



REPORT OF THE ADJUDICATOR

WASPA Member	Fox Mobile
Brand	Jamster 31200
Service Type	Subscription
Source of Complaints	WASPA Monitor
Complaint Number	5653
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 (31200) offered by the WASPA member did not provide the required reminder message.

The following testing procedure was followed:

Test 1: Expected reminder sms on 20 December 2008

Cell phone number: 0793203933

I joined the above subscription service on 20 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.

I did not receive a reminder message.

Test 2: Expected reminder sms on 27 December 2008

Cell phone number: 0728248191

A further test was conducted and I joined the above subscription service again 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.

I did not receive a reminder message.

Breaches of code:

- Advertising rules subsection 12.

Conclusion:

The advertising rules clearly state the format and importance of a monthly reminder message. Service providers who do not make use 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 doing so are withholding the reminder that the consumers are members.

Action requested:

Immediate sending of correct format reminder to their entire base. There after monthly proof that they are sending to their entire base with the correct message.

SP Response

The SP seemed to have inordinate difficulty supplying the correct logs in support of its contention that it was compliant with the reminder message requirements. Logs for the incorrect month were first supplied whereafter logs for the correct month but with the text of messages omitted were provided.

The correct logs, when eventually sent through, indicated the following:

[30.12.2008] - **0793203933**

You are subscribed to Jamster Premium Club for R20/week. Help? 0800 991481. Visit <http://wap.jamster.co.za/jim/90/afl/home.do> for more amazing mobile products.

[30.12.2008] - **0728248191**

You are subscribed to Jamster Premium Club for R20/week. Help? 0800 991481. Visit <http://wap.jamster.co.za/jim/90/afl/home.do> for more amazing mobile products.

Upon viewing the above the monitor requested that the member explain the absence of the required opt-out information. The reply from the member, which does not of itself make sense, is reproduced below:

“As they are the monthly reminders for January the stop keyword does not have to be sent. This is a new update that is effective for this month OR!”

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;
- (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 media monitor indicated in her complaint that no reminder message was received in respect of the service subscribed via the two testing numbers. It appears, however, that the reminder messages were indeed sent but at the end of the month following the month in which the service was subscribed to, rather than on the month anniversary of the subscription itself.
2. The issue which falls for adjudication is therefore not whether the message was sent or not but rather whether the format in which the message was sent is as required by the Code of Conduct and Advertising Rules.
3. It is evident that such message is compliant in a number of respects but principally through the omission of the required opt-out information. The reply received from the member in this regard is concerning in that it indicates that the member has failed to engage properly with the reminder message requirements.

4. Furthermore the message, in the opinion of the Adjudicator, could reasonably be construed as including elements which advertise the service. This is prohibited by section 12.3 of the Advertising Rules. Neither have the form and capitalisation requirements set out in section 12 being followed.
5. In the circumstances the complaint is upheld and the member is found to have breached section 11.1.8 of the Code read with section 12 of the Advertising Rules.
6. In considering the appropriate sanction in this matter Adjudicator has considered:
 - 6.1. 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)
 - 6.2. the fact that the member has made some effort to comply, including the sending of a reminder message
 - 6.3. 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
 - 6.4. 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
 - 6.5. the recent record of the WASPA member.
7. In the circumstances the following order is made:
 - 7.1. 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.
 - 7.2. 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.
 - 7.3. 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.
 - 7.4. The member is fined an amount of R40 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.

NOTE TO WASPA

There is potential confusion as to the timing of the sending of the monthly reminder message. It is not clear to this adjudicator whether it is the intention to require that the message be sent on the monthly anniversary of subscription or whether it must be sent once a month, irrespective of the date of subscription. It is suggested that steps be taken to clarify this matter.