



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Opera Interactive
Information Provider (IP) (if any)	n/a
Service Type	Content subscription services
Source of Complaints	Mr D Mitchell
Complaint Number	7335
Date received	13 August 2009
Code of Conduct version	7.4

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 3 August 2009. The complainant has indicated that he was not satisfied with the SP's response and the complaint has been escalated to formal adjudication.

The complainant states that on 2 August 2009, he received an SMS from an unknown number telling him that "Amy" had added him to the social media website Facebook. When he opened this it provided a link to a URL which appeared to be a porn website. He immediately disconnected and deleted the SMS. However he subsequently received three further SMS's stating:

Thank you 4 buying our mobile content on 2/8/2009. This is a billing SMS, for help email customersupport@operainteractive.co.za or call 0839000410.

The complainant then contacted his network operator and was advised that he had been charged 3 (three) separate charges of R14.00 each to his account.

The complainant states further that he tried to send an e-mail to the SP requesting that he be unsubscribed and requesting a refund. He also tried phoning the helpline but was met with an automated voice message stating that all the SP's consultants were busy.

SP's response

The SP stated that it had contacted the complainant and explained the service to him, as well as offering a full refund. The complainant also confirmed that the service in question had already been suspended and no further marketing was taking place.

The SP also provided a full transaction history. The complainant browsed the SP's WAP affiliates Music Club site on 26 August 2008 at 17:06:14 but did not make any purchases.

The complainant accessed the free content section and was opted-in to receive future promotional messages.

The complainant responded to a free marketing message for the Animation Club which was sent on 4 February 2009 at 19:57:27 by browsing the site but again did not make any purchases.

The complainant responded to another free marketing message for the Friends Network site on 2 August 2009 at 14:33:49 using a Samsung-SGH-d900i cellphone. The section of the site accessed was for video packs at a reduced cost as follows:

R14/ITEM 3 ITEMS/VIDEO PACK
CHARGED PER PACK

The complainant viewed the SA Friends Network page by clicking on the link supplied. The page featured a selection of non-adult pictures and videos, in this case of Emma. The user can view and download this content from the page, in exchange for receiving 3 x R14 billing messages. 3 (three) billing messages were then sent to the complainant on 2 August 2009.

Complainant's reply

The complainant maintains that the matter of the charges being levied to his account borders on fraud and/or theft and an offer of a refund does not rectify matters. The complainant also does not believe that the suspension of the service has any significant bearing on the matter as the suspension seems to have taken place after he was charged the relevant amounts.

The complainant states that he has no recollection of accessing or browsing the SP's Music Club or Animation Club on the given dates. With reference to the SA Friends Network, which relates to this complaint, the complainant believes that the SP has verified and repeated what he has stated in his complaint. If he did access any of these sites, the complainant alleges that he was obviously duped into doing so and any opt-in request was obtained by trickery and was given unwittingly and unknowingly.

Sections of the Code considered

4. Customer relations

4.1. Provision of information to customers

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.

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.

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 and may not be an entry into a competition or quiz.

11.1.3. An advert for a content 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;

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- (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].

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.

11.2. Reminder messages

11.2.1. 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.

11.2.2. 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].

or

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

11.2.3. 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.

11.2.4. 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.

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.

11.2.6. The text “(VAS)” must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

11.2.7. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

11.6. Subscription service directory and logs

11.6.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (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.
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Decision

The complainant has alleged that he received a misleading SMS on 2 August 2009 which purported to be an invite to add someone as a friend ("Amy") on the popular social media website, Facebook. The SP has not denied this and I must therefore accept the complainant's version.

The message contained a link which did not direct the complainant to the Facebook website but rather to the SP's SA Friend Network website.

There is a dispute of fact between the parties as to whether this website contained adult content or not. No further evidence has been presented regarding the nature of the content on the site so I cannot take this matter any further.

However, regardless of the nature of the content, it would appear that the complainant has been misled into subscribing to the SP's subscription service in response to the SMS message sent on 2 August 2009.

The SP, in its response, has made reference to previous dealings with the complainant. Although the complainant has stated that he has no recollection of such dealings, I do not believe this takes the matter any further.

The promotional message sent to the complainant on 2 August 2009 does not prominently and explicitly identify the services as "subscription services". The SP has therefore contravened section 11.1.1 of the Code.

The promotional message sent to the complainant contained an invitation to add someone as a Facebook friend. Instead, the complainant was induced into inadvertently subscribing to the SP's service. The request from the complainant to join the service was not an independent transaction, and was not made with the specific intention of subscribing to the service. The SP has contravened section 11.1.2 and 11.1.5 of the Code.

Once the complainant had accessed the site, the subscription was initiated without any separate confirmation being obtained from the complainant before any billing took place for that service. The SP has contravened section 11.1.11 of the Code.

No notification message was sent to the complainant containing clear notification of the name, cost, frequency of charges, and clear instructions for unsubscribing from the service. The SP has contravened section 11.1.8 of the Code.

In addition to the actual manner in which people are subscribed to this service, the content being offered, as well as the pricing information contained on the site, is misleading, ambiguous and unclear.

The SP has contravened section 4.1 and 4.2 of the Code.

Sanction

The SP has committed numerous breaches of the WASPA Code, and each breach must be viewed in a serious light. In determining the sanctions I have taken into account, numerous other complaints that have been upheld against the SP, including complaint 6648 which relates to the same or similar contraventions of the Code as detailed in this complaint.

The SP has offered to refund the complainant in full and has stated that this particular service and the marketing of it has been suspended. It appears that the suspension took place after this complaint arose.

The following sanctions are given:

1. The SP is ordered to refund all amounts charged to the complainant's account and to provide proof to the WASPA Secretariat that it has done so within 7 (seven) days of receiving notice of this report.
2. The SP is ordered to terminate all services offered using the relevant short code with immediate effect.
3. The SP is fined the amount of R150 000.00.

These sanctions may not be suspended pending any appeal being lodged against this decision by the SP.