



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Cointel
Service Type	Content Download
Source of Complaints	Public
Complaint Number	#0398

Complaint

A complaint was received from a member of the public concerning content requested from the SP. The complainant states:

On 6 aug 2006 i responded to a TV ad for adult video MMS content, by sending an sms to 39117 (for a cost of R15), and received a message back asking me to sent another text to 39175 for a further R30, then followed by another text to 42608. After all this and R45, i still didn't receive any video or content, but was subscribed to the service which deducts R30 per month plus R5 per day off my account. I still receive sms's from this company even though i have stopped the service. This is false advertising and fraud, as i have spent money and not received content back.

The Adjudicator considered the following provisions of the WASPA Code of Conduct:

3.3. Service levels

- 3.3.1. Members will not offer or promise services that they are unable to provide.
- 3.3.2. Services must not be unreasonably prolonged or delayed.
- 3.3.3. A member is not liable for any failure to provide a service due to circumstances beyond that member's control.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. Where feasible, persons receiving commercial messages should be able to remove themselves from the database of a message originator using no more than two words, one of which must be 'STOP'.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

11. Subscription services**11.1. Manner of subscription**

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services".

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 bundled with a request for a specific content item.

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

11.1.8. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.3. Termination of a service

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

11.3.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

11.3.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

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

SP Response

The SP provided the following response:

We respond as follows to complaint #0398.

1. It seems the complaint has two aspects to it, viz: (a) that the complainant did not receive content that he paid for and (b) that he remained subscribed to the service after he had tried to unsubscribe.

2. Before dealing with the two aspects of the complaint, it is important to note that the complainant's allegation that he sent an SMS to 39117 in response to which he received an SMS asking for another SMS to be sent to 39175, then followed by another to 42608 is incorrect. By sending an SMS to 39117 (or 39175) a customer will immediately be entitled to an MMS video at a cost of R15 without having to send any further SMS's. The customer will however receive an SMS inviting him to subscribe to the service (which he is not compelled to respond to as the complainant implies) by sending an SMS with a keyword to a R30 premium rated SMS short code). Only if the customer agrees to subscribe will he then be subscribed for a further 4 days (during which period he will receive 4 MMS's) at a once-off cost of R30, and at the end of the 4 day period he will be given the choice of opting-out, failing which he will be subscribed to the service at a cost of R5 per day until he unsubscribes.

3. Dealing now with the first aspect of the complaint we have checked the logs and can confirm that due to technical difficulties at the gateway the complainant did not receive the MMS on the day he ordered, however the technical issues were resolved over the course of the next few days, and the complainant received the content that he had ordered on 11 August 2006.

4. Dealing with the second aspect of the complaint we confirm that the complainant expressly agreed to subscribe to the service, at which point he was specifically advised that if he wished to unsubscribe at any time then he

should send in the words "STOP MMS" to the short code 31114 (at a cost of R0.50). The complainant in fact sent in the word "STOP" to 31114 and for this reason the system was unable to unsubscribe him. He has (subsequent to receipt of this complaint) now been unsubscribed from all services.

5. We therefore deny that we have breached any part of the Code. However having regard to the fact that the complainant did not receive his first item of content on time, we are prepared (without prejudice or admission of fault and purely as a gesture of good will) to refund to him his initial R45 as well R5 per day for each day after he attempted to unsubscribe.

Adjudicator's Decision

The Adjudicator noted that the complainant had not supplied the detail of any of the messages received by him. In the absence of some evidence indicating that the SMS messages received by the complainant required the transmission of additional SMS messages to premium rated numbers in order to obtain content, as indicated in the complaint, the Adjudicator accepted the veracity of the SP's submission.

The Adjudicator noted the provisions of clauses 3.3.2 and 3.3.3 of the WASPA Code of Conduct. In the Adjudicator's view, a delay of between four and a half and five days is unreasonable. The SP indicates that this delay was due to circumstances beyond its control and thus the SP should not be liable for such delay in terms of clause 3.3.3 of the WASPA Code of Conduct.

Based on the SP's submission and the lack of further evidence, this complaint is not upheld.

The SP's offer to make a full refund to the complainant is noted and welcomed. It is not clear from the SP's offer if such refund has in fact been processed, or if such submission is an offer dependant on the outcome of this complaint. Unless the Adjudicator finds a breach of the WASPA Code of Conduct, it is not within his power to order the SP to abide by the offer made. In this regard, the Adjudicator noted that:

- The SP's offer accords with the spirit of the WASPA Code of Conduct and recommended to the SP that if the refund has not yet been processed