



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Mobile Messenger
Service Type	Subscription service
Source of Complaints	Mr S Orford
Complaint Number	6807
Date received	17 June 2009
Code of Conduct version	7.4

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 4 June 2009. The complainant was not satisfied with the SP's response and has escalated the complaint.

The complainant initially stated that he visited the following websites:

(<http://www.justin.tv/kostaz007> &
<http://livehdsport.blogspot.com/2009/06/watch-golden-lions-v-british-irish.html>)

which claimed to offer a free high definition video of a rugby match involving the match between the Golden Lions and the British Lions earlier this year.

The complainant states further that he believed he was completing a quiz on the site but was then informed that he had subscribed to the SP's subscription service and furthermore that he would be charged a premium rate to unsubscribe.

The complainant also alleges that no double opt-in facility was provided and the unsubscribe link to: www.sms-helpdesk.com does not exist.

SP's response

The SP made contact with the complainant directly and confirmed that he had not been subscribed to the service as alleged. The SP states further that, after communicating with the complainant, it became clear that his main query was regarding the way that the subscription service was being run and whether it complied with the WASPA Code of Conduct.

The SP then asked that the complaint be redirected to the IP, which was also a member of WASPA.

IP's response

The IP stated that the complainant had not incurred any charges from any short code operated through its network. Their records indicated that the complainant had entered his number on the web page, but did not enter the PIN after receiving same. As such, no subscription was initiated and no charges were incurred by the complainant.

The IP also stated that the complainant also sent the unsubscribe keyword STOP immediately after receiving the PIN message. But as at that stage there was no subscription active and no further action took place.

The IP had investigated the links provided in the complaint and it was not able to find any reference to any of its client services. It was also noted that the email address as provided by this complainant was incorrect. The correct email address for all its landing pages is : customerserviceZA@sms-helpdesk.com.

The IP attached the logs showing the 2 messages that were transmitted through its network. The first was the PIN and the other was for the STOP command.

Timestamp	Direction	Shortcode	FreeMT	
6/4/2009 4:17	MT	31601	Yes	Enter PIN 6356 on iquizapp.com/za to receive Amazing Fac
6/4/2009 4:18	MO	31601	No	stop

The IP stated that as no charges were incurred, there was no refund to be given. The IP did, however, undertake to blacklist the complainant to prevent any further messages from being transmitted via the IP's network to the complainant's number.

Sections of the Code considered

11. Subscription services

11.1. Manner of subscription

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.2. 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.

11.1.3. An advert for a subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.

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

11.1.5. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.6. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.7. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.1.8. 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.

11.1.9. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.1.10. 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].

11.4. Reminder message for WAP services

11.4.1. 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].

11.4.2. 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.

11.4.4. 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 is via WAP.

11.5. Termination of a service

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

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

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

11.5.4. For services where the primary means of interacting with the service is via USSD or WAP, and for which the reminder message set out in clause 11.3.1. or 11.4.1. is used, clause 11.5.2. does not apply.

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

11.5.6. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

11.5.7. If a user ports their number from one operator to another, that number must be removed from all subscription services.

11.5.8. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

Decision

I am satisfied, based on the evidence placed before me, that the IP's online quiz subscription service is compliant with the WASPA Code of Conduct.

As the complainant was not subscribed to the service and no charges were incurred, there is no basis for a refund.

The complaint is accordingly dismissed.