



REPORT OF THE ADJUDICATOR

WASPA Member	Club Zed
Service Type	Subscription
Source of Complaints	WASPA Monitor
Complaint Number	5646
Date lodged	27 January 2009
Code of Conduct version	6.2

Complaint

The complaint was lodged by the WASPA media monitor after testing revealed that a subscription service (31933) offered by the WASPA member did not provide the required reminder message.

The following testing procedure was followed:

Background:

The purpose of this test is to monitor whether sms reminder messages for subscription services were sent to consumers a month after joining.

Test 1: Expected reminder sms on 20 December 2008

Cell phone number: 0793203933

I joined the above subscription service on 19 November 2008. In accordance with the advertising rules of WASPA, this service provider was meant to send me a reminder sms communicating that I am a member of their club and communicating details on how to stop my subscription.

Test2: Expected reminder sms on 28 December 2009

Cell phone number: 0728248191

I once again joined the above subscription service this time on 27 November 2008. In accordance with the advertising rules of WASPA, this service provider was meant to send me a reminder sms communicating that I am a member of their club and communicating details on how to stop my subscription.

In both tests I received a reminder message:

“You are subscribed to Club Zed, great choice! For only R5 every 2 days, u get 10 products- that?s only 50c per product! For more info contact us at 021 425 7529”

However the format was slightly wrong and should have been as follows in the advertising rules subsection 12.4. and should have appeared as follows in one of the two following examples:

Example 1:

“You’re subscribed to TONES XXX (R30/5days+R1/tone) from WSPABCXYZ. To stop service, SMS STOP TONES to 31xxx (R1).Help? Call 08x1234567(VAS)”

Example 2:

“You’re subscribed to the ACME service. Cost is R5/week. To stop subscription, SMS STOP to 31xxx (R1). Help? Call 082 123 4567 (VAS Rates)”

Breaches of code:

- Advertising rules subsection 12.4

Conclusion:

The advertising rules clearly state the format and importance of a monthly reminder message. Service providers who do not adhere to the format of reminder messages, are appearing to use these tactics as a way to decrease members/ consumers from opting out from their services, and also by designing these reminder messages in such a way that a reasonable reader may construe the message to be an advertisement for the service or any other service.

Action requested:

Immediate sending of correct format reminder to entire base. Proof that they have all been altered.

SP Response

The Information Provider in this matter, Zed Mobile South Africa (Pty) Ltd t/a Club Zed, filed a comprehensive response drafted by their attorneys. The full response is attached as an annexure to this Adjudication and, where necessary, responded to below.

Sections of the Code considered

The following sections of the Code of Conduct and Advertising Rules were considered:
following information:

Code of Conduct:

11.1.8. A monthly reminder SMS must be sent to all subscription service customers containing the

- (a) The name of the subscription service;

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- (b) The cost of the subscription service and the frequency of the charges;
 (c) The service provider's telephone number.

11.1.9. The monthly reminder SMS must adhere to the following format:

- (a) The monthly reminder must begin with either "Reminder: You are a member of NAME OF SERVICE" or "You are subscribed to NAME OF SERVICE".
 (b) Any marketing for a new service must appear after the cost and frequency of the existing service and the service provider's telephone number.

11.1.11. The format of the both the initial notification message and the monthly reminder should comply with the relevant section of the WASPA Advertising Rules.

Advertising Rules:

12 Subscription Service Reminder Messages

12.1 As is specified in the WASPA Code Of Conduct (www.waspa.org.za), a monthly reminder SMS must be sent to all subscription service customers. The reminder must contain the following information only:

- (a) The name of the subscription service.
 (b) The name of the service provider supplying the content or service to the subscriber
 (c) The inclusive cost of the subscription service and the frequency of the charges;
 (d) Explicit instructions on how the subscriber may stop their subscription to a service using an SMS MO.
 (e) The service provider's telephone number. If VAS rates are applicable, this must be indicated next to that telephone number.
 (f) The information in (a) - (e) above must be presented in the reminder message in the order of first (a), then (b), then (c), then (d), then last (e), inclusively.
 (g) No other characters other than those prescribed in this section may be inserted before the information contained in (a) and after (e).

12.2 The information specified in s12.1 must, without exception, take the following design and have the following content, capitalisation, and spacing and must be provided exclusively in ENGLISH only:

You'r<space>subscribed<space>to<space><SERVICE NAME><space><inclusive cost of service & the frequency of billing><space>from<name of content provider><period>To<space>stop<space>service,sms<space>STOP<space><insert service name><space> to<space><insert number><space><open bracket><cost of MO><close bracket><period>Help?Call <space>0xy1234567<open bracket>VAS<close bracket>

- where <period> indicates the full stop character, "."

- where **<open bracket>** indicates the "(" character
- where **<close bracket>** indicates the ")" character
- where the word **"VAS"** is inserted only if required by the type of helpline number being utilised

12.3 The reminder message may not take the form, or be designed in such a way that a reasonable reader may construe the message to be an advertisement for the service or any other service.

12.4 Example 1:

"You'r subscribed to TONES XXX (R30/5days+R1/tone) from WSPABCXYZ.To stop service,SMS STOP TONES to 31xxx (R1).Help?Call 08x1234567(VAS)"

Example 2:

"You'r subscribed to the ACME service. Cost is R5/week. To stop subscription, SMS STOP to 31xxx (R1). Help? Call 082 123 4567 (VAS Rates)."

