



REPORT OF THE ADJUDICATOR

WASPA Member	SMSNET-SA
Service Type	Subscription
Source of Complaints	Public
Complaint Number	5214
Date lodged	17 November 2009
Code of Conduct version	6.2

Complaint

The following detailed complaint was received against the WASPA member.

“On the 15th of November 2008 I was charged on my MTN contract bill the amount of R74.57. The MTN call centre agent told me this was charged on my bill as 'content charges' by a company called Samber Trading and MTN could not reverse these charges. I attempted to call them on the weekend, the number they gave is incorrect, they have changed it. When dialing that number I got 'this number does not exist' from Telkom. Today, Monday, I called again and their agents (I spoke to two of them) told me there is nothing they can do about it.

My phone was with me the entire time on the 15th, never left my sight. I never visited their wapsite admob.com (I have never even heard of this site). I was charged R15 for subscription to this site and then charged R40 for Colin McRae racing (I did not request nor receive such content).

Additionally I was charged R20 but they cannot tell me for what. Their call centre also told me that I downloaded this content on a Samsung J700, I do not own, nor do I know anyone who owns a Samsung J700 (I was using a Sony Ericsson W800 that day). Finally at the times I was supposed to be downloading this content I can clearly remember using Opera Mini and looking at my e-mail and the American blackberry forums for information on the phones - I am certain I did not even accidentally visit this website. I am not the only one this company is scamming, please see these links to helloworld (alternately just go to helloworld.co.za and type in 'Samber Trading':

http://www.helloworld.com/the_comment.asp?recid=168483

http://www.hellopeter.com/the_comment.asp?recid=160240

http://www.hellopeter.com/the_comment.asp?recid=129373

Additionally I started this thread at Mybroadband:

<http://mybroadband.co.za/vb/showthread.php?t=145953>

Where you'll notice the member Microwave has experienced the exact same thing.

Why do MTN know them as 'Samber Trading' but when I called them they answer as 'SMSNet', on this website they are listed as such but it is impossible to find out anything about them under 'Samber Trading', that name is not mentioned on their website?

Dishonest companies like this should be put out of business. I will be happy to provide my MTN billing, as it is available, if it will assist in proving my claims.

Clearly the system used by this company is open to abuse: as I understand it you can just register on their website and possibly begin downloading content without any confirmation (I cannot confirm this as I don't want to be charged anymore) or else this company is intentionally and fraudulently charging unsuspecting MTN customers."

The complainant then listed the provisions of the Code of Conduct which he regarded the WASPA member as having breached.

3.10.1 Contact information on this website and with MTN service provider is incorrect. Phone number is invalid and company appears to use two names SMSnet and Samber Trading.

4.1.7 The contact numbers do not work at all on weekends (no ability to leave a message, I get a 'this number does not exist' message from Telkom)

5.1.5. When unsubscribing the reply SMS does not indicate the name of the service.

6.2.10 There is no confirmation whatsoever for this service, I have been charged for various services but never received any confirmation of this.

6.2.11a No confirmation was obtained from myself, no contact was made with me period.

Services costing R15, R40, and R20 were charged to my account from wap site.

11.1.4 I was subscribed without my knowledge period.

11.1.7 No indication of being subscribed to service.

SP Response

The SP filed the following response:

"I find the complaint to be defaming rather than seeking a solution and most of if not all the issues Trisan's complaining about are unfounded.

First he mentioned that our contact info are false and again he says that he called in and we answered as smsnet. How did he get the correct contact info? See all our contact info on : <http://www.smsnet-sa.co.za/>. Our lines are working and we operate on Saturday and Sundays as well, contrary to what he says.

Our company name is Smsnet-Sa as it is listed under the waspa membership; and we use no other name. That's why we answer our calls as SMSnet-sa like he says. It's up to MTN to update our info.

And we have nothing to do with the site he is referring to; Admob; our service site is Hugemob.com which has all the terms and conditions. Plus approved by WASPA. Admob is another site, someone else's.

We comply with WASPA conducts by sending reminder sms to our subscribers. And our subscribers can always send Stop to unsubsciber where-after a confirmation Sms is sent contrary to what Trisan says.

I also see it necessary to mention that a phone model is not a way out because a sim-card can always be put into another phone and placed back to the original phone after the downloads or subscription.

Trisan's complains is based most on untrue statements and i therefore regards this as a defamatory other than a complain in a good-faith."

