



REPORT OF THE ADJUDICATOR

WASPA Member (SP) TIMw.e. New Media Entertainment
South Africa

Information Provider (IP)
(if any)

Service Type Subscription service

Source of Complaints

Complaint Number

Date received

Code of Conduct version 7.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 22 January 2010. The SP unsubscribed the complainant but no refund was offered. The complainant was not satisfied with the SP's response and the matter has been escalated as a formal complaint for adjudication.

The complainant states that this sim card was not in use and this can be confirmed by her network operator.

SP's response

The SP initially stated that it had no information on the complainant as she had never subscribed to any of its services. An alternate number was then provided to the SP and it was able to pick up that the complainant's number had been used to subscribe to two different subscription services.

The complainant is alleged to have subscribed for the first service and was then redirected to another web page where she subscribed again to another service.

The SP states that it is no longer running the same promotion campaign for the first service. However its new campaign can be accessed at the following URL:

<http://www.mymobilehits.com/ws/acp?sp=27105>

The second campaign was still live at the following URL:

<http://www.mymobilehits.com/ws/acp?sp=27111&t=25041>

The SP alleges that all relevant information about the service is contained on the promotional web page. All subscription information was sent to the complainant's handset after she had subscribed to the services and a reminder message was sent every 30 days.

The SP provided the relevant IP address from where the complainant subscribed to both services.

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 is 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 have viewed the logs provided by the SP which confirms all outgoing messages sent to the complainant's number. The SP has also provided the IP address from where the complainant accessed both services.

The complainant has referred to proof being available from her network operator that the relevant sim card was not in use at the time that the SP alleges the services were activated. However such proof has not been provided with her complaint.

In the absence of such proof, I am satisfied that the SP has not contravened any provisions of the WASPA Code of Conduct.

The complaint is accordingly dismissed.