



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Sybase 365
Information Provider (IP) (if any)	mBill
Service Type	Competition / Subscription service
Source of Complaints	Ms A Garner
Complaint Number	5491
Date received	8 January 2009
Code of Conduct version	6.2

Complaint

The complainant lodged a complaint on 3 November 2008 via the unsubscribe facility on the WASPA website (#12929). The complainant was a subscriber to the SP's 3G iPhone Trivia service after entering the iPhone online competition on the website <http://yourmobe.com/products>

The complainant has been unsubscribed but is claiming a refund.

Emergency Panel Notice

On 20 January 2009, an emergency panel notice was issued in respect of complaints 5395, 5396 and 5509. After reviewing the available information, the emergency panel concluded that the service provider had continued to bill customers in clear contravention of the emergency panel ruling for complaint 5081.

Consequently:

1. The panel ordered mBill to immediately suspend all competition and other services offered in South Africa.
 2. The panel ordered Sybase 365 to immediately suspend all services to mBill.
 3. The panel ordered that no WASPA member may provide any services to mBill.
 4. The above orders apply until the conclusion of the formal review of the applicable complaints.
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SP's response

The SP initially unsubscribed the complainant from the service but failed to refund the complainant.

In response to the emergency panel notice, mBill firstly confirmed that it was aware that its suspension was due to the continued billing of subscribers to the original iPhone campaign which formed the subject matter of the emergency panel ruling for an earlier complaint (5081).

mBill stated that although the original iPhone campaign and all billing of opted-in subscribers was stopped, the campaign was amended to include all changes required to comply with the WASPA Code) and the original subscribers that were still opted-in to the service had their billing re-enabled.

mBill stated that this was due to an error by a junior programmer who was in charge of the campaign at the time. The employee is no longer working for mBill as a result, and the writer of the response, who is a senior programmer at mBill, has been appointed to take charge of mBill's South African campaigns in the future to ensure

that everything runs smoothly.

Sections of the Code considered

3.3. Service levels

3.3.1. Members will not offer or promise services that they are unable to provide.

3.3.2. Services must not be unreasonably prolonged or delayed.

9. Competitions

9.1. Provision of information

9.1.1. Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

9.3. General provisions

9.3.1. Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.

11. Subscription services

11.1. Manner of subscription

11.1.2. 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.

Decision

This complaint is one of a number of complaints about mBill's iPhone campaign which have been submitted to me for formal adjudication. The campaign has also been the subject of 2 (two) separate emergency panel rulings, with the second (see above) being called as a direct result of mBill's failure and/or refusal to comply with the first.

I have previously found in a number of other adjudications that the iPhone campaign in its original and amended forms is in contravention of sections 3.3.1, 3.3.2, 9.3.1 and 11.1.2 of the WASPA Code.

The subscription of the current complainant to mBill's subscription service was as a direct result of these contraventions and the complainant is therefore entitled to a refund for all charges levied to his account by mBill.

From the log records it appears that the complainant was charged 29 x R10.

Sanction

I have already ordered under complaint # 5165 that the IP may not offer any competition or subscription services for a period of 6 (six) months.

The SP is ordered to refund the complainant with an amount of R290.00 (in South African rand only) within 7 (seven) days of receiving notice of this adjudication report.