



REPORT OF THE ADJUDICATOR

Complaint reference number:	16340
WASPA member(s):	Buongiorno SA
Membership number(s):	0002
Complainant:	A Sirkussoon
Type of complaint:	Subscription service
Date complaint was lodged:	6 February 2012
Date of the alleged offence:	22 November 2011
Relevant version of the Code:	11.6
Clauses considered:	11.1 – 11.10
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	11863; 16382

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 22 November 2011 wherein he/she also requested proof of subscription and a refund.

The complainant also requested a general cancellation of all WASP services on 29 November 2011 and appears to have initially complained that he/she was still billed for certain services in December 2011, although these services did not pertain to the SP.

The SP unsubscribed the complainant and after some delays, provided MO/MT logs as proof of subscription.

It appears that the complainant persisted in his/her denial of ever having subscribed to the SP's services and requested clarification of where the SP obtained his/her number.

SP's response

After some initial confusion as to the exact nature of the complainant's complaint, the SP responded to the complaint by referring to its MO/MT records as evidence of the complainant's subscription to its service, and it confirmed that the complainant had been unsubscribed from the service after he/she requested same on 21 November 2011.

The SP also confirmed that no further billing took place for its service after the complainant had been unsubscribed.

Sections of the Code considered

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.

11.10.2. 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

The MO/MT logs provided by the SP do not constitute sufficient proof that the complainant opted in to the service in question. The SP also does not provide any further explanation as to where it obtained the complainant's number, despite being asked to do so.

I therefore find that the SP has breached clause 11.2.1 of the WASPA Code of Conduct in that there is no evidence provided that the complainant specifically opted-in to the service in question.

The logs provided by the SP are also not compliant with clause 11.10.2 of the WASPA Code of Conduct in that they don't show that the complainant opted-in to the service.

The complaint is accordingly upheld.

Sanction

In determining an appropriate sanction, the following factors were considered:

1. The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
2. The SP's subsequent response.

I have noted a number of other complaints against the SP regarding its subscription services which have been upheld, and specifically its contraventions of various sections of clause 11 of the WASPA Code of Conduct. (See, *inter alia*, complaints 14643, 15183, 15578).

Despite numerous complaints being made against the SP's subscription process from members of the public, it continues to contravene the provisions of the Code.

The SP's continued conduct in this regard must be viewed in a serious light and held as an aggravating factor in the choice of appropriate sanctions.

In light of the foregoing, the following sanctions are made against the SP:

1. The SP must refund the complainant for all amounts billed to his/her account from 23 August 2011 to 21 November 2011 and shall provide written proof to the WASPA Secretariat that it has done so within 10 days of this report being provided to it.
2. The SP is fined the amount of R 100 000.00.