



REPORT OF THE ADJUDICATOR

Complaint reference number: 13530

WASPA member(s): US Cellcom LLC / Mira Networks

Membership number(s): 1046 / 0011

Complainant: Public

Type of complaint: Subscription service

Date complaint was lodged: 2011-06-29

Date of the alleged offence: 2011-05-25

Relevant version of the Code: 11.0

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: 10739; 10628; 10048

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 25/05/2011. 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.

Service provider's response

There has been no response from the IP or SP despite proper notification and a reminder being sent.

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.

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

11.5. 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.

11.9. 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

I have perused the subscription logs provided by the IP to WASPA. I am not satisfied that the relevant logs provide sufficient proof that the complainant has opted in to the service in question. The logs refer to the MTN network and the complainant has advised that his number is on the CellC network.

The logs also do not comply with section 11.10.2 of the Code of Conduct in that they do not contain a detailed transaction history.

The complaint is accordingly upheld.

Sanctions

The IP is ordered to refund all amounts charged to the complainant's account.

The IP is fined the sum of R 25 000.00.