



REPORT OF THE ADJUDICATOR

Complaint reference number:	14584
WASPA member(s):	Wap Network Group (IP); Smartcall Technology Solutions (SP)
Membership number(s):	
Complainant:	Mr V Barath
Type of complaint:	Subscription service
Date complaint was lodged:	2011-08-25
Date of the alleged offence:	2011-08-24
Relevant version of the Code:	11.0
Clauses considered:	4.1.8; 4.1.9; 11.2.1; 11.5.1; 11.5.2
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	None

Complaint

The complainant logged a complaint via the WASPA website on 25 August 2011 regarding an automatic subscription to the IP's NFSWMob subscription service.

The complainant also alleges that he made numerous calls to the IP's support telephone number on 24 August 2011 to unsubscribe from the service but encountered an error on the number stating that there was an authorisation failure. There was also no voicemail facility available.

The complainant also alleges that the compulsory welcome message prescribed by the WASPA Code of Conduct ("the Code") for subscription services was not received. The message that was received was worded as follows:

nsfwmob.com This subscription service is charged at R20 per day. To unsubscribe send NSFWMOB STOP 31295. Support at www.wapbill.net or call 0213009895

Correspondence was initially exchanged between the complainant, the IP and the WASPA Secretariat in an attempt to resolve the complaint informally. A refund was paid to the complainant by the IP, but the complainant was not satisfied with the lack of explanation from the IP as to why he had been automatically subscribed to the service in the first place.

The complaint was then escalated to the formal complaint procedure in terms of clause 14.3 of the Code.

IP's response

The IP initially responded to the various complaints raised as follows:

1. It denied that its customer support telephone number was not working and stated that the complainant had in fact used the number to unsubscribe on 25 August 2011 at 11:25:18 BST.
2. It confirmed that a welcome message was sent.
3. It denied that it was technically capable of automatically subscribing the complainant to the service.

The IP later stated in a further response that:

1. The customer support line offered an alternative option to speak to a customer representative with an "out of hours" voice mail facility.
2. The word "welcome" was omitted from the message sent to subscribers upon subscription, but the substantive requirements of the provisions of the Code had been met.
3. It conceded that the complainant had been automatically subscribed to the service in question, but alleged that this was the result of a technical fault on the part of the network service provider, MTN.

Sections of the Code considered

4.1.8. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

4.1.9. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

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.

11.5.1. 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.
-

Decision

The issues raised by the complainant and which have been disputed by the IP are the following:

1. Did the customer support number provided by the IP function effectively?
2. Was the complainant automatically subscribed to the IP's NFSWMob subscription service due to the fault of the IP?
3. Did the IP send the prescribed welcome message to the complainant once he had been subscribed to the service?

In respect of issue 1, the complainant alleges that he called the customer support line on 4 separate occasions between 08h39 and 08h49 on the same day. The complainant states that the call was not connected and that it returned an error message. He has indicated that he has call records to confirm that these attempts were made but these records were not presented as evidence in the complaint.

It is common cause that the complainant was able to contact the support line later on the same day and unsubscribe from the service.

The IP has stated that two options are available to callers when using the support number, with the second option enabling a caller to speak to a representative or leave a voice message. The IP misses the point made by the complainant that if he is not able to get through on the number in the first place, he cannot exercise one or more of the options presented.

I am unable to make any conclusive finding on this issue due to the lack of evidence presented and due to the fact that there may have been other reasons not based on the fault of the IP for why the complainant was not able to get through on the number earlier that morning.

On issue 2, the IP has conceded that the complainant had been automatically subscribed to the service in question and has stated that this was due to a technical problem experienced by the network service provider, MTN. No details were given by the IP as to the nature and extent of this problem.

The complainant has stated that he investigated the matter with MTN and the allegation made by the IP of a technical problem was denied by MTN. This was put to the IP but no further response was received. I must therefore accept the complainant's evidence in this regard.

The IP has therefore failed to provide any adequate explanation as to why the complainant was automatically subscribed to the service. In the circumstances, I find that the IP has contravened clause 11.2.1 of the Code.

Regarding issue 3, the IP has conceded that the message that was sent to the complainant after he was subscribed to the service did not begin with the word

“welcome”. The provisions of clause 11.5.2 are clear in this regard and the IP has therefore contravened this clause by omitting this wording in its message.

Sanctions

I have confirmed that no previous complaints have been lodged against the IP and this is taken into account as a mitigating factor when considering appropriate sanctions. It has also been noted that the complainant has received a full refund from the IP.

However, it has been confirmed in numerous previous adjudications that the automatic subscription of users to subscription services is viewed in a serious light by WASPA. Furthermore, the IP has attempted to absolve itself of responsibility for its breach by alleging that the fault lay with the network service provider, when this has not been shown to be the case. I have taken this into account as an aggravating factor when considering appropriate sanctions.

In light of the foregoing, the following sanctions are imposed:

1. The IP is warned to change the wording of its welcome message sent in terms of clause 11.5.2 to start with the text "Welcome".
2. The IP is fined the sum of R25 000.00 for the automatic subscription of the complainant to its NFSWMob service in contravention of clause 11.2.1 of the Code.