



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Hugemob.com
Information Provider (IP) (if any)	n/a
Service Type	Subscription service
Source of Complaints	Mr D C Walthew
Complaint Number	6341
Date received	30 April 2009
Code of Conduct version	7.0

Complaint

The complainant has lodged the complaint on behalf of his wife, whose number was allegedly subscribed to the SP's subscription service. The complainant denies that his wife ever subscribed to the service.

The complainant alleges that his wife was billed two separate amounts of R20.00 on 13 April (at 00h31 and again at 16h44) in respect of her subscription. She sent an unsubscribe request on the same day which was acknowledged by the SP.

However, on 20 April 2009, the complainant's wife was again sent an unsolicited SMS welcoming her to the service and telling her money would be deducted. She sent a "stop" message on the same day to cancel the subscription.

On 22 April 2009, she was again sent a welcome message from the SP telling her that money would be deducted. On 29 April 2009, the complainant's wife again

sent an unsubscribe request to the SP which was acknowledged on the same day.

The complainant requested proof of subscription from Autopage Cellular, who have denied any responsibility. The complainant has also attempted to contact the SP telephonically but was told they are not interested and that they would not produce proof of subscription.

SP's response

The SP alleges that the client subscribed on 20/04/2009 and got unsubscribed on the same day but then subscribed again on 22/04/2009 and requested the cancellation on 29/04/2009. The SP states that since 29/04/2009, the subscription has been stopped and no further billing has been effected on the number thereafter. The number has also been blacklisted to prevent re-subscribing once again.

The SP has provided a table reflecting the subscription history for the given number.

Sections of the Code considered

Section 11.1.2 reads as follows:

Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.

Section 11.1.4 reads as follows:

Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

Section 11.1.8 reads as follows:

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.*

Section 11.1.10 reads as follows:

Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing]. Help? Call [call centre number + "(VAS)" if applicable]. To unsubscribe, [unsubscribe instructions].

Section 11.2.1 reads as follows:

A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

Section 11.2.2 reads as follows:

The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

Section 11.2.3 reads as follows:

The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.2.2.

Section 11.2.4 reads as follows:

The content/service description must be text describing the content, promotion or service (e.g. “tones” or “poems”). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

Section 11.4.1 reads as follows:

For services where the primary means of interacting with the service is via WAP, either the format set out in 11.2.2 or the the following format must be used: U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, dial [USSD code1 + “(VAS)” if applicable] or call [call centre number + “(VAS)” if applicable]. To unsubscribe, click here [WAP link].

Section 11.4.2 reads as follows:

Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.4.3. The WAP link in the reminder message must begin with “www” to ensure that all phones recognise this as a clickable link.

Section 11.4.4 reads as follows:

All of the other requirements set out in section 11.2 of the Code continue to apply to services where the primary means of interacting with the service us via WAP.

Decision

There is a dispute of fact between the complainant and the SP as to whether the number was validly subscribed to the SP’s subscription service. I am unable to decide this dispute on the basis of the evidence before me.

The number has been blacklisted and I am satisfied that the complaint has been properly resolved by the SP.