



REPORT OF THE ADJUDICATOR

Complaint reference number:	15136
WASPA member(s):	TIMw.e. New Media Entertainment South Africa (IP); Integrat (SP)
Membership number(s):	1067; 0030
Complainant:	Mr D Payne
Type of complaint:	Subscription service
Date complaint was lodged:	6 October 2011
Date of the alleged offence:	10 October 2011
Relevant version of the Code:	11.0
Clauses considered:	11.2; 11.3; 11.5; 11.6
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	12421, 12751, 13378, 13379, 13397

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 1 September 2011. The complainant requested a refund which the IP initially refused to give. However the IP later offered to refund the complainant in good faith.

The complainant maintained that he had not subscribed to the service and the complaint was therefore escalated to a formal complaint in terms of clause 14.3 of the WASPA Code of Conduct ("the Code").

IP's response

According to the IP and SP's records, the complainant subscribed to the IP's "Tones Club" on 29 April 2011 via the webpage:

http://www.mymobilehits.com/ws/acp?sp=27002&t=70600&ce_cid=221fzBwl.

The MSISDN was entered on the web site. A pin was issued to the user and the pin was re-entered on the site. The IP provided its logs to verify this.

These steps were followed by the delivery of a welcome message which is also visible in the SP's log.

The IP did acknowledge that, due to a technical problem, it didn't send the required reminder message to the complainant. It has refunded the complainant in full, explained the situation, and has issued an apology.

The SP also offered to meet with the complainant to address any other queries, concerns or requests. However the complainant was not willing to engage on the matter further.

The IP is of the opinion that remedial action was taken swiftly and in balance with the infringement.

In reference to the complainant's claims that the MSISDN was never entered and that the PIN was never received or entered we have to reaffirm that contradicts the logs which can also be verified by the network service provider.

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.

11.3. Subscription initiated via a browser (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 the name of the service, an explanation of the confirmation process, and 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. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

11.6.7. 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.

11.6.8. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

Decision

The IP alleges that the complainant subscribed to its Tones Club by entering his number on the webpage:

http://www.mymobilehits.com/ws/acp?sp=27002&t=70600&ce_cid=221fzBwl

The IP has also provided logs showing that:

- a) a confirmation message with a pin code was sent to the complainant to verify his subscription; and
- b) a welcome message was sent to the complainant.

The complainant denies that he ever subscribed to the service and alleges that the number belongs to a close corporation.

On the basis of the evidence presented, I am satisfied that the IP has complied with sections 11.3.1 and 11.5.1 of the WASPA Code of Conduct.

However the IP failed to send the required reminder messages to the complainant. I have noted the IP's statement that this was due to a technical problem, but no details have been given in this regard.

The IP has therefore breached section 11.6 of the Code of Conduct.

The complaint is accordingly upheld.

Sanction

It is noted that the IP has provided the complainant with a full refund. This has been taken into account as a mitigating factor when deciding on an appropriate sanction.

However, I have also noted the numerous previous complainants that have been upheld against the IP regarding its failure to comply with section 11 of the WASPA Code with regard to its various subscription services (see 12421, 12751, 13378, 13379, 13397).

The IP is ordered to pay a fine of R50 000.00.