



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	Unsubscribe request
Complainants:	Competitor
Complaint Number:	8235
Code Version:	5.7
Advertising Rules Version:	N/A

Complaint

The Complainant wrote:

“I do not recall subscribing to iTouch services. I have tried unsubscribing from this service many, many months ago when I received a message. I picked up that I was being charged on my Vodacom bill and requested from Vodacom the content provider’s details. On the 17th November when I called to request why I had been subscribed they advised that I had joined on the 25th of June 2008, but were unable to inform me to which service. I have received one message from them like I mentioned many, many months ago and on that message I sent STOP. I have never in over a year received a 30 day reminder and what’s worse is that when I sent STOP on the 17th they sent me a message saying “Oops! We don’t understand your request. Please call our call centre for Help: 021 417 8001. Thanks, the Movilisto Team”. I was promised an email with all relevant information. I called again today 23rd November and was promised by Innocentia again the email within 5 minutes but it’s been about 40 minutes since then. I called again and asked to speak to someone to resolve the issue and explained the situation to Elvis (Gentlemen in call centre). He was able to pick up that I sent stop and he mentioned that it comes up as errors when there customers send stop and not stop CM. I then asked to know when I had sent STOP the first time all those months ago but he then said he could not go that far back. I explained that I would like to resolve the issue without trouble or I would be forced to go to WASPA. His response was that I go to WASPA.”

The Complainant was not satisfied with the SP’s response and provided the following reason for escalation:

"I am absolutely not happy with the outcome. On the 30 November I received a call at approximately 12:30 from (iTouch) Donovan and he informed me of the following: that I have been unsubscribed and that he saw that I subscribed to "It must have been a TV ad "where his words to HOT and then I tried to unsubscribe but their system does not work like that I have to send stop CM or other. That I now subscribed in 2007 and not in 2008 as previously told on 2 occasions. That he would send me logs of every 30 day reminder message I received since date of inception in 2007. From their logs and the logs they get from Vodacom (I am still waiting). He went on telling me that he was looking into giving me a refund but needed to take his findings to his superiors. He then later the same day called me back to inform me that they (His superiors) had decided that no refund was due because clause 11.5.2 stipulates that they don't need to Stop any one if they just send stop. I then asked if he has read these rules himself as I am well aware that clause 11.5.2 stipulates the following: 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. I was not stopped on requesting to be stopped, or given a choice to the service I wanted to be removed from. I was given a "Oops, we don't understand your request." The one time I received a 30 day reminder I tried to unsubscribe from a service I don't recall ever even subscribing to. I was not happy with the back and forth treatment I was receiving and asked that he gets all his facts straight and deal with me through WASPA. Donovan said he would go back to his superiors and talk to them again.

On the 2nd December I received another call from Donovan at iTouch who said they are still pulling my logs and that the superiors have said they will give me a R500 refund because I work for a company that is affiliated to WASPA to show good faith. I'm horrified that they would say something like that. They were wrong in not stopping me and until I see those logs they are in the wrong for not sending me reminders, which they never did because I would have received them. Not to mention that their entire base is set up to get a "oops, we did not understand your request" when the send STOP.

Please get me all the logs and I want to know how much I was charged from the time that they started taking money to date. I want every 30 day reminder and I want to see the logs that they supposedly have from Vodacom to prove that I got all of these reminders I also don't think it's fair that their entire base gets done in like this. How many people have sent in STOP and are still being billed?"

The Complainant provided the following feedback:

"It has gone from 2008 to 2007 and now to 2005. Which is it now???????

I insist on getting full logs of my 30 day reminders and what they charged me monthly. I see that WASPA and I have requested this on more than one occasion!!!!

Please take note that I tried to unsubscribe on the 17th of November 2009 I got the same message as what I got on the 25th of October 2005 or is it 6 or 7. So

even thought they could not handle the unsubscribe request then their system should surely be compliant by now being 2009. I am in the process of contacting my service provider to give me a recon of the deductions iTouch has deducted from my account. I would like to see the advert I was subscribed to and what the charges where?"

The Complainant refused resolution:

"I want a full refund of the money they took from my account. I do not believe they sent 30 day reminders as I have mentioned because I would have received them. The logs they have sent in the Excel sheet are wrong as the data in it has been pasted incorrectly and the dates are wrong. Also the second Excel file is incorrect as it says I subscribed on the 25 Oct 2007, unsubscribed on the 25 Oct 2007 and unsubscribed again on the 27 Oct 2007. This is either another typo or their system is not working.

