



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	MobileGate
Information Provider (IP):	Not applicable
Service Type:	Subscription contact/dating service
Complainant:	Member of the public
Complaint Number:	#7097
Code Version:	7.4
Advertising Rules Version:	2.3

Complaint

The complainant, a member of the public, lodged a complaint with WASPA against the member's service, which appears to be a combination of a subscription service and a contact or dating service. The complainant incurred costs of roughly R16 000 in charges related to the service and claims he was unaware of the nature of the service. He advised WASPA that he was charged in increments of R8,77 culminating in his substantial bill with his mobile provider.

The services appeared to be associated with a website at the domain yenomayb.co.za (this domain did not resolve to a website when I typed it into my browser and Uniform does not reflect the domain as registered).

Service provider's response

The member advised WASPA as follows on 27 October 2008:

Hi there, This phone number is opted out from all the services! So, the customer is subscribe onto this website <http://iphone.mobefun.com> How is become subscribe. When the customer put his(her) mobile number into the website his(her) still not subscribe but couple minutes later the system sent pin code which is received to the customers handset. When he(she) see that

pin code and put back into the website then start subscribe to the game which is advertise on the website. That pin code is using to stop accidental subscribe. Before he(she) put that pin code into the website he(she) must read and understand the terms and conditions which are written into the website front page. However, when the customer had sent stop and the system didn't stop the services for some reason. Can the customer send to us full name and mail address about cheque for these charges?

WASPA requested the member's logs substantiating these contentions. The member's initial response to WASPA's requests for logs was the following:

Yes 2008-08-13 11:13:00 incoming 38696 > Hi Leon, KATE from YES NO wants to chat and maybemeet.me! TXT YES TO CONNECT NOW! MAYBEMEET>ME for help 0800981229 2 end txtstop R10msg+ R60 sub

There was some correspondence between WASPA and the member regarding its failure to supply adequate logs including an assertion by the member that it attempted to supply logs but WASPA's system appeared to reject the submission.

The member subsequently furnished WASPA with a more detailed response indicating the following:

1. The complainant received an opt-in message on 13 August 2008 containing the following text:

Hi Leon, KATE from YES NO wants to chat! TXT YES TO CONNECT NOW! SAFEDIVERT for help 0800981229 R10/msg + R60/week 2end txt stop

2. The complainant apparently responded in the affirmative; and
3. The complainant then received an opt-in message roughly an hour and a half after the initial message containing the following text:

Thanks for joining SAFEDIVERT, your chat partner will reply to you shortly!!! 4help 0800981229. R10/msg R60 subscription pw 2endtxtstop.

On 18 August 2008 the member records that the following message was sent to the complainant:

Thankyou for using Safedivert and southafricansingles you have reached R300 spent for the month 4 help call 0800981229 or txt stop to end

The member further recorded that it had sent the complainant 1 862 messages priced at R10 per message (or roughly R8,77 before VAT). The complainant appears to have sent a termination request on 11 September 2008 because the member notes that the following message was sent to the complainant and its system processed the termination on that date:

FREE MESSAGE - You have been removed from southafrican-singles-online.com and safedivert For help or further information call 0-800-981-229

The member does not appear to have submitted any further information to WASPA.

Sections of the Code considered

This complaint was filed prior to the most recent update to the Code to version 8.0. I have accordingly considered versions 7.4 and 8.0 for the purposes of this report in order to determine compliance with the Code (referencing version 7.4) and the remedy for non-compliance (referencing version 8.0). Having regard to the issues raised in this complaint, I have also considered other sections of the Code, which are pertinent.

I have therefore considered the following sections of the Code:

Code version 7.4	Code version 8.0
<p>2.10: A “contact and dating” service is any service intended to enable people previously unacquainted with each other to make initial contact and arrange to meet in person.</p>	<p>2.10: A “contact and dating” service is any service intended to enable people previously unacquainted with each other to make initial contact and arrange to meet in person.</p>
<p>2.23: A “subscription service” is any service for which a customer is billed on a repeated, regular basis without necessarily confirming</p>	<p>2.23: A “subscription service” is any service for which a customer is billed on a repeated, regular basis without necessarily confirming</p>

