



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Zouk Mobile
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	Mr M Talaszewski
Complaint Number	7469
Date received	31 August 2009
Code of Conduct version	7.4

Complaint

The complainant states that in the month of August 2009, he was billed by the SP for a service he did not subscribe to. The SP sent the following email apology to the complainant:

Dear Customer,

We would like to apologise on the mixup in our system resulting on your cell no being subscribed to our service & being charged R40 in this process. We have removed your cell no in our system.

Hence, we will be glad to refund the full amount charged of 40Rand. It will be processed via a) bank transfer or if you are a prepay user, we will b) credit the airtime. Could you be kind enough to fill in the details as below for us to process the payment? Thank-you.

The complainant has confirmed that he received a full refund of the amount deducted

from his account from the SP. The refund amount was deposited in cash into the complainant's bank account within an hour of him reporting the matter to them.

The complainant remains unsatisfied with the SP's response and has raised the following queries:

1. How did the SP get his cell number?
2. Why did the SP's system bill his account even though it did not send and receive a confirmation/premium sms?
3. What prevents the SP from billing his account again?
4. Who is going to pay for his time and effort to sort this matter out?

SP's response

The SP states in response that it had assumed this case was closed as the complainant had requested and received a full refund.

After being requested by the WASPA Secretariat to provide proof of subscription, the SP provided copies of its logs. The SP also stated that it had been suspended by its service provider, Mira Networks for 2 weeks as a result of this issue.

The SP states that it sent an official letter to its service providers explaining in detail what the issues were that caused the automatic subscription of consumers and the steps it had taken to rectify the situation. The SP confirmed that it had refunded all the users affected, including the complainant. The SP states that it experienced a flaw in its system which had been rectified.

In response to the complainant's particular queries, the SP responded as follows:

1. The SP states that all the opt-ins were from its WAP advertising.
2. As per the logs there was an incoming message from the user's handset. However the SP's error was not sending the welcome message which resulted in a severe reprimand from the network operators.

3. The SP states that it will only offer services to a customer who opts-in for a particular service and not choose randomly as this is known as SPAM and its illegal. Hence the chances of this happening with their company is zero.

4. The SP states that they are truly sorry for the great inconvenience caused to the customer and they had taken all necessary steps to reimburse the customer the amount owed and ensured that it will not happen again but nevertheless even though it was a technical fault they need to point that their short codes were penalized and suspended for over 2 weeks which caused a significant revenue loss.

Sections of the Code considered

11. Subscription services

11.1. Manner of subscription

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.

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

11.1.8. 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.

11.1.10. 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].

11.6. 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 denied ever subscribing to the service in question and has queried how and when he was subscribed. The WASPA Secretariat requested the SP to furnish proof of subscription. The SP responded to this request by presenting an incomplete MSEXcel spreadsheet purporting to be a log, which was wholly inadequate for this purpose and which does not satisfy the requirements of section 11.6.2 of the WASPA Code of Conduct.

The SP has alleged in its response to the complainant's specific queries that its subscribers usually opt-in to the service from WAP advertising. The SP does not expressly state that this was how the complainant was subscribed.

The SP does admit that it did not send any welcome message as required by section 11.1.8 of the Code. The SP also did not obtain further confirmation from the complainant's handset, as required by section 11.1.11 of the Code.

I therefore find that the SP has contravened sections 11.1.8, 11.1.11 and 11.6.2 of the Code.

This complaint is accordingly upheld.

Sanction

The SP immediately refunded all amounts deducted from the complainant's account and offered a full apology to him. It appears that the SP was also penalised by a 2 week suspension of its services at the instance of the network operators.

It has also been noted that the SP has had no previous complaints upheld against it and that this is a first offence.

These factors have been taken into account in mitigation.

However, it has been well-established through the precedent of previous WASPA adjudications regarding contraventions of section 11 of the Code, that the subscription of consumers to services that they have no intention of joining is viewed in a very serious light.

Despite being requested to do so, the SP has failed to provide an adequate answer as to how the complainant was subscribed to its service. Instead, the SP avoids this issue and focuses on the fact that a welcome message was not sent to the complainant after he had subscribed to the service due to a technical glitch in the SP's system. This is not a satisfactory response to a serious matter.

In light of the foregoing, the following sanctions are given:

1. The SP is fined the sum of R50 000.00.
2. The SP is ordered to provide proper proof of subscription for the complainant as required by section 11.6.2 of the Code to the WASPA Secretariat within 7 (seven) days of receipt hereof.