



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	US Cellcom
Information Provider (IP):	Not Applicable
Service Type:	Subscription
Complainant:	WASPA Monitor
Complaint Number:	20470
Code Version:	11.6
Advertising Rules Version:	2.3

Complaint

The WASPA monitor, with the assistance of a journalist investigating this matter, lodged a complaint. The complaint is essentially on the following legs:

1. Insufficient reminder messages
 2. Incorrect format of reminder messages
 3. R200 threshold message breach
 4. Commercial message breach – reference to points
 5. Website breaches – size and location of subscription services and charges
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Service provider's response

The SP responded to each leg of the complaint, in essence, as follows:

1. The SP initially stated that they send free monthly reminder messages. On receipt of the MSISDN it stated that "As I see, there are 173 billed messages IN TOTAL and 7 free reminders sent to the user according to the billing. It is confirmed that free reminders are also received. Since our tariff is R7/day/sms (173 divided 30messages/day equals 6 free

reminders needed to be sent to the user). It is true that after errors we received as number is not charged, first free reminder is sent after 53 billed messages.” (sic)

2. The SP submitted that the format of the reminder messages is correct.
3. The SP does not appear to have addressed the R200 threshold issue head on.
4. The SP submitted that it has removed the reference to points following matter 17908.
5. The SP submitted a screen shot of the website and landing page and submitted that “subscription service” and the billing information was sufficiently clear. It submitted that the landing page referred has been removed.

Sections of the Code considered

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.2.10. During any calendar month, if the total cost of any service exceeds R200 for that month:

(a) Where the WASP is in control of the billing (e.g. an OBS), a notification must be sent to the customer that they have reached this limit and a communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.

(b) Where the WASP is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.

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.

11.6.1. 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].

Sections of the Advertising Rules considered

9.2.1 Cost OF ACCESS DISPLAY

9.2.1.1 Formatting Of Access Cost Text:

Access cost text must be of a size that is at least **80%** of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif font.

Decision

1. Frequency of reminder messages

Clause 11.6.1 clearly states that a reminder message must be sent every calendar month. The SP appears to be labouring under the belief that a reminder message is somehow linked to the messages sent, although I confess that I am unsure exactly how they reach their equation.

The fact of the matter is that the clause is clear – regardless of whether the subscription messages have been successfully sent, regardless what is or is not charged, a reminder must be sent every month. From what is before me, this does not appear to have occurred.

The SP is therefore in breach of Clause 11.6.1.

2. The format of the reminder messages

Clause 11.6.2 requires exact compliance with one of the following formats:

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].

The messages sent according to both parties are:

You are subscribed to SmsOne. HELP: 0861106472. Cost R7/day. To unsub, sms STOP SMS to 43635.

The reminder message is incorrect on two points:

Absence of the word "reminder"

The cost should appear before the word "HELP"

There is therefore technically a breach of Clause 11.6.2.

3. The R200 threshold message

Clause 6.2.10 requires that a message is sent to the consumer when the monthly charges exceed R200.

From what is before me, it appears that this did not occur. The SP has provided no explanation.

I have no choice but to conclude that the SP is in breach of Clause 6.2.10.

4. Commercial message breach – reference to points

The SP submits that this was addressed prior to receipt of this complaint.

This aspect of the complaint appears therefore to be addressed by another finding, and there is no need for me to make a finding on it.

5. Website

It appears that the webpage has been amended.

There is no doubt that the version presented by the complainant is in breach of Clause 11.1.1 as the reference to "subscription services" is entirely missing, and the subsequent communication is very misleading. **Despite the subsequent change, I find that during this period the SP was in breach of Clause 11.1.1.**

At some point between 17 April and 29 May 2013, the page was changed.

Clause 11.1.1 calls for “prominent” declaration that the service is a subscription service.

For me, the primary communication of the page happens in the top third, which looks like this:



The call to action – the sign up button – appears before any reference to the subscription services. In essence, the relevant communication appears in what is really the small print of the offer, and no attempt is made to draw attention to it.

I do not think that this amounts to “prominent” and “explicit” as required by the Clause. **The SP therefore remains in breach of Clause 11.1.1.**

The landing page was allegedly removed in response to matter 17908. I will therefore accept that this has been considered, and there is no need to consider it again.

Sanctions

The SP is ordered to:

1. Send monthly reminder messages in the correct format going forward;
2. Pay a fine of R5000 in respect of the failure to send monthly reminder messages;
3. I do not consider the breach of format serious enough to sanction but emphasise that the format must be corrected;
4. Pay a fine of R 5000 for the failure to send R200 threshold messages;

5. Pay a R50 000 fine in respect of the initial breach of Clause 11.1.1. I accept that there was an attempt to correct the situation, and therefore I only apply an additional R50 000 suspended fine in respect of the post-amendment breach, which will be activated if the SP has not sufficiently amended the webpage within 7 days of receipt of this ruling.