



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	TIMw.e. New Media Entertainment South Africa
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	Mrs Els
Complaint Number	8837
Date received	22 February 2010
Code of Conduct version	8.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 15 February 2010. The complainant was not satisfied with the SP's response and the request has been escalated as a formal complaint.

The complainant denies subscribing to or making use of the service in question. She alleges that her account was charged for more than 115 SMS's.

SP's response

The SP alleges that the complainant subscribed to three (3) clubs from three (3) different campaigns on 2 September 2009 at 10h57 from the IP address 196.35.158.181.

The SP states that each web spot redirects to another and the complainant subscribed to them all.

The SP also states that the complainant received all the required information about each service.

The SP has discontinued one campaign but the other 2 can be accessed at:

<http://www.mymobilehits.com/ws/acp?sp=27003>

<http://www.mymobilehits.com/ws/acp?sp=27004>

Sections of the Code considered

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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].

Section 11.5.9

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.

Section 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 checked the MO/MT log provided by the SP and there is no proof that a separate confirmation was received from the complainant's handset before any billing took place for the service in question.

It is also not clear from the log provided what content items were downloaded by the complainant for each charge shown.

The SP has contravened sections 11.1.11 and 11.6.2 and the complaint is accordingly upheld.

Sanction

I have noted the adjudicator's report in complaint 7673, which dealt with similar contraventions of the Code and which was upheld against the SP. The SP was fined R150 000, which remains unpaid.

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

1. The SP is ordered to refund all amounts charged to the complainant's account and send proof of the refund to the WASPA Secretariat within 7 (seven) days of receiving notice of this report.
2. The SP is fined an amount of R200 000.00
3. In the event that the fine payable in terms of 2) above and the fine payable in respect of complaint 7673 is not paid within 10 (ten) days of receipt of notice of this report, the SP's membership of WASPA will be suspended for a period of 6 months with immediate effect.