I subscribed to the channel they said I was subscribed to "HOT" to see if indeed I was being charged R5/5days, but I got the following message "Welcome to fun club. Click on the link we sent for unlimited access to games, tones and more! Help: 021 417 8001.sms Stop fun to 31194 to end. Subscription R10/day". I then unsubscribed using STOP to 31194 and got the "Oops, we don't understand message" again.

Could you please clarify for me 100% if this unsubscribe message is compliant or not? I would also like to know if they re- used the keyword while subscribers where still being billed at R5/5 days on that specific channel? As mentioned I have requested a log from Vodacom to see how much they have deducted from my account monthly and will get back to you in the week regarding this.

Please could they give answers to my questions and not just come back with logs that make no sense, I would like to resolve this issue before next year."

Service provider's response

The SP wrote:

"Member has been unsubscribed and confirmation sms has been sent. We'll investigate to determine if a refund is due. Thanks.

Attached is the proof of subscription. Member will be contacted to inform that no refund is due. Thanks.

As the billing goes back as far as 2007 I am currently waiting on the billing. I have been in contact with the Complainant on the 30/11/2009. We'll update you shortly."

The SP provided the following response to the formal complaint:

"Our investigation shows that the user had tried to unsubscribe from the fun club service. The key word sent in by the user was HOT the 25th October 2005, yet on the same day the user had tried to unsubscribe. Due to the

service not being set up to handle generic unsubscribe request at the time, we are more than happy to refund the complaint in full. The total amount billed is R645. Please, advise on banking details in this regard.”

The SP provided the following feedback:

“The Subscription date was in fact 25th October 2007 as per the screenshots supplied below and previously and not 2005. It was a typo error on my side, which I do apologize for. Have requested full billing logs in this regard....”

In its final response the SP stated:

“In our efforts to try and retrieve the full logs in this matter, we are unable to do so. This is due to the buy over from Buongiorno South Africa; hence the data required is not completely attainable, as certain systems have been switched off and discarded making data extraction impossible. The billing logs are fortunately retrievable.

In this regard we have granted the complainant a full refund.

Attached you will find the complete billing log on mobile number as well as subscription message sent in and messages sent to the user in relation to this subscription.

We do however apologize for the incomplete logs in this regard and have put through a request to try and have data restored.”

Sections of the Code considered

4.1.1. Members are committed to 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.

11.1.8. A monthly reminder SMS must be sent to all content subscription service customers containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

11.2.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be ‘STOP’.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent response.

Although the SP has provided logs of its reminders that were apparently sent to the Complainant in this matter, the mere fact that it was unable to provide sufficient logs dating back to 2007, is unacceptable. The Adjudicator also finds it hard to believe that the billing logs are available without having access to the other logs.

On the matter of the billing logs the Adjudicator found various inconsistencies. The period between 22 February 2008 and 03 March 2008 and the period between 08 March and 12 April do not reflect anything. This either seems as an error on behalf of the system, an omission on whoever compiled the logs, or a reflection of bad fabrication. Without alleging the latter, the Adjudicator cannot accept this log as sufficient evidence or proof.

It is also interesting to note that on one of the attachments offered by the SP, it confirmed that the Complainant was indeed unsubscribed on 25 October 2007. It therefore raises further doubts as to how the Complainant could have been billed, and it also casts additional doubt on the bill logs provided.

Without having supplied enough evidence on reminder messages allegedly being sent, the Adjudicator has no alternative but to find the SP in breach of section 11.1.8.

The Adjudicator does not however find anything wrong with the unsubscription method utilised by the SP since a subscriber should not have to use more than two words to unsubscribe, one of which must be STOP. In this case, the subscriber was prompted to send STOP CM, which justifies the rule.

This matter is not the first where the Adjudicator has been confronted with allegations or complaints of irregularities against the SP's operating system and/or billing system.

Although no sufficient evidence has been raised by either party, the Adjudicator is of the strong opinion that the SP in this matter does not conform to section 4.1.1 and 4.1.2. However, due to insufficient evidence, the Adjudicator cannot rule on a breach of the said sections.

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;

The SP is instructed to refund the Complainant in full. The amount is to be confirmed by the WASPA Secretariat on receipt of Vodacom invoices detailing the amounts from the Complainant.

The SP is fined R15 000-00 for its breach of section 11.1.8 which is payable to the WASPA Secretariat within 5 (five) working days after notice hereof.

The WASPA Monitor is also instructed to investigate the allegation by the Complainant that the same keyword (31194) is being re-used while certain users are still subscribed to its original use, which had different costs, R5/5 day as opposed to the alleged re-use of R10/day. This might have negative impact on the original subscribers' subscription costs.