



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Venista
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	Ms J Meijer
Complaint Number	7436
Date received	26 August 2009
Code of Conduct version	7.4

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 13 August 2009. The SP initially didn't respond to the request and the current complaint was escalated to formal adjudication.

The complainant wanted to know how she "opted in" to the subscription and asked for clarification on whether she send an SMS to the short code number for the service or did she erroneously respond to an SMS sent to her.

After receiving an explanation from the SP as to how the subscription was activated (see below), the complainant stated that she obviously could not prove that she didn't go through that process or that her phone remained under her control at all times.

However, she also queried how she got the original WAP link in the first place and asked for clarification on whether she requested this link somehow or how else did the SP get hold of her cell number. She asked for a copy of the link to be emailed to her.

On receipt of the link, the complainant states that she had never gone onto the web site in question to register for anything. She then states that she purposively tried to access the link from her computer but didn't have the required software to do so.

SP's response

The SP provided a short log showing that the complainant's number subscribed to its service on 22 July 2009 at 17:19:51, using a Nokia 5310 XpressMusic handset. The complainant was initially contacted by one of the SP's helpline operators and a full refund was offered to her in line with the SP's company policy.

The complainant was not satisfied and asked that someone with technical knowledge call her to explain how she had been subscribed to the service. The SP called the complainant again and took her through the subscription process, explained what the logs showed, and confirmed that the handset used was the same as the one she used around that time.

The SP states that the complainant did admit that she may have pressed a few buttons but denied that she had read the terms and conditions.

Upon receiving a request to provide logs, the SP sent a short-log of activity using the comment box on WASPA's unsubscribe system site. The SP apologised for not uploading a full log at that time, but it understood the request to be for the customer who needed the explanation. A simplified short-log was seen as more user-friendly and easier to understand to a member of the public than the system-generated full log.

In describing the process of subscription, the SP states that this was a WAP subscription. The user receives the WAP link, opens it by selecting "go to" or something similar on their handset. They are redirected to the home page of the SP's WAP site, where the prices and terms for the service are clearly displayed. The user is able to browse around this page and click on a chosen link to download content. There is no need to send an SMS to access the content.

The SP maintains that its service and its operation conform to WASPA regulations and has been approved by the network operator.

The SP states that it was given the complainant's details by Sybase.

The Web subscription was requested on 28 January 2009, when a WAP invitation to the SP's "Music Club" was sent. This was followed by further marketing messages for "Video Club" on 2 March 2009, for the "Music Club" on 23 April 2009 and for "Total Embarrassing" on 22 July 2009.

The complainant subscribed to "Total Embarrassing" on 22 July 2009 at 17:19:51, by entering her cell number on the SP's web-site: <http://www.mobile-africa.net>.

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 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;
- (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.

Decision

The SP has stated that it received an opt-in request from the complainant's handset on 22 July 2009 for the subscription service in question. The SP alleges that the service was accessed via its WAP site at <http://www.mobile-africa.net>. The complainant has denied that she ever visited this site and/or that she opted-in to the subscription service on offer at this site.

In order to resolve the dispute on this issue, the SP was requested to provide clear logs pertaining to the complainant as per section 11.6.2 of the Code. The SP has provided a short log which does not comply with section 11.6.2 of the Code.

In terms of section 11.1.11 of the Code, where 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. It is not clear from the evidence presented whether such confirmation was obtained by the SP.

Furthermore, a monthly reminder message must be sent by the SP to the subscriber confirming the details of his subscription. This was not done.

Based on the evidence presented, the SP has therefore also breached sections 11.1.11 and 11.2.1 the Code.

Sanction

The SP has already made a full refund to the complainant and this has been taken into account as a mitigating factor.

However, contraventions of section 11 must be viewed in a very serious light, especially in light of the numerous complaints being lodged by consumers who have been subscribed to subscription services without having any intention of doing so.

In many of these cases, the subscription is purportedly accessed via WAP sites by consumers who deny having ever accessed such sites.

In determining the sanctions in this matter, I have taken into account that a complaint of a similar nature against the SP was dismissed in September 2009. However this complaint was heard under version 7.0 of the Code, i.e. prior to the introduction of section 11.6.2 of the Code.

The following sanctions are given:

1. The SP is fined an amount of R25 000 for its contraventions of section 11.1.11; 11.2.1 and 11.6.2.
2. The SP is directed to provide proper logs relating to the complainant as required by section 11.6.2 within 7 (seven) days of receipt of notice of this report.

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3. If the SP fails or is unable to provide such logs or if presented, such logs show that the complainant was not validly subscribed or that the necessary welcome and reminder messages were sent to her, the SP will be required to pay a further fine of R 25 000.00.