Decision

1. The Adjudicator has had regard to the submissions made on behalf of the WASPA member and agrees in the first instance that there is a disjuncture between the Monitor's characterisation of the deviation from the required format of the reminder message being "slight" and the conclusions which were drawn in the complaint.
2. The Monitor's view as to the nature of non-compliance or the materiality of a breach is not, however, conclusive. It is clear to the Adjudicator, subsequent to a review of the reminder message in question, that the format is not "slightly wrong" but is materially non-compliant with the Code and Advertising Rules.
3. This in turn disposes of the procedural point raised by the member's representatives in paragraph 5 of their response. Use of the formal dispute resolution procedure under the WASPA Code was justified in the circumstances.
4. The Adjudicator is also of the view that the complaint more than adequately sets out the details of the alleged non-compliance to which the member is required to respond and notes that a full response has in fact been forthcoming.
5. The Adjudicator can find no merit in the points raised in paragraph 6 of the response regarding ambiguity in the Code and Advertising Rules as also a supposed conflict between them. The member's representative is of the view that these are of such a nature that it would "inappropriate and administratively unfair to hold our client accountable for failing to comply with ambiguous and unclear rules".

6. The points raised in said paragraph 6 are set out below.

“The Advertising Rules and the Code of Conduct are not clear as to the correct format for reminder messages. The Code of Conduct provides no definition of a reminder message and does not clearly stipulate the format. A great deal of confusion is caused by the overlap between the Code of Conduct and the Advertising Rules and the need to refer to both when sending out reminder messages. This confusion is clearly shared with other members as our client was informed by an email from WASPA, on 12 January 2009, that a number of requests had been received to incorporate the format into the Code of Conduct.”

6.1. The Adjudicator notes that there is no need or requirement that the Code provide a definition of “reminder message” nor that it clearly stipulate the format thereof (which is, in any event, done in the Advertising Rules). The confusion alluded to is overstated and the inconvenience of having to refer to two separate documents does not strike the Adjudicator as constituting any hardship whatsoever. To the extent that this “confusion” is shared the Adjudicator noted that the majority of WASPA members did not experience any difficulty in complying with the reminder message requirement.

7. The argument continues:

“We submit that points (a) to (g) of section 12.1 of the Advertising Rules are unclear and cause confusion. For example, (f) stipulates the order in which information is to be presented, starting with (g). However, (g) does not refer to any information, making it impossible to know what the reminder should look like.”

7.1. This argument has, with respect, no merit. It is abundantly evident that there is a typographical error and that the reference to “(g)” should be a reference to “(a)”.

8. Furthermore:

“Section 12.2 adds to the confusion as it utilises an unnecessarily complicated series of symbols and characters.”

8.1. This argument is also rejected as unfounded and no grounds are laid for why, in the view of the member, the representation of the manner in which the message is to be portrayed is regarded as unnecessarily complicated.

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9. There does not, on any event, appear to be attempt by the member at establishing a causal link between the confusion and conflict which it alleges and its non-compliance.
- 9.1. How, for example, does confusion as alleged by the member contribute to it failing to ensure that the required opt-out information was included in the reminder message? How does the alleged conflict excuse the inclusion of text which clearly promotes the service when this is explicitly prohibited by section 12.3 of the Advertising Rules?
10. It is accordingly found that the WASPA member has breached section 11.2.8 of the Code of Conduct, read with section 12 of the Advertising Rules.
11. In considering the appropriate sanction in this matter Adjudicator has considered:
- 11.1. the recent introduction (1 November 2008) of the provisions in respect of which the breach lies (although this must be balanced against the period given for preparation)
 - 11.2. the fact that the member has made an effort to comply
 - 11.3. the consideration that it would be reasonable to have expected the member to test the reminder messages before attempting to send them to their subscribers
 - 11.4. the consideration that, when introducing a new requirement of the Code of Conduct and Advertising Rules, a member would reasonably be expected to monitor such introduction to ensure that it was functioning as required and was compliant with the Code and Advertising Rules
 - 11.5. the need to ensure that consumers are properly and adequately protected in respect of subscription services and that they are given an informed choice with regard to services they wish to receive or continue to receive
 - 11.6. the recent record of the WASPA member.
12. In the circumstances the following order is made:
- 12.1. The complaint is upheld and the WASPA member is found to have breached section 11.2.8 of the Code of Conduct, read with section 12 of the Advertising Rules.
 - 12.2. The member is ordered to ensure, at its own cost, that all subscribers to its subscription service are sent a reminder message in the correct format and in the prescribed manner as soon as possible after the member is notified of this Adjudication. This is to be confirmed with the Secretariat.
 - 12.3. The member is placed on notice that its services will be monitored by the WASPA media monitor on an ongoing basis and that any failure to comply with the provisions breached as per this Adjudication in the future will be severely dealt with.
 - 12.4. The member is fined an amount of R50 000, of which R15 000 is payable within five days of date of notification of this Adjudication. Payment of the balance is suspended for a period of one year on condition that the member is not found to be in breach of section 11.2.8 of the Code of Conduct or section 12 of the Advertising Rules during that period.