



REPORT OF THE ADJUDICATOR

Complaint reference number:	14541
WASPA member(s):	Switchfire Ltd
Membership number(s):	
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	2011-08-23
Date of the alleged offence:	2011-06-13
Relevant version of the Code:	11.0
Clauses considered:	6.2.9
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	Not applicable

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 13/06/2011. The IP unsubscribed the complainant and provided subscription logs. Initially the IP did not provide a refund, but subsequently did. However, the complaint has been escalated to the formal complaint system for adjudication.

The basis for the escalated complaint was the wording of an SMS sent by the IP to the complainant, which read as follows:

“You have already been billed R200 this month for this service. Pls reply “Yes” to receive further content”

The complainant did not reply “yes” to the message received, but was billed for further content in the same month, i.e. in excess of R200.

IP's response

The IP responded to the complaint as follows:

1. Switchfire does a considerable amount of premium-rate traffic in South Africa yet has an unblemished record with WASPA. This is because we take customer satisfaction very seriously. Every user is given a fair deal from the beginning. Yet, if any user is dissatisfied for any reason, we give a refund at the earliest opportunity as a goodwill gesture. In this case the user was given a full refund as a goodwill gesture and they dropped their complaint.
2. The specific concern being discussed (the wording of the R200 price warning) was not raised by the user. This concern was raised by Brandon at WASPA. Now, although we agree that this message would benefit from being reworded we do not believe that it has caused any consumer harm to date -- as evidenced by the facts that Switchfire has an unblemished record, this user dropped their complaint, this user did not raise this point, no previous user has raised this point, and the behavior of the associated service meets the requirements of the WASPA Code of Conduct. The issue is that this particular wording asks the user to do something that, actually, they do not need to do.
3. Please keep in mind that this message was worded poorly by accident and not design. This message was designed for an SMS service (where it would be appropriate for the user to reply YES) and then was copied over to our WAP service without sufficient review.
4. As soon as we became aware of Brandon's concerns, the message in question was reworded. It now reads:

You have already been billed R200 this month for this service. By continuing to use of our WAP site, you confirm you are happy to be charged further.

5. We apologise profusely for this oversight – in copying a system message without sufficient review. And will do better in future.
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Sections of the Code considered

Section 6.2.9:

During any calendar month, if the total cost of any service exceeds R200 for that month:

- a. Where the WASP is in control of the billing (e.g. an OBS), a notification must be sent to the customer that they have reached this limit and a communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.
 - b. Where the WASP is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.
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Decision

In the present case, the IP did comply in part with section 6.2.9 of the Code by sending the complainant a notification that he had reached the R200 monthly billing threshold.

However, the question to be decided is whether the IP breached the further requirements of section 6.2.9 by billing additional costs to the complainant without receiving any communication from the customer confirming acceptance of any costs over the R200 threshold.

The IP argued that the complainant's conduct in downloading further content from the WAP site after receiving the aforementioned notification constitutes communication of his acceptance of the additional costs.

Section 24(1) of the Electronic Communications and Transactions Act of 2002 states that:

24(1) As between the originator and the addressee of a data message an expression of intent or other statement is not without legal force and effect merely on the grounds that-

a) it is in the form of a data message; or

b) it is not evidenced by an electronic signature but by other means from which such person's intent or other statement can be inferred.

Generally, the instruction given by the complainant's browser to download further content from the IP's WAP site is a data message for the purposes of section 24(1), and, as such, it would be a valid communication by the complainant which satisfies the requirements of section 6.2.9 of the WASPA Code.

However, the IP had stated in the notification sent to the complainant that the complainant was required to reply "yes" to the message to receive further content. By doing so, the IP specified the form of communication that it would accept in these circumstances.

As the complainant did not send a reply stating "yes" to receive further content, he should not have been billed any additional amounts.

I therefore find that the IP has breached the provisions of section 6.2.9 and the complaint is accordingly upheld.

Sanctions

It is noted that the IP has already changed the wording of the notification it sends to users in terms of section 6.2.9. It is further noted that the ambiguous wording in the previous version of the notification was an oversight on the part of the IP when it changed the format of the service to WAP.

No previous complaints have been lodged against the IP and its record with WASPA is good.

In light of the foregoing, the IP is issued with a first warning to ensure that it complies with the WASPA Code of Conduct at all times. No further sanctions are necessary.