



REPORT OF THE ADJUDICATOR

Complaint reference number:	16354
WASPA member(s):	Wapbill (IP); Smartcall Technology Solutions (SP)
Membership number(s):	1062; 0090
Complainant:	A Sirkissoo
Type of complaint:	Subscription service
Date complaint was lodged:	7 February 2012
Date of the alleged offence:	29 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:	14584; 16340

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 29 November 2011. It appears that the complainant was subscribed to subscription services offered by 3 different WASP companies, including the IP in this complaint. (The complainant has lodged separate complaints against the other 2 WASPs.

The SP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant MO/MT logs. The IP also gave the complainant a full refund of all amounts billed to his/her account.

However, the complainant did not accept the logs given as proof that she had specifically opted-in to the service in question and maintained that the debits made against her account were unauthorised.

The complainant requested that the complaint be escalated to the formal adjudication process.

SP's response

The SP provided MO/MT logs which show that a Nokia handset was used to subscribe to the service via the IP's NSFWMob.com website on 23 August 2011 and that a subscription confirmation message was sent to the same number.

The IP provided the complainant with a refund and then there appeared to be some confusion as to the nature of the complainant's complaint and his/her rationale for escalating the complaint to the formal adjudication process. The SP and IP believed that they were being grouped together with another WASP who had not yet provided a refund. However the WASPA Secretariat clarified that the complainant was not satisfied with the proof of subscription provided and that was the reason for the escalation of the complaint.

No further proof of the complainant's specific opt-in instruction was given and the SP and IP chose to rely on the logs provided.

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 SP's MO/MT logs state that the handset used was a Nokia but the complainant denies that she uses a Nokia phone.

Furthermore, a prior entry in the SP's log links the same number to a Blackberry handset on the Vodacom network whereas later entries refer to a Nokia handset on the MTN network.

The SP and/or IP have also not provided any explanation as to the subscription process followed via the NSFWmob.com website, nor have they provided any relevant screenshots as proof of a specific opt-in instruction from the complainant.

I am not satisfied that the logs provided by the SP constitute sufficient proof that the complainant specifically opted-in to the service in question.

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 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 that a previous complaint regarding an automatic subscription of a consumer via the IP's NSFWmob.com website has been upheld against the SP (see complaint 14584), and the SP was fined R25 000.00.

I have taken into account that the IP has provided the complainant with a full refund. However, the automatic subscription of consumers to services offered by WASPs is viewed in a serious light and the SP and IP were both alerted to this in the adjudicator's report in complaint 14584.

In light of the foregoing, the SP is fined the amount of R 100 000.00.