



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	iTouch
Information Provider (IP):	Not applicable
Service Type:	Unsubscribe Request
Complainants:	Vivan McGregor
Complaint Number:	6030
Code Version:	6.2
Advertising Rules Version:	N/A

Complaint

In his initial complaint The Complainant stated the following:

“On 15 January 2009 I realised that what I thought was a free subscription would cost me R10 per day so I immediately sent a sms to 0839200275 requesting they stop fun. When I did not receive a reply I sent a second sms to which I received a reply -"don't know what you mean". I therefore sent a third sms. I then phoned to ensure that the subscription was stopped but after 15 minutes hung up because I could not get through. I then presumed that the subscription was cancelled, but to my dismay when I received my account from Autopage I discovered that I had been billed from the 15 of January to 13

February 2009. When I contacted customer care on 021 417 8001 to inquire about the charges Pam advised me that they had received my cancellation sms but because I sent another ["incorrect"](#) one they presumed that I wanted to continue with the subscription. When I asked why they did not contact me she said it was computerised. I believe that this is "internet robbery" and request your assistance in dealing with the matter.”

In his second complaint the Complainant wrote as a reason for escalation to the formal complaint:

“Service provider has not resolved my complaint to my satisfaction. They say my sms stopping fun was incorrect. In terms of clause 5.1.6 whether I said stop or cancel or similar words they were supposed to honour my request. According to the service provider their computer did not understand my

sms. I cannot remember the exact words of my sms - but it would have been obvious that I wished to cancel the subscription."

After the SP's response the Complainant wrote the following:

"However I am still not satisfied with the Service Provider's (iTouch) reply. They acknowledge that they received 5 sms's from me requesting that they stop fun, and 1 sms requesting that they cancel fun. In terms of clause 5.1.6 of the Code of Conduct the very first sms was sufficient to cancel my subscription. What did they not understand?

With regards to their comment that I did not phone them: I did phone their call centre number. I phoned them at 13:30 on 15 January 2009, but after holding on for 14:56mins on my third attempt to get through to them I gave up because of the cost.

They also charged me R7.50 for each of the 5 sms's I sent them. What a rip off."

Service provider's response

In its initial response the SP states the following:

"Number had been unsubscribed from the Fun Club on the 15th February 2009, a confirmation sms has been sent. The sms request to cancel was not as instructed in the welcome message we have sent to the MSISDN (attached). Please see the attached logs. The MSISDN has sent the correct stop command on the 15th February which cancelled the subscription (attached). A refund will not be awarded as the correct stop command/instructions were communicated to the customer (attached). The customer was contacted & Mrs McGregor expressed an objection towards our system recognizing/actioning only specific 'stop command keywords.'"

In the final response the SP wrote:

"The user did in fact ignore numerous sms sent to the mobile number informing the user on how to stop the service on many occasions. We do not feel that we are in breach of the code, as all messages sent to the user were informative on how to stop the service. The user did however stop the service on his or her own once he or she read the messages sent to the mobile number correctly. The service was stopped by the user when he or she sent in the stop command to the number 31194, which was set out in the messages sent to the user.

In this regard, we do not deem a refund forthcoming as, all messages sent to the user did in fact include the stop command, when the user subscribed. Should the stop command messages not have been informative enough, the user was sent error messages, which included our call centre number.

Below you would find all messages sent to the user and messages user sent in, as well as the reminder monthly message, which was sent to the user informing them once again on how to unsubscribe."

Sections of the Code considered

4.1.7. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent.

5.1.4. For SMS and MMS communications, a message recipient must be able to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). If replying 'STOP' as set out in 5.1.3 will result in a charge greater than the lowest tariffed rate available, then instructions for the lowest tariffed rate opt-out must be included in every message sent to the customer.

5.1.5. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

5.1.6. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

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'.

Decision

In adjudicating a matter the Adjudicator has to rely on the information provided to him / her.

In this matter the Adjudicator has taken note of the complaint lodged and the SP's subsequent response.

In this particular case the Complainant referred to section 5.1.6 of the Code of Conduct. Section 5 of the Code of Conduct refers to Commercial Communications. Section 11 of the Code makes provision for subscription services.

This matter relates to subscription services and hence section 11 of the Code.

Although the Adjudicator can sympathize with the Complainant in this matter, the Adjudicator is of the opinion that the SP had not breached the relevant sections of the Code. Section 11.1.7 specifically provide for information to be supplied by the SP. In this instance, it seems clear from the logs provided and the user's subsequent history that the SP did comply with section 11.1.7. The information provided was clear and it explicitly stated: "SMS stop fun to 31194 to end". This is in full compliance with section 11.2.2 of the Code.

However, the fact that the Complainant misunderstood the instructions is quite obvious from the logs, and definitely showed a concise effort on the Complainant's behalf to end the subscription. The Complaint's consistent efforts in gaining access to the helpdesk, in some cases holding the line for periods extending to 15 minutes, does not relate to "function effectively" as provided in terms of section 4.1.7 of the Code.

This is not the first time that this issue has been raised and the Adjudicator find the SP in breach of section 4.1.7 of the Code.

The Complaint is partially upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;

The SP is given a formal reprimand in assuring that it complies in future with section 4.1.7 by addressing its effectiveness regarding the provision of adequate customer support.

The Adjudicator is also of the opinion that the Complainant would not have incurred the costs associated with this Complaint, would the customer's support have been effective.

The SP is ordered to refund the Complainant in full.