Code version 7.4	Code version 8.0
each individual transaction.	each individual transaction.
<p>3.1.1: Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.</p>	<p>3.1.1: Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.</p>
<p>3.1.2: Members are committed to lawful conduct at all times.</p>	<p>3.1.2: Members are committed to lawful conduct at all times.</p>
<p>4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.</p>	<p>4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.</p>
<p>4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.</p>	<p>4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.</p>
<p>6.2.9. During any calendar month, if the total cost of any service exceeds R200 for that month:</p> <p>(a) Where the WASP is in control of the billing (e.g. an OBS), an additional communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.</p> <p>(b) Where the WASP is not in control of the billing (e.g. the customer sends</p>	<p>6.2.9. During any calendar month, if the total cost of any service exceeds R200 for that month:</p> <p>(a) Where the WASP is in control of the billing (e.g. an OBS), an additional communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.</p> <p>(b) Where the WASP is not in control of the billing (e.g. the customer sends</p>

Code version 7.4	Code version 8.0
<p>an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.</p>	<p>an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.</p>
<p>6.2.10. During any calendar month, when the total cost of any service reaches R400, and when it reaches any multiple of R200 thereafter, an additional notification must be sent to the customer notifying them of the total cost incurred for that service so far.</p>	<p>6.2.10. During any calendar month, when the total cost of any service reaches R400, and when it reaches any multiple of R200 thereafter, an additional notification must be sent to the customer notifying them of the total cost incurred for that service so far.</p>
<p>6.2.11. The member providing the service must keep a record of the confirmation provided by the customer (for 6.2.9 (a)) or the notification sent to the customer (for 6.2.9 (b)).</p>	<p>6.2.11. The member providing the service must keep a record of the confirmation provided by the customer (for 6.2.9 (a)) or the notification sent to the customer (for 6.2.9 (b)).</p>
<p>10.1.1. Contact and dating services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.</p>	<p>10.1.1. Contact and dating services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.</p>
<p>10.1.2. Providers of contact and dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.</p>	<p>10.1.2. Providers of contact and dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.</p>
<p>10.1.3. Providers of contact and dating services must ensure that customers' contact information is duly protected and not publicly available.</p>	<p>10.1.3. Providers of contact and dating services must ensure that customers' contact information is duly protected and not publicly available.</p>

Code version 7.4	Code version 8.0
<p>10.3.1. When so requested by a customer, the provider of a contact and dating service must ensure that the customer's details are removed from the service at the earliest opportunity and in all cases within 24 hours.</p>	<p>10.3.1. When so requested by a customer, the provider of a contact and dating service must ensure that the customer's details are removed from the service at the earliest opportunity and in all cases within 24 hours.</p>
<p>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.</p>	<p>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.</p>
<p>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 and may not be an entry into a competition or quiz.</p>	<p>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 and may not be an entry into a competition or quiz.</p>
<p>11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.</p>	<p>11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.</p>
<p>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.</p>	<p>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. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.</p>

Code version 7.4	Code version 8.0
<p>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:</p> <ul style="list-style-type: none"> (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. 	<p>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:</p> <ul style="list-style-type: none"> (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.
<p>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:</p> <p>[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service</p>	<p>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:</p> <p>[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service</p>

Code version 7.4	Code version 8.0
provider] @ [cost of service and frequency of billing].	provider] @ [cost of service and frequency of billing].
<p>11.1.11. If a subscription service can be initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.</p>	<p>11.1.11. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.</p>
<p>11.2.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/ month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.</p>	<p>11.2.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/ month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.</p>
<p>11.5.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.</p>	<p>11.5.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.</p>
<p>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.</p>	<p>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.</p>
<p>12.3.2. Prohibited services:</p> <p>(a) Chat services where a customer is billed for receiving a message rather than being billed for sending a message. "Chat services" includes any service where facilities are provided for any form of conversation</p>	<p>12.4.2. Prohibited services:</p> <p>(a) Chat services where a customer is billed for receiving a message rather than being billed for sending a message. "Chat services" includes any service where facilities are provided for any form of conversation</p>

Code version 7.4	Code version 8.0
<p>or dialogue between the customer and other customers of the service, between the customer and a software application, or between the customer and staff of the chat service provider.</p>	<p>or dialogue between the customer and other customers of the service, between the customer and a software application, or between the customer and staff of the chat service provider.</p>

Sections of the Advertising Rules considered [if applicable]

Not considered.

Decision

There are a number of difficulties with the member's service which is, to a degree, misleading from the outset. It has the appearance of a sms chat service whereas it is, in fact, a subscription service alongside a premium sms service. The member has contended that the complainant was notified of the service's pricing on its website, presumably located at southafrican-singles-online.com (no website loaded when I pointed my browser at this domain so I was unable to verify the member's assertions in this regard).

Pricing information

The Code specifies the format of any pricing information for mobile services. I am unable to comment on whether pricing information for the reasons I stated above. On the other hand the member has disclosed the pricing format in its messages, which I quoted above.

