Wireless Application Service Provider Association

REPORT OF THE ADJUDICATOR

Complaint reference number:	15834
WASPA member(s):	Mira Networks (SP) / US Cellcom LLC (IP)
Membership number(s):	0011/1046
Complainant:	Ms A Faure
Type of complaint:	Subscription service
Date complaint was lodged:	6 December 2011
Date of the alleged offence:	30 November 2011
Relevant version of the Code:	11.6
Clauses considered:	Section 11
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	10048; 13530

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 2 December 2011. The IP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant logs.

The complainant indicated that she was not satisfied with the IP's response and the complaint was escalated to formal adjudication.

The complainant stated in her complaint that she recalls receiving the first notification SMS. However she alleges that the message has a double meaning in that she understood the message to mean that she already had loyalty points which she

would lose if she did not register. She states that she did not realise that this was a third party offering bonus sms's.

The complainant also alleges that there were no terms and conditions and she has never accessed the www.the-lobop.com website.

She also states that she has never made use of the subscription service and ignored the reminder messages which she viewed as unsolicited marketing messages which she always ignores or deletes.

The complainant has requested a refund of the amount of R3 248.00 which has been charged to her account for this subscription service.

IP's response

The IP stated that given the logs that it provided, it is evident that the complainant sent an SMS containing the text (keyword) ''BONUS'' and initiated the subscription service.

All signup and welcome messages were delivered, identifying the subscription service, price of the service, instructions how to unsubscribe as well as support centre telephone number and e-mail.

The IP did not receive an unsubscribe request or complaint from the complainant's number until 30 November 2011.

Sections of the Code considered

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the

customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

11.2.6. The confirmation message described in 11.2.5 must 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].

11.5.1. 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, in the following order:

- The name of the subscription service;
- The cost of the subscription service and the frequency of the charges;
- Clear and concise instructions for unsubscribing from the service;
- The service provider's telephone number.

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.

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.

11.9.8. Members must ensure that the termination mechanism is functional and accessible at all times.

11.9.10. 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].

11.9.13. If a customer sends an unsubscribe request directly to a member, and the request cannot be acted on immediately, the customer must be informed (for example, via a notification of the form "This may take up to 24 hours"). In any case such a request must be acted upon with two working days (48 hours).

11.9.14. 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.

11.10.1. Members must register all subscription services with WASPA, by providing the following information:

- the name of the service;
- the short code or access method (e.g. WAP) the service uses; the price and frequency of billing for that service;
- the customer support number associated with the service; and 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: proof that the customer has opted in to a service or services; proof that all required reminder messages have been sent to that customer; a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and any record of successful or unsuccessful unsubscribe requests.

Decision

I am satisfied that the IP has provided sufficient proof that the complainant subscribed to the relevant service.

I have noted the complainant's opinion that the promotional message which she responded to was not clearly worded and she interpreted it as meaning that she already had free loyalty points from her service provider which would be lost if she did not subscribe.

However, I do not share the complainant's opinion. The message in question clearly states that this is a subscription service and the wording used complies with the requirements of section 11 of the WASPA Code of Conduct.

It is unfortunate that the complainant misunderstood the import and effect of responding to the message, but the IP cannot be held responsible for her unilateral error.

The complaint is accordingly dismissed.