



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	SMSNet
Information Provider (IP) (if any)	
Service Type	Unsolicited commercial sms
Source of Complaints	Anonymous
Complaint Number	7923
Date received	27 October 2009
Code of Conduct version	8.0

Complaint

An anonymous complainant has alleged that a number of unsolicited sms messages have been sent by the SP to their number, despite “stop” messages being sent on various occasions.

The complainant did not provide copies of the unsolicited messages received or proof of the various “stop” messages sent to the SP.

The complainant also alleges that the long code number provided by the SP for users to unsubscribe is premium rated at a cost of R1.50 in contravention of the WASPA Code of Conduct.

SP's response

The SP states that the complainant was subscribed to a “daily bible verse” content subscription service. The first subscription sms included all opt out options and

reminder sms's were then sent on a monthly basis to the complainant containing opt-out details.

The SP confirmed that the number would now be unsubscribed and that they would contact the complainant to find out when he/she tried to stop the subscription so that a refund could be offered.

The SP indicated that there may have been a technical error that they weren't aware of at the time that the complainant attempted to unsubscribe from the service.

In response to a request for the subscription logs to be provided, the SP did provide logs without the MO and MT details included. The SP stated that the subscription was initially hosted by Integrat and the number in question was used as a test number and was probably forgotten on the database when changing applications. The MO and MT details would still be available from Integrat but were not furnished.

In response to the allegation that the number provided to unsubscribe was premium-rated, the SP eventually acknowledged that this was an error and the cost was amended from R1.50 to R0.50.

Sections of the Code considered

Section 5.1.2

Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

Section 5.1.3

For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word \"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. The reply \"STOP\" procedure should be made clear to the recipient at the start of any messaging service, for example by including \"reply STOP to opt out\" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear

instructions for unsubscribing must be included in the body of that message.

Section 5.1.4

For SMS and MMS communications, a message recipient must be able to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). If replying \"STOP\" as set out in 5.1.3 will result in a charge greater than the lowest tariff rate available, then instructions for the lowest tariff rate opt-out must be included in every message sent to the customer.

Section 5.1.5

Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

Decision

The SP has provided evidence that the complainant was previously subscribed to a “daily bible verse” subscription service. This has not been disputed by the complainant.

The SP acknowledged that there was a possibility that the unsubscribe function for this service was not working due to a technical error. However this has not been taken any further and there is no proof before me that this was indeed the case.

The SP has acknowledged that the unsubscribe number should not have been premium rated and has reduced the cost thereof.

Based on the foregoing, I therefore find that the SP has breached section 5.1.4 of the WASPA Code of Conduct. The complaint is accordingly upheld in this regard.

The complaints in respect of the alleged breaches of sections 5.1.2, 5.1.3 and 5.1.5 are accordingly dismissed.

Sanction

It has been noted that a number of other complaints regarding the SP's subscription services have been upheld. It has also been noted that the SP has not paid certain outstanding fines in relation to complaints 6811 and 6730. These factors have been taken into account before passing sanction.

It has been noted that the unsubscribe number used by the SP has been re-rated prior to the matter being referred to adjudication.

The following sanctions are given:

1. The SP's membership of WASPA is suspended until such time as all outstanding fines have been paid by it and the fine provided below.
2. The SP is fined R 50 000 for its breach of section 5.1.4.
3. The complainant is requested to provide details to the WASPA Secretariat of when they first attempted to unsubscribe from the SP's "daily bible verse" subscription service.
4. The SP is ordered to refund the complainant all amounts charged to the complainant's account from the date that the complainant first attempted to unsubscribe from the service within 7 (seven) days of being notified of such date by the WASPA Secretariat.