In the first message the member alleges was sent to the complainant, the price is in the format Rx/frequency and is in line with the Code's guidelines. However, the pricing information in the subsequent meeting is more opaque. "R10/msg R60 subscription pw" doesn't clearly state that a subscription charge of R60 per week applies. This pricing format also doesn't comply with the Code formatting requirement is rule 6.2.8 or in Rule 11.2.5.

Billing reminders

The Code requires members to notify users when charges incurred reach certain thresholds (R400 total charge or increments of R200). According to the member's submissions, only one notification was sent to the complainant 5 days after he apparently subscribed to the service informing him that he had spent R300 to date. This is particularly concerning because the complainant has informed WASPA that his total bill amounted to roughly R16 000, a substantial amount of money, especially considering the complainant appeared to have been a subscriber for roughly 29 days (this works out to about 64 sms messages a day). The member certainly does not seem to have sent further notifications as the complainant incurred further costs.

The member's failure to notify the complainant of his increasing charges is negligent at best, calculated to profit unduly from the complainant's ignorance, at worst. Either way it is a gross violation of the Code's provisions in the circumstances. Compliant notifications could have helped the complainant avoid the high costs he faced in the short time he made use of the service.

The member also appears to have failed to maintain proper records of the complainant's confirmation of the charges applicable to the service, or his election to opt-out of such requirement, as required by Rule 6.2.12 (a) or 6.2.13 (respectively). The member certainly didn't furnish WASPA with adequate records when it responded to the complaint.

Rule 10.1.1 contains a further notification requirement where a contact and dating service includes an "ongoing incremental cost". It is unclear whether the services charges qualify as "ongoing incremental" costs but this provision is worth noting.

In addition, the member failed to ensure that a message including the prescribed format specified in Rule 11.1.10 was sent to the complainant when the complainant apparently became a subscriber to the service. Such a notification would have clarified the nature of the service to the complainant and given him an opportunity to limit his costs.

Bundling

As I mentioned above, the service is somewhat misleading. It has the appearance of an sms based chat service but it is also a subscription service. Even assuming that the complainant was fully aware of and consented to being charged for sms's he exchanged with the service's operators/servers, there is no indication that the complainant entered into an independent transaction with a view to subscribing to the service as a subscription service. For this reason I believe that the service falls foul of the Code's "anti-bundling" provisions, specifically Rules 11.1.2 and 11.1.5.

The member's conduct

I have a number of concerns about the member's conduct towards the complainant and WASPA.

While there is no clear evidence before me, the service appears to be somewhat misleading and calculated to disguise the various charges associated with the service, along with their billing frequency. One reasonable conclusion to draw from this is that the service is designed to induce subscribers to use it frequently without being kept apprised of the associated costs, much to their dismay when they, like the complainant, find themselves having to pay excessive costs they perhaps did not anticipate initially. This conclusion is reinforced by the availability of clear guidelines in the Code that specify the format and frequency of various notifications and how such services may be conducted. The service is potentially fraudulent and the member in breach of its obligation to act lawfully in its dealings with the complainant and WASPA.

The short history of this matter further indicates that the member has not responded to WASPA's communications with a reasonable diligence and with information it is required to collate and have available on request. The member failed to furnish WASPA with adequate logs (or any real logs for that matter).

Historical context

As I pointed out in my findings on complaint 6875, this is not the first time a complaint about the member's service has been lodged and adjudicated. This is one of several complaints that have been referred to me for review and there have been at least

previous reports filed by my colleagues in 2009 expressing similar reservations about the service and its non-compliance with the Code.

The member does not appear to have taken note of the 2009 reports and it has continued to make its service available in substantially the same form to members of the public, often with severe financial implications for subscribers.

Sanctions

The member has clearly failed to take notice of previous findings against it. I take further notice of the member's further and blatant disregard for the Code's provisions and the member's continued failure to heed WASPA's rulings regarding the service and its variations. I therefore impose the following sanctions, which will similarly not be suspended pending any appeal process:

1. The member is fined an amount of R250 000, payable to WASPA within 10 business days of receiving notice of this report;
2. The member is ordered to refund all amounts charged to the complainant for his use of the service from 13 August 2008 to date of termination of his subscription. Such refund must be paid within 10 business days of receiving notice of this report;
3. The member is ordered to cease all instances of the service for so long as the service (and its variations) continue to be in violation of the Code;
4. The member is ordered to send all the service's (and its variations) current subscribers a notification in the format prescribed by Rule 11.2.2 of version 8.0 of the Code, being the current version of the Code.