



REPORT OF THE ADJUDICATOR

Complaint reference number:	14721
WASPA member(s):	SMSNet (0084)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Subscription Service
Date complaint was lodged:	2011-09-05
Date of the alleged offence:	2011-07-21
Relevant version of the Code:	11.0
Clauses considered:	Clauses 11.3.1 and 14.3.2
Relevant version of the Ad. Rules:	N/A

Related cases considered:

Complaint

Complaint summary:

Complaint number 14721 is the escalation of unsubscribe request number 2032261 regarding proof of subscription and request for refund.

The formal complaint was sent to the WASP on 2011-09-06 and they responded on 2011-09-08.

The complainant responded on 2011-09-10.

The secretariat requested clarification to the complainant on 2011-09-12.

The complainant responded on 2011-09-12.

The secretariat provided clarification to the complainant on 2011-09-13.

The complainant refused resolution on 2011-09-13.

Complaint:

Complaint number 14721 was logged by a complainant regarding an unsolicited SMS he received informing him of his subscription to a service to which he claims he did not subscribe.

He requested that the WASP do the following:

1. Unsubscribe him;
2. Send SMS confirming that he has been unsubscribed;
3. Provide proof of subscription;
4. Contact him regarding a refund; and
5. Advise how they came to be in possession of his contact details.

Complainant stated that he had over R60 deducted from his account for a service he never subscribed to and never used or in respect of which he received any services .

In summary the complaint sets out the following having been breached:

- Automatic subscription.
 - Failure to comply with the subscription process mandated by the Code.
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Service provider's response

The WASP responded by stating that the complainant clicked on a banner advert while browsing the internet and then provided logs in the form of a table setting out dates of subscription, the sending of the welcome messages and the charges deducted. They also provided confirmation of the unsubscription of the complainant from the service.

Complainant's Further Reply

The Complainant responded to the WASP's response to state that they never subscribed to any service and that the handset details provided by the WASP had never been used in association with the SIM card associated with the MSISDN in question and accordingly the logs and proof provided were inconsistent, and (by my inference) could not be considered as actual proof of subscription.

Sections of the Code considered**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.

14.3 Formal Complaint Procedure

14.3.12. Where a complaint involves any interaction with a customer, when requested to do so, a member must, within five working days, provide clear copies of all relevant logs of that interaction.

Decision

I have a general issue with the practical problems of determining when logs are valid and when someone has entered standard information on a template spreadsheet to look like logs substantiating subscription and the sending of the required messages. All too often, the WASP alleges that the Complainant entered their cell phone number into the website to initiate the process and the Complainant denies doing any such thing. Due to the fact that it is possible for anyone to enter any cell phone number into a website, it is very hard to demonstrate whether or not the Complainant actually did the inputting themselves.

In this case I have a problem with the following:

1. The WASP provides no proof of the message being sent to the Complainant in line with the requirements of clause 11.3.1.
2. The logs of the charges deducted go from R15 being deducted twice on a day in both the 14th and 16th March 2009 to R5 per fortnight at irregular intervals for the remainder.

Although my point 2 above does not appear to fall foul of the Code which states problems relating to increasing charges but not reducing them, the irregularities above together with the fact that one cannot take the logs as conclusive evidence of subscription but merely a prima facie indication of subscription I am inclined to believe that the proof provided is insufficient to demonstrate the Complainant's subscription and consent to be billed in terms of this service.

The WASP further failed to provide all relevant logs as required by section 14.3.12 and is accordingly in breach of that section, in particular by failing to provide the logs relating to the message as required by section 11.3.1.

Sanctions

In respect of the WASP's infringement of section 11.3.1 a fine of R20 000, of which R15 000 is suspended on condition that the WASP does not infringe section 11.3.1 for a period of six months from the date of publication of this report.

In respect of the WASP's infringement of section 14.3.2 a fine of R20 000, of which R15 000 is suspended on condition that the WASP does not infringe 14.3.2 for a period of six months from the date of publication of this report.

Refund the Complainant in full for all charges deducted within 7 days of the publication of this report and provide proof to WASPA.