



REPORT OF THE ADJUDICATOR

WASPA member	Gozomo SA (Pty) Ltd
Service type	Subscription service
Source of complaints	WASPA Monitor
Complaint number	5657
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 (31600) offered by the WASPA member did not provide the required reminder message.

The following tests were conducted:

Test 1: Expected reminder sms on 20 December 2008

Cell phone number: 079320xxxx

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: 072824xxxx

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”

Member Response

The WASPA member admitted the breach and accepted the results of the testing. In mitigation the member noted that the complaint had alerted it to an unintentional error which was rectified on 21 January 2009 and provided logs in support of its statement.

The essence of the problem was that the content subscribed to was delivered every second day and not on a daily basis as was indicated in the required subscription welcome message.

“[W]e were able to establish that the product was setup to only send content messages every second day instead of every day. The reminder message is setup based upon how often content is meant to be sent out. In this case it would be every 30 content messages, meaning if it was setup correctly it would be sent out monthly. However due to messages only being sent every second day, the reminder message would only be sent every 60 days. (15 messages per month, instead of 30).”

The member further provided logs showing that reminder messages had been sent to the numbers used by the WASPA Media Monitor on 18 January and 21 January 2009, i.e. 60 days after subscription, and that the service had been rectified on the date that they had become aware of it.

The member contended that, this error aside, it was in compliance with the reminder message requirement and provided further logs in support of this. It also noted that the error in sending out content every second day had cost them revenue. indicating that this was indeed an error and not done in bad faith.

The member also took issue with what it identified as a conflict between the Code of Conduct and the Advertising Rules as also a deficiency in section 12 of the Advertising Rules, claiming that these hampered it in its efforts to be compliant:

“We brought the following to the attention of Codecom at the Codecom face to face meeting on the 30th of January 2009. There is a contradiction in the reminder message examples between the Code of Conduct and the Advertising Rules. Codecom agreed that the clause has to be amended and that the examples and reminder message formats used in the Advertising Rules will be changed to replace those in the Code of Conduct. We want to bring the same to the attention of the adjudicators.

We currently have a complaint against us from the WASPA Monitor, complaint #5657. We want the adjudicators to be aware of the different examples and guidelines for the reminder message in the Code of Conduct itself and in the Advertising rules when ruling on this complaint.

Waspa Advertising Rules give the following 2 examples:

[these are reproduced below]

In neither example, does the message start with the word "Reminder".

However, when you look at the actual Code of Conduct it states the following:

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

The monthly reminder must begin with either "Reminder: You are a member of NAME OF SERVICE" or "You are subscribed to NAME OF SERVICE".

This means that the Advisory rules actually contradict the Code, whereas the code says you can have the word "reminder" the Ad guidelines makes no mention of it.

On a similar point the following section of the Ad rules has a major mistake:

- (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 (g), 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).

In the section I highlighted in Red (f), it does not say where section (a) the name of the subscription should go.

We have tried to adhere to both formats, but as can be seen from the above there is confusion as to which example to follow. We have included all the relevant information required in our reminder messages, from both examples.

Finally the WASPA member wished it to be known that no formal complaints had been lodged against it through the WASPA Code of Conduct for more than two years and that it was doing everything possible to ensure compliance."

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 WASPABCXYZ.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

The WASPA member has admitted to a breach of section 11.2.8 of the Code of Conduct, read with section 12 of the Advertising Rules. The complaint is accordingly held and it remains to consider the points raised in mitigation by the member when considering an appropriate sanction.

In arriving at such a sanction the Adjudicator has considered:

- the recent introduction of the provisions in respect of which the breach lies
- the fact that the member appears to have made an effort to comply but appears to have been thwarted in this respect by an understandable technical error, i.e. it does not appear to the Adjudicator that there has been any deliberate attempt to mislead subscribers or to use the reminder message for this purpose
- 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

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- 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
 - 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
 - steps taken to remedy the matter once alerted thereto
 - the recent record of the WASPA member, which has been much improved (although perhaps not quite as spotless as raised by the member).

In the circumstances the following order is made:

- 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.
- 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.
- 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.
- The member is fined an amount of R40 000, of which R15 000 is payable within five (5) days of date of notification of this adjudication, with payment of the balance suspended for a period of one year from date of notification of this adjudication, subject to the WASPA member in no way contravening Chapter 12 of the Advertising Rules or any other provision of the Code of Conduct or Advertising Rules relating to subscription reminder messages during that time.

Postscript for the attention of the WASPA member

The arguments raised around the conflict between the Code and the Advertising Rules and the error in section 12 of the latter are not relevant to the adjudication of this matter, which relates rather to the frequency with which the reminder message is sent.

It is, in any event, the view of the Adjudicator that neither argument carries much weight. A member is unlikely to be prejudiced against whether the word "Reminder" is used or not: given the doubts raised as between the Code and the Advertising Rules neither approach could be regarded as right or wrong.

The typographical error in section 12.1 of the Advertising Rules is hardly "serious" – a moment's thought should be sufficient for most people to figure out that the reference to "(g)" should be a reference to "(a)". No other interpretation makes sense.

The actual reminder messages sent are not subject to examination under this complaint but the Adjudicator has taken note of the examples provided by the member, such as:

- “Reminder: Hello from Gozomo. You are subscribed to Charts 4 Girls at R9.98 per week. To stop service sms STOP to 31403. Help? Call 0822350404 (VAS Rates)”
- “Reminder: Hello from Gozomo. You are subscribed to Ringtones at R4.99 per day. To stop service sms STOP to 31600. Help? Call 0822350404 (VAS Rates)”.

The Adjudicator notes that all required information is present in the above reminder messages but wishes to bring the attention of the member to the fact that the “content, capitalisation, and spacing” set out in section 12 of the Advertising Rules must be complied with. The member should ensure that this has been done (particularly with regard to capitalisation of the service provided – e.g. “CHARTS 4 GIRLS” rather than “Charts 4 Girls”).
