

REPORT OF THE ADJUDICATOR

WASPA Member (SP): SMSNET-SA

Information Provider (IP):
(if applicable)

Service Type: Service Levels

Complainant: Consumer

Complaint Number: 3548

Code version: Code v5.7 and Ad Rules v1.6

Complaint

1. On the 21st of February 2008 the Complainant, a member of the public, lodged the following complaint through the WASPA website:

Affiliations: I am not employed by, or otherwise associated with one of WASPA's member companies

Affiliation_Information:

Name_WASP: SMSNETZA

OtherID:

Code_Breached: Section 11 in relation to subscription & Others relating to contacting \"service provider\"

Detailed_Description_Complaint: My boyfriend uses my second number and was \"surfing\" the internet for FREE downloads and ended on a site linked to SMSNET-ZA. Was \"told\" this site charges and exited the site immediately. Before internet connection was closed and sms was received and upon reading was advised that THANK YOU FOR YOUR SUBSCRIPTION..... He immediately send STOP to the number given (07/02/2008) Earlier this week either Monday 18/02 or Tuesday 19/02 a recharge voucher was purchased and uploaded into the phone. With almost IMMEDIATE effect an amount of R15.00 was deducted. Upon phoning Vodacom Customer Care was informed that this was by SMS Networks SA on Tel: 012 548-2791. I have for the past 2 days continuously phoned this number but it is always busy. I then went to the WASPA website and got details for SMSNET-ZA from their as they are subscribers to the Code of WASPA Conduct. Numbers found on WASPA +27.12.548.2791 (permanently busy) & +27.12.547.2793 (doesn't exist). I further used the WASPA website obtain the SMNET-ZA website and the contact numbers 0800212040 & 012 543 2006 doesn't exist.

Response

2. The complaint was forwarded to the SP by the WASPA Secretariat with the recommendation that the parties resolve the matter in accordance with the informal dispute resolution procedure as described in the Code of Conduct. A series of emails were sent back and forth between the parties, the material points of which were:
 - 2.1. The SP produced a log of its interactions with the Complainant's number, and claimed that this log showed that a subscription was indeed made to its service and that a stop request was received. Someone apparently downloaded material from the SP, which explains why the Complainant was charged.
 - 2.2. The Complainant denied that her boyfriend subscribed to any service or downloaded any material.
3. On the 29th of February the SP made its formal response to the now escalated complaint. It advised that it had spoken to the Complainant (who later advised that it's representative in fact spoke to her boyfriend) and tried to resolve the matter. Its version changed to the following: that there was never any subscription, rather that there was a once-off charge of R 7.50 for a download. The SP attached a copy of its log, attached as annexure "A".
4. Further correspondence passed between the parties, in the course of which the SP tendered repayment of the R15.00 allegedly charged to the Complainant's account but held to its version that material had in fact been downloaded. The Complainant found this insulting and insisted that a full investigation be carried out.
5. From the above it would seem that there are several points of complaint:
 - 5.1. The customer care offered by the SP is inadequate in that the telephone numbers provided on the Complainant's website do not exist;
 - 5.2. The Complainant was billed for a download to her handset that was allegedly not made.
 - 5.3. The Complainant was sent an SMS confirming a subscription to a service when it is common cause that no subscription took place.

Portion of the Code Considered

6. The following clauses of the Code of Conduct are pertinent:

4. Customer relations

4.1. Provision of information to customers

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

4.1.4. Members must make the terms and conditions of any of their services available to customers and potential customers, on request.

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

4.1.6. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

4.1.7. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

Decision

Customer Care

7. I determined from a visit to the WASPA website that the SP is indeed a member of WASPA. While the email address of its representative is given as a .co.za domain, its other contact persons have email addresses at a .com.tr domain. .tr is the ccTLD for Turkey.
8. I also visited the SP's website at URL www.smsnet-sa.co.za on 4 April 2008 and attempted to dial the customer care telephone numbers listed there, viz 0800212040 and 0125432006. Neither of these numbers was in use. I clicked on the "help" link and was presented with a page of what appeared to be Turkish.
9. An examination of the website showed that there were no terms and conditions of any kind, and the details required in terms of clause 4.1.3 of the Code of Conduct were nowhere to be seen.

