



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	TIMw.e. New Media Entertainment South Africa
Information Provider	Unknown
Service Type:	Subscription Service
Source of Complaint:	Public
Complainant:	Mr. T Ledimo
Complaint Number:	9962
Date Received:	16 July 2010
Code Version:	9.0
Advertising Rules Version:	Not applicable

Complaint

The initial complaint, an unsubscribe request (# 171342) was logged by the complainant via WASPA's electronic complaints lodgement facility on the 31st of May 2010.

The complainant requested a refund of the monies paid over to the Service Provider. The complainant was unsatisfied with the response of the Service Provider.

The formal complaint was sent to the Service Provider on the 19th of July 2010. The actions requested of the Service Provider under the formal complaint were:

- To unsubscribe the customer (complainant);
- To send an SMS communication to the complainant confirming that the complainant has been unsubscribed;
- To provide the complainant with proof of subscription to the relevant service; and
- To contact the complainant regarding the refund requested by the complainant.

Service provider's response

The Service Provider responded on the 23rd of July stating that:

- the Service Provider was in disagreement with the complainant;
- the complainant did in fact download the said communications negating the need for a refund;
- the complainant should stipulate whether there was a problem with the service rendered by the Service Provider.

Complainant's Reply:

The complainant responded on the 26th of July 2010 to the SP's response as follows:

- (i) more generally that the complainant's request was not resolved;
- (ii) that the complainant did not agree to the contention by the Service Provider that the complainant downloaded the said communications;
- (iii) that the complainant worked between Monday to Sunday and phones were not permitted at the workplace negating the download; and
- (iv) that the Service Provider should provide the complainant with the details of the complainant's phone, not simply cellphone number but the identity of the complainant in order to ascertain whether the complainant did in fact subscribe to the service.

On the 26th of July 2010, WASPA requested evidence of the complainant's subscription to the service in the form of the relevant logs and evidence of the actual downloads.

On the 3rd of August at/about 09:47 am, WASPA informed the Service Provider that the period for provision of the relevant evidence had expired and that the matter was being referred to adjudication.

Service provider's response

The Service Provider responded on the 3rd of August at/ about 10:52am by providing the subscription logs and evidence of downloads as requested.

The Service Provider recorded that the Client subscribed via WAP and downloaded a true tone, "Blah Blah Blah".

Sections of the Code considered

12.4 Notification Service Logs

12.4.1 When requested to do so by WASPA, a member must provide clear logs for any notification 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;**
- (d) any record of successful or unsuccessful unsubscribe requests.**

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her.

With reference to (i) the initial and formal complaint, (ii) the SP's response to the complaint(s), (iii) the complainant's reply;(iv) the SP's response to the referral of the complaint for adjudication and the corresponding logs; and iv) the sections of the Code considered:

Turning to the requests made under the formal complaint, ie.

- To unsubscribe the customer (complainant);
- To send an SMS communication to the complainant confirming that the complainant has been unsubscribed;
- To provide the complainant with proof subscription to the relevant service; and

- To contact the complainant regarding the refund requested by the complainant,

I find that the Service Provider has duly attended to the unsubscribe request. It is unclear as to whether the complainant received confirmation of this fact. I am inclined to infer however from the absence of the reference to this issue in the complainant's response that the matter of confirmation of unsubscription is no longer an issue.

The critical aspects of the dispute relate therefore to the issue of proof of subscription to the relevant service by the complainant and the refund requested by the complainant.

I note that the Service Provider was not in agreement with the complainant's averment that the complainant had not subscribed to the service and withheld the refund on account of this disagreement.

I note further the provision of the logs by the Service Provider and the contention that the Client subscribed via WAP and proceeded to download a truetone.

I am however disconcerted by the provision of such logs following the referral of the matter for adjudication. As such, I find that the contents of the logs may not be considered in this adjudication.

As a result, I find that the Service Provider failed to provide WASPA with the proof of subscription to the relevant service as required under 12.4; and as such :

- failed to provide the complainant with the proof of subscription; and
- failed to refund the complainant.

I further note the multiple reminders and requests issued to the Service Provider by WASPA.

The complaint is accordingly partially upheld.

Sanctions

I have noted the Adjudicator's Reports in complaints 8837 and 7637 which inform me that the complainant's complaints are familiar to the Service Provider. In consideration of the prior sanctions against the SP, my expectation would be a willingness on the part of the Service Provider to ensure strict compliance with the WASPA complaints procedures.

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 R 80 000.00 payable to the WASPA Secretariat within ten (10) days of receipt of this report.