



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Mira Networks
Information Provider (IP) (if any)	Zed Mobile
Service Type	Subscription service
Source of Complaints	Mr N Fortuin
Complaint Number	8468
Date received	14 January 2010
Code of Conduct version	8.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 8 January 2010. The SP responded by confirming that the complainant had been unsubscribed and uploaded logs as proof of subscription.

The complainant was not satisfied with the SP's response and the matter has been escalated as a formal complaint for adjudication.

The complainant queried his prepaid airtime balance with his network service provider after the festive holidays at the end of last year, stating that he was using up his airtime quicker than usual.

His network provider confirmed that the complainant had been subscribed to a content service and referred him to the SP. The complainant contacted the SP and it was confirmed that the subscription was valid. He was also advised that he had been charged R5 per day during the period 20 August 2009 to 5 January 2010.

The complainant denies that he ever registered for this service and/or that he has downloaded any of the available content.

The complainant states further that he may have inadvertently clicked on the relevant link while his phone was in his pocket or when trying to unfreeze the handset. He states that he uses a touch screen handset which makes it easier to click on links unintentionally.

The SP advised the complainant that he receives sms messages that include an unsubscribe function should he wish to unsubscribe from the service. The complainant states that he uses the sim card mainly on his laptop to surf the internet and doesn't access sms messages sent to this number.

The complainant also complained that the employee from the SP that he discussed the matter with very rude and unfriendly to him.

The complainant was offered a R200 airtime refund from his network provider as a gesture of goodwill. However he has refused the offer believing the refund to be a bribe to keep him quiet.

SP's response

The SP undertook to investigate the allegations that one of its staff members was rude to the complainant. The SP also clarifies that the refund offered was not a bribe, but rather an attempt to satisfy the customer after all other attempts to resolve the matter were exhausted with the complainant.

The SP confirmed that the relevant log has been provided and that the IP had provided an explanation to the complainant on how he was subscribed to the service.

IP's response

The IP states that customers subscribe to its "Club Zed" service using a 2-click process. Firstly, the complainant would access a WAP link on an advertising banner. Then the customer would be directed to a landing page where he or she would be prompted to click on the 'click here to confirm' button.

The landing page outlines that when a user joins Club Zed, they are given access to games, ringtones, wallpapers and more. The IP informs users on the landing page that Club Zed is a subscription service and that they will be billed R4.99 per day until they unsubscribe. The terms and conditions of the service are also clearly displayed.

Only when a consumer has clicked on both the advertising banner and the 'click here to confirm button' on the landing page are they then subscribed to the service. The relevant welcome messages are then sent to the subscriber.

This subscription process was tested by the WASPA Monitor (complaint number 6924). The Monitor made recommendations for changes to the service, which were implemented by the IP and have been confirmed to be in order by the WASPA Monitor.

The IP provided the complainant with logs prior to the complaint being lodged and have also furnished copies of its logs with its response. The logs show that the complainant was sent the respective welcome messages, and three sets of monthly reminder messages.

The complainant unsubscribed via the USSD "stop" command on 3 January 2010 at 17:49:02. He was sent a confirmation message stating that he had left Club Zed and that no further charges apply.

The IP alleges that the handset used to click on the "click here to confirm" button on the landing page was a Nokia E65, which is the handset used by the complainant.

The IP states further that it has made numerous attempts to resolve this complaint with the complainant but it was continually conveyed to them that the complainant was not interested in any explanations as to how he had been subscribed to Club Zed. The IP has maintained that his fight was with the network provider and that he wanted a refund from the network provider only.

The IP confirmed that it had offered to refund the complainant in full but this was declined by the complainant.

Sections of the Code considered

6.2.12. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

- (a) If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.
- (b) If the transaction is billed at less than R10, the price for the transaction must be clearly indicated as part of, or immediately next to, the link or option that will initiate the transaction and must be visible on the same screen as the link.
- (c) If the transaction is to initiate a subscription service, then the price and frequency of the service must be included directly in the text of the WAP link or immediately adjacent to it and must be visible on the same screen as the link.

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.

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

automatically be subscribed to a subscription service without specifically opting in to that 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 is 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.

11.2.1. 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.

11.4.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.2.2 or the the following format must be used:

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, click here [WAP link].

11.4.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.4.3. The WAP link in the reminder message must begin with “www” to ensure that all phones recognise this as a clickable link.

11.4.4. All of the other requirements set out in section 11.2 of the Code continue to apply to services where the primary means of interacting with the service us via WAP.

11.5.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.5.2. 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.

11.5.5. Where a service is linked to a specific short code in advertisements for that service, then sending a 'STOP' request to that short code should result in the termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.5.8. Members must ensure that the termination mechanism is functional and accessible at all times.

11.5.9. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. U'll then b resubscribed @ [cost of service and frequency of billing].

11.5.12 If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

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

I am satisfied that the IP has provided sufficient proof that the complainant was subscribed to the service in question via a valid opt-in process. I have noted the complainant's arguments in this regard but must conclude that the IP cannot be held responsible where users inadvertently click on the necessary links by mistake.

I am satisfied that the IP has not contravened any sections of the WASPA Code of Conduct. The complaint is accordingly dismissed.