011 and that no unsubscribe instructions had been received prior to the unsubscribe request that was logged on 18/04/2011.

Sections of the Code considered

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.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, it must be clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

11.2.4. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian to do so.

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].

11.3. Subscription initiated via web or WAP

11.3.1. 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 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.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a

WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:

- (a) The name of the service and an indication that it is a subscription service
- (b) The price and frequency of billing
- (c) A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:

[Application name] has requested that your mobile number be made available.

11.3.5. The information listed in 11.3.3 and 11.3.4 above must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

11.5. Welcome message

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information:

- (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.

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.

11.8. Reminder message for WAP services

11.8.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.6.2 or the the following format must be used:

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, click here [WAP link].

11.8.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.8.3. The WAP link in the reminder message must begin with "www" to ensure that all phones recognise this as a clickable link.

11.8.4. All of the other requirements set out in section 11.6 of the Code continue to apply to services where the primary means of interacting with the service is via WAP.

11.9. Termination of a service

11.9.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.9.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.9.4. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in a request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

11.9.5. Where a service is linked to a specific short code in advertisements for that service, then sending a 'STOP' request to that short code should result in the termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.6. If a message sent by a customer cannot be parsed by a WASP, then the resulting response to the customer should contain sufficient information for the customer to be able to unsubscribe from that service, or to be able to contact the service provider's customer support.

11.9.7. For services where the primary means of interacting with the service is via USSD or WAP, and for which the reminder message set out in clause 11.7.1. or 11.8.1. is used, clause 11.9.2. does not apply.

11.9.8. Members must ensure that the termination mechanism is functional and accessible at all times.

11.9.9. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. You'll then be resubscribed at [cost of service and frequency of billing].

11.9.10. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

11.9.11. If a user ports their number from one operator to another, that number must be removed from all subscription services.

11.9.12. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

11.10. Subscription service directory and logs

11.10.1. Members must register all subscription services with WASPA, by providing the following information:

- (a) the name of the service;
- (b) the short code or access method (e.g. WAP) the service uses;
- (c) the price and frequency of billing for that service;
- (d) the customer support number associated with the service; and
- (e) unsubscribe instructions for the service.

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:

- (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

The SP has not provided any evidence that a confirmation page was displayed to the complainant after the relevant pin code was entered on the web page.

The SP's welcome message also does not contain the word "welcome".

The complaint is accordingly upheld.

Sanctions

The SP is ordered to refund all amounts charged to the complainant in respect of the subscription service in question.

Previous complaints (10379; 12751) were upheld regarding this same service (Top Music Club) as a result of the SP's non-compliance with the provisions of clause 11 of the WASPA Code of Conduct. The SP is therefore fined the sum of R 50 000.00.