



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Marketel (Pty) Ltd
Information Provider (IP):	Not applicable
Service Type:	Subscription
Complainant:	Public
Complaint Number:	21643
Code Version:	11.6
Advertising Rules Version:	Not applicable

Complaint

In essence, the complainant submitted that he/she was not subscribed to the service, but was billed. He/she requested full refund.

Service provider's response

The WASP provided full logs, submitting, in essence, that the complainant had subscribed, and had received messages every day, so could not claim ignorance.

Sections of the Code considered

I have considered the following clauses of the Code as it was at the time:

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.

11.2.1. 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.

11.5.1. 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:

- (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.

11.9.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

Decision

I start by noting that the double opt in process required by Clause 11.2.5 of the current version of the Code (12.4) only became effective on 1 March 2012, and therefore does not apply to this matter which was activated on 14 February 2012. I caution the WASP that the procedure reflected in this respect in the logs in this matter would no longer be acceptable.

I accept that the logs in this matter are *ex facie* valid.

For me, the key questions are:

- [In responding to the initial marketing messages, would the complainant have reasonably believed he/she was subscribing to a service?
- [Do the ongoing messages make it clear that they are part of a subscription service?

The initial marketing messages read:

"DREAMCALL has created 3 MILLIONAIRES and [varies] winners!! SMS YES to 14569 to be entered into the daily draws and YOU could WIN next! R1,50/draw. Opt out reply stop"

I am of the opinion that the consumer would be quite reasonable in thinking that if they respond "yes" they will be entering ONE draw at R1,50. The words "subscription services", as required by the Code, never appear. The consumer is therefore misled.

The material is in breach of Clause 11.1.1 and 11.2.1.

It is clear from the logs that no Welcome message was sent.

Clause 11.5.1 and 11.5.2 of the Code were therefore breached.

In addition, there is nothing in the daily messages that advises the consumer that they are in fact paying to be entered in the draw, and have subscribed.

Opt out information is only provided in the initial message, in breach of Clause 11.9.

Sanctions

The events in this matter occurred in February 2012, and it is now April 2014. While the WASP was in clear and flagrant breach of the Code at the time, I am loathe to impose a heavy fine for historic behaviour that may well have been remedied in the interim.

I therefore impose the following sanctions:

- [A full refund to the complainant within 7 days of receipt hereof;
- [A suspended fine of R100 000 should the WASP be found to have breached any aspect of Clause 11 of the current Code within 6 months of receipt of this ruling. It is my hope that this will encourage the WASP to audit its processes and check for any outstanding irregularities.