



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Integrat, Funmobile, iTouch
Information Provider (IP):	Not applicable
Service Type:	Stop Command not honored
Complainants:	Bertie Hechter
Complaint Number:	5826
Code Version:	6.2
Advertising Rules Version:	N/A

Complaint

The Complainant lodged the following complaint:

"I clicked on a "Know your IQ" ad on the Dispatch as well as "know the day of your death". I now received SMS's that I have subscribed to services that I do not want or need, and that my account would be debited by various amounts. The opt out sms no's (31601 & 31194 & 31345) do not work as well as the tel no supplied (01146133212) as a "Help line"."

The same day later the complainant wrote:

"Sir/Madam I have received a call from iTouch/Integrat/Fox Mobile. They have undertaken to take me off their list and to refund my money. Thank you for your prompt assistance."

The complainant was requested if he had copies of URLs/stop messages which he confirmed he did.

After WASPA's request to provide the URL or a screen shot of the sites entered, the complainant wrote the following:

"The links / Adverts to these sights were on the Daily Dispatch's website. I am under the impression that they have said that these links were removed. I remember seeing these links / ads on other websites but I can't put my finger on it. I will play around and see if I can find it."

The complainant provided a PDF copy of the stop messages. The links to [brain.quiz](#) and the [death.quiz](#) were also provided.

Service provider's response

The first SP (Funmobile) in its initial response stated the following:

"We've received the complaint case from WASPA in regards of MSISDN: 723307523. We've already unsubscribed user from all of our service. For our investigation, could you please provide us the URL and/or snapshot of the site where user saw the ad it it's available? As we're still on the stage of investigating, we'll provide a formal reply to WASPA within the time frame allowed by WAPSA."

After the website links were sent to Funmobile the SP wrote the following:

"In regards of the complaint case of MSISDN: 723307523 (complaint Ref: #5826), we would like to know whether the requested additional information (the URL and/or snapshot of the site where user saw the ad) is available for us? We've check with our marketing department which indicated we do not have this type of promotion. Therefore, we would highly appreciate if this information could be provided by WAPSA in order for us to provide a more accurate reply to WASPA. Please let us know as soon as possible in order for us to reply within the time frame allowed."

In the final response the SP wrote:

"According to the screenshot of the mentioned IQ test provided by WASPA (as attached):

Short code **33535** does not belong to our company – World Base Limited. We never use "Know your IQ" as our promotional method and such landing page is not belongs to us. No opt-out SMS was ever received from this user (cell phone number: =723307523). Our CS hotline is functioning without any problem.

However, cell phone number 0723307523 subscribed to our service dated January 19, 2009 and details are in the followings:

User accessed our website with IP address (165.146.94.217) and entered the cell phone number (0723307523) on the website. A free SMS was sent to user's handset containing a pin and the opt-in method on January 19, 2009. User entered the Pin in our website; hence agreed to the terms and conditions and register to our service.

Attached please find the log of transaction regarding cell phone number: 0723307523.

Disregards all these, user's subscription were immediately removed once we have received the email from WASPA."

The second SP (iTouch) provided the following information:

“Please see below for user subscription to our fun club service: This user has been unsubscribed as of 2009/02/20 07:52:34. Also we do not advertise for knowing your IQ to get into the subscription service.

Attached you will find messages which the user received from our services informing the user that this was in fact a subscription service.

A sms was never sent through to our fun club to prompting us to stop the service. If the user has proof of this sms's which he informs us about, then please advise him or her to supply proof of these. If he did in fact send in the stop command to 31194, and we did not receive it for some reason order, then we would be more than happy to investigate. Should a sms have been sent in to 31194 from the user's mobile number an error would have been linked to mobile number, of which there is not as far as we can see on our interface.

Please see the mobile traffic report below: As seen below in the traffic report, the user never sent in any keywords to stop the service. The messages we sent to the user upon subscription welcomes the user to the fun club and the number we supply in the message is 021 417 8001 and not 01146133212.”

In the final response the second SP wrote:

“We have read the complainants attachment and thank them for providing the information but, due to the fact that we have no record on our system of a stop command being sent in and in this regard, we are not able to pass a refund. In all if the user did send in an incorrect stop command, then we would have sent back an error message informing them to contact our call centre.

Unfortunately the information supplied via the attachment is not enough to even consider the users claim that he or she sent in a stop command, as it is not network verified in anyway. Should the customer have solid proof of the keyword being sent in we would be happy to reassess the client's interaction with our service. Please be advised that this user has been unsubscribed.”

The third SP (Integrat) stated the following:

“We attach hereto the logs to show that we never received a stop command message or any other MO from the complainant. The only stop command message is the one logged by the Integrat unsubscribe system done by the call centre after we received the complaint from WASPA.

We confirm that we offered the complainant a refund as a gesture of good faith – the complainant however was never billed a cent as his prepaid

account always displayed insufficient funds and therefore no billing was ever successful.

We therefore won't be refunding the client as he was never billed. We attach hereto the OBS logs to show that the complainant was never billed.

We trust you find the aforementioned in order and view the matter as closed and resolved with Integrat."

Sections of the Code considered

11.2.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.2.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.2.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the complaint and the various SPs' response.

In referring to the complaint at hand it is hard to imagine that all three SPs in this matter have co-jointly provided for ineffective procedures and processes that would accumulate in simultaneous errors as is alleged by the complainant.

The SPs have provided sufficient log reports to indicate that the complainant did indeed subscribe to at least two of the SPs services. The complainant failed to subscribe to the third SP due to insufficient funds on his behalf, and not due to insufficient attempts, as could clearly be seen from the logs provided by the third SP in this matter.

Although the complainant in this matter has come up with partial evidence, claiming his allegations of unsubscribing to the services, it would be unwise on behalf of the Adjudicator to allow such unverified PDF reports as sufficient evidence.

The links provided were also not related to any SPs' services in this matter.

Therefore, in weighing up the evidence supplied by the three SPs against those provided by the complainant, the Adjudicator has no alternative but to rule in favour of the evidence provided by the SPs.

The complaint is dismissed.