10. In attempting to test the Complainant's version by attempting to download content I found that the website did not allow for downloads to be effected, presumably as a result of the Report in complaints 3336 and 3337.
11. It is clear from the above and from the Complainant's experience that the customer complaints procedure envisaged by clauses 4.1.5 to 4.1.7 is not in place here. Specifically, the SP is in breach of clause 4.1.7 due to the fact that the telephone numbers given on the website (and which the Complainant also tried to call) are not in use.
12. I would also find the SP in breach of clause 4.1.3. However, given that no downloads were in fact possible from the site when I viewed it on the 4th of April, and because this aspect falls outside the ambit of this complaint, I have not found such a breach.
13. On the 8th of April I re-visited the above website and found that it was unavailable and marked "under construction".

Erroneous Billing

14. Examination of the SP's log reveals that while there is indeed an entry on 8/2/2008, the entry in respect of the alleged download is dated either the 8th of October 2007 or the 7th of October 2008, depending upon which way around the date is read. Neither of these dates fall within the period of the dispute and the entry must therefore be dismissed as erroneous.
15. The entry in question shows a charge of 7500.0, which presumably refers to the R7.50 alluded to by the SP in its response. Given the unreliable nature of the SP's log however, I am inclined to believe the Complainant's version that the amount in question was R15.00.
16. I find that the Complainant did not download the material as alleged but was nonetheless charged for doing so. The SP is in breach of clause 4.1.1 in that it has not dealt with the Complainant in an honest and fair manner.

Erroneous Subscription Confirmation

17. It seems clear from examination of the SP's log that there was indeed no subscription to a service offered by the SP, and this is indeed common cause between the parties. Why then did the Complainant receive an SMS noting that a subscription had indeed been effected?
18. As this SMS was clearly erroneous, the SP is in breach of clause 4.1.2 in that it disseminated information that was false and misleading.

Sanction

19. In imposing sanctions I took into account the fact that the SP has taken its website offline as a result of complaints against it. I have however not taken account of the

fact that the SP apparently operates in the Turkish language and may have difficulty getting to grips with the local requirements in offering the services that it does. It is the duty of WASPA to protect the interests of South African consumers, whose interests must thus take precedence.

20. The following sanctions are imposed on the SP:

20.1. In respect of the breaches of clauses 4.1.1, 4.1.2 and 4.1.3, the SP is fined an amount of R3 000.00, payable within five days of the publication of this report.

20.2. The SP is directed to refund the amount of R15.00 to the Complainant within five days of the publication of this report, by electronic funds transfer direct to her bank account if necessary.

21. The breaches for which the SP is fined took place when the SP's website was still functional. I note that the SP has taken its website offline, presumably until such time as it is fully compliant with WASPA requirements. I repeat the advice given to the SP in the Report in complaint 2430 that it should take legal advice in making it so.

-----ooOoo-----

8 April 2008

Annexure A

SMSNET-SA LOG ADMINISTRATIVE

[Safe Monitoring](#)

[Send Free Content \(BETA\)](#)

[HUGE MOB](#)

[Black List](#)

Subscription Information

PHONE TYPE	STATUS	START TIME	CANCEL TIME
------------	--------	------------	-------------

Could not find any subscription info for tel: **27724145718**

Download History

COUNTER	REQUEST CODE	REQUEST TYPE	NAME	STATUS	PHONE NUMBER	INTIME	LANGUAGE	MONEY DRAWN	CHARGE
1	null	S		Y	27724145718	08/02/08 23:31	EN	Y	0.0
2	3442	F	hot girl dancing so sexy	W	27724145718	08/10/07 18:10	EN	Y	7500.0