



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:	#7195
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 advised WASPA that he subscribed to download a song, which he said he never received. He sent "STOP" to the download service (it is unclear whether this is the member although this seems like a reasonable assumption) on the same day. The complainant incurred costs of roughly R7 900 in charges related to the service. He advised WASPA that he was charged roughly 500 times a day in the process (this works out to almost 21 charges an hour over a 24 hour period).

The services appeared to be associated with a website at the domain maybemeeet.me (this domain did not resolve to a website when I typed it into my browser).

Service provider's response

WASPA requested the member's logs detailing the complainant's involvement with the service. The member furnished WASPA with a response indicating the following:

1. The complainant received an opt-in message on 27 April 2009 containing the following text:

*Hi tony,its kristine from ZOO I want to chat to you maybemeet.me!
 TXT YES TO CONNECT NOW! for help 0800981229 2end txtstop
 R10msg+R60sub*The complainant apparently responded in the affirmative; and

2. The complainant appears to have responded positively and then received an opt-in message at what appears to be the same time as the initial message containing the following text:

*Your chat partner will reply to you shortly. Welcome to maybemeet.me
 4 help 0800981229 r60subscription pw2endtxtstop*

The member further recorded that the complainant had sent a total of 1 914 messages priced at R10 per message (or roughly R8,77 before VAT) “over a couple of months”. The member does not appear to have submitted any further information to WASPA.

The complaint was escalated largely due to the member’s failure to supply WASPA with adequate logs as required by Rule 11.6.2 of the Code.

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>

Code version 7.4	Code version 8.0
<p>2.23: A “subscription service” is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.</p>	<p>2.23: A “subscription service” is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.</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>3.1.1: 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</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</p>

Code version 7.4	Code version 8.0
<p>being billed.</p> <p>(b) Where the WASP is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.</p>	<p>being billed.</p> <p>(b) Where the WASP is not in control of the billing (e.g. the customer sends 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>

Code version 7.4	Code version 8.0
<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>
<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</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</p>

Code version 7.4	Code version 8.0
content or service.	content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.
<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</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</p>

Code version 7.4	Code version 8.0
<p>wording:</p> <p>[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].</p>	<p>wording:</p> <p>[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].</p>
<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>11.6.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include</p>	<p>11.6.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include</p>

Code version 7.4	Code version 8.0
<p>the following information:</p> <ul style="list-style-type: none"> (a) proof that the customer has opted in to a service or services; (b) proof that all required reminder messages have been sent to that customer; (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and (d) any record of successful or unsuccessful unsubscribe requests. 	<p>the following information:</p> <ul style="list-style-type: none"> (a) proof that the customer has opted in to a service or services; (b) proof that all required reminder messages have been sent to that customer; (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and (d) any record of successful or unsuccessful unsubscribe requests.
<p>12.3.2. Prohibited services:</p> <ul style="list-style-type: none"> (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 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>12.4.2. Prohibited services:</p> <ul style="list-style-type: none"> (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 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.

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. Leaving aside the nature of the member's service, the complainant has advised WASPA that he attempted to subscribe to a service to enable him to download a song. This is not consistent with the message the member sent to him (which indicates that the service is its contact/dating service).

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 although it is unclear what the billing frequency is. In other words, the quoted price, "R10 msg + R60sub" doesn't reveal whether the prices quoted are charged per message, once off, daily, weekly, monthly or otherwise. Furthermore, the pricing information in the subsequent meeting is even more opaque. "r60subscription 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 in 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). There is no indication that the member sent the complainant any notifications about the mounting charges the complainant faced. This is particularly concerning because the complainant has informed WASPA that his total bill amounted to roughly R7 900. 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. The complainant further indicated that he subscribed to a content download service. This further complicates this matter. What he received was a subscription to the member's contact/dating service instead. 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) and has continually failed to maintain adequate logs and furnish those logs to WASPA on request. Its so-called "logs" which it has furnished WASPA with in this and previous complaints are little more than copies of messages that it contends it has sent to complainants.

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 24 July 2009 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's failure to maintain adequate logs and make them available to WASPA on request and without delay is unacceptable. The member is required to ensure that it remedies this to WASPA's satisfaction immediately. Its failure to comply could result in more drastic sanctions being imposed; and
5. 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.