Sections of the Code considered

The following sections of the WASPA Code of Conduct were considered"

3.10. Nominated representatives

3.10.1. Each member must supply WASPA with contact information (including at least a telephone number and an email address) for a primary and a secondary Code of Conduct representative.

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.

5.1.5. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

6.2.10. The member providing the service must keep a record of the confirmation provided by the customer (for 6.2.9 (a)) or the notification sent to the customer (for 6.2.9 (b)).

6.2.11. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

(a) If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (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.

Decision

1. Notwithstanding the assertions made in the WASPA member's response the Adjudicator accepts the good faith of the complainant in making the complaint.
2. In respect of the provision of incorrect contact details the correct section of the Code to be considered is not section 3.10.1, which relates to contact details of the member lodged with WASPA. It is not in any event clear to the Adjudicator how the same number could be out of service over a weekend but working on the following Monday and the Adjudicator does not wish to make a finding in this regard on the evidence presented.
3. The member is known as Samber Trading by MTN and it is accepted that there is no fraudulent intent in this but that it appears to be an anomaly on MTN's side. There is no question of the member trying to conceal this. This aspect of the complaint is dismissed.
4. As regards the balance of the alleged breaches raised in the complaint the following is held:
 - a. It is accepted that the WASPA member was the service provider and that, based on the evidence presented, the complainant has erred in referring to the service as Admob instead of Hugemob.com.
 - b. The member has failed to provide logs or to refute the fact that it billed the complainant (which it would not have done had the complainant been using the Admob service with which the member has no association).

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- c. The assertion by the member that the complainant could have used a sim swap, implying that the complaint is fraudulent, is rejected and the version of the complainant in this regard is accepted.
 - d. The provision of logs would be the only reasonable manner in which to deal with the allegations raised. In their absence the assertion by the complainant that he was charged R15 for a subscription service he did not subscribe to and R40 for a game download he did not request or receive stand uncontroverted. Similarly the complainant's assertions that he did not receive the required subscription message and that the unsubscribe message did not specify the service remain unchallenged.
5. It follows that the Adjudicator, on the basis of the evidence presented by the parties (and with specific reference to the failure of the member to provide logs showing how the charges debited from the complainant were incurred), finds that the member has breached sections 5.1.5, 6.2.11 (a) & 11.1.7.
 6. The Adjudicator does not, however, believe that sufficient grounds have been set out for a breach of section 11.1.4 in that the complainant alleges that he is not aware of how he came to be unsubscribed and therefore cannot allege that the WASPA member is "bundling" single content items and subscription services. There is no factual basis for this and this aspect of the complaint is dismissed.
 7. Section 6.2.10 requires the WASPA member to keep record of notifications sent and no breach of this section has been outlined. This aspect of the complaint, which is in any event covered by other sections which the member has been found to have breached, is also dismissed.

Sanction

8. In determining a sanction the Adjudicator has considered the recent record of the WASPA member:
 - a. Under Adjudication 5352 the member was ordered to effect a refund after being found to have breached the Code in the face of allegations similar to those in this matter. The member failed to provide any logs in this matter.
 - b. Under Adjudication 5558 the member was fined R20 000 after being found to effecting "automatic subscriptions" through an advertising banner.
9. The Adjudicator is of the opinion that the decision in Adjudication 5558 can be distinguished on the facts from the current matter on the grounds that there was a specific allegation as how the complainant came to be subscribed in the former but not the latter. Nevertheless it seems clear from the above matters and the references provided by the complainant that there are a number of complaints relating to consumers being unwittingly subscribed to services offered by the member.

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10. The Adjudicator also had reference to the continuing problems being experienced by South African consumers with subscription services offered by WASPs and the directives from WASPA to take firm action in this regard.
 11. Finally the Adjudicator acknowledges that the absence of clear evidence in this matter militates against a significant punitive element to the sanction. It must be borne in mind, however, that the failure to provide logs – the best evidence available in the circumstances – lies at the door of the WASPA Member.
 12. The following sanction is imposed:
 - a. The member is ordered to effect a refund in an amount of R74.57 to the complainant within five (5) days of date of notification of this Adjudication. This only applies only to the extent that the complainant has not already been refunded by MTN or any other party.
 - b. The member is fined the sum of R35 000, payable to the WASPA Secretariat within five (5) days of date of notification of this Adjudication.

Note to the Member:

The Adjudicator advises that the member should take steps to improve the manner in which it responds to complaints received through the WASPA complaints process. The member should provide sufficient evidence to back up its statements and should ensure that it addresses carefully each section of the Code or aspect of the complaint raised.

A failure to do this will almost always have adverse consequences.