



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	MobileNOBO
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	T Du Toit
Complaint Number	9978
Date received	20 July 2010
Code of Conduct version	9.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 20 May 2010. The request was actioned by the SP but the complainant indicated that she was not satisfied with the SP's response.

The complainant states that she received a number of unsolicited commercial SMS's from the SP since March 2010. The messages read as follows:

Click on the link to download new Games:

<http://wapimo.com/?u=27825726127;p=tokens;aff=meta>.

The URL in the SMS linked to a website offering a subscription service which allowed users to download up to 20 mobile games per week at a cost of R44.97 per week.

The complainant states that she initially deleted the promotional messages received from the SP. It was only on 19 May 2010 that she was made aware of charges being levied to her cellphone account by the SP.

The complainant states further that she suspected that the charges were linked to the promotional SMS's she had been receiving. On 19 May 2010, the complainant used her computer at work to access the URL contained in one of the SMS's. She was directed to the SP's website and has provided a screen shot of the relevant page.

The complainant contacted her network service provider on 20 May 2010 to complain about the unauthorised charges debited to her account by the SP and to demand a refund. On 24 May 2010 she received notification that her subscription had been stopped, however no refund was passed to her account.

The complainant denies that:

- a) she used her cell phone to surf the internet;
- b) she entered her telephone number on the SP's website;
- c) she received a unique code to access the subscription service offered by the SP;
- d) she accessed or read the terms and conditions on the SP's website;
- e) she received a welcome message from the SP confirming her subscription;
- f) there was an unsubscribe function in the messages received.

The complainant also states that the SP has failed, despite repeated requests, to furnish adequate proof of subscription, and that the proof that was provided was inadequate, ambiguous and contradictory.

On 26 July 2010, after initially responding to the complaint, the SP stated that the complainant had not subscribed to the service via her cellphone, but rather from a computer. As proof, the SP provided stats from its website showing that a computer with the IP address: 196.210.157.236, visited its website on 3 March 2010.

The complainant again denies this to be the case and that the web stats provided by the SP constitutes adequate proof of subscription. The complainant states that the IP

address given is a random IP address assigned by her employer's information system at varying intervals.

The complainant argues further that it is clear from the timing of the SP's messages and its web stats that this proof is unreliable. In short, the SP alleges that the entire subscription process took 34 seconds from the time the complainant's computer was first used to access the SP's website.

The complainant also denies that she has ever downloaded any games offered by this subscription service. This is reflected in her cellphone account. The complainant also denies that any other person has subscribed for the service using her cellphone and/or computer as has been alleged by the SP.

Instead of being charged the amount of R44.97 per week for the service, the complainant received further promotional messages every 2 days for which she was billed R13.15 per message.

SP's response

The SP states that it works through a pin code system, whereby a computer and a specific mobile phone are both needed to complete the subscription process. This is to prevent unlawful use of the service.

The SP provided its system logs to prove the IP address of the computer that was used to enter the complainant's mobile number on its website. From the logs, it appears that the SP's website was accessed on 3 March 2010 at 16:37:43 from IP address 196.210.157.236.

The SP also provided MO logs for the message that was sent to the complainant's number with the unique pin code. On 3 March 2010 at 16:37 the following message was sent: *Enter this code:XJ136 to join the MobileNobo subscription service @ R44,97/week. Help?Call 0800982166.Unsubscribe? SMS stop games to 39826.*

The SP's logs then show that the unique pin code was entered from IP address 196.210.157.236 at 16:38:17 on 3 March 2010.

The SP's logs also show that several attempts were made to download content from a computer browser. The SP states that this would not work as a user can only download content by opening the link from the SMS in the phone itself.

Sections of the Code considered

Section 4.1.1

Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

Section 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.

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 11.2.1

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.
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Decision

The SP has provided logs of its outgoing messages as well as web stats showing the IP address of the computer that was allegedly used to access its website to activate the subscription process. These logs do not meet the requirements of section 11.6.2 of the WASPA Code of Conduct in that they are not clear on whether the complainant actually opted in to a service or services.

The complainant has acknowledged that the IP address in the SP's logs corresponds with an IP address for her employer's information system, although she states further that the system randomly chooses IP numbers and that it would be impossible to link the particular number that appears on the log with her computer.

The complainant also questions the timing of the activation process as it appears from the SP's logs. The complainant makes the point that the entire activation process, involving a computer browser and cell phone took approximately 34 seconds. This does indeed appear to be an unrealistic time frame and must be doubted.

The complainant denies that she ever accessed the SP's website or that her computer and/or mobile phone were used to subscribe to the SP's service. Based on

the facts that are before me, I am unable to conclude whether the complainant validly subscribed to the SP's service on 3 March 2010 or not.

The logs also do not provide proof that all required reminder messages have been sent to that complainant, nor do they provide a detailed transaction history indicating all charges levied and the service or content item applicable for each charge.

The SP has also contravened a number of other provisions of the WASPA Code of Conduct. Firstly, the charges levied on the complainant's account are different from the pricing reflected in the SP's welcome and promotional messages.

It is not disputed that the complainant did not download any games using the service. However, she was charged for numerous SMS messages sent by the SP at R13.15 per message. This is a clear contravention of sections 4.1.1 and 4.1.2 of the Code.

Furthermore, there is no evidence before me that the SP sent the required monthly reminder messages to the complainant about the subscription as required by section 11.2.1.

The complaint is accordingly upheld.

Sanction

The SP's contravention of sections 4.1.1 and 4.1.2, particularly in relation to the pricing of services, must be viewed in a serious light and has been taken into account as an aggravating factor when considering the appropriate sanctions to be given.

I have noted the previous complaints regarding the SP's subscription services which were upheld against it (see complaints 7435 and 7505).

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 must provide written proof that it has done so to the WASPA Secretariat within 7 (seven) days of receipt of this report.

2. The SP is fined an amount of R 150 000.00.

3. The SP is formally warned that any further contraventions of the WASPA Code of Conduct involving its subscription services will result in the suspension of the relevant short code/s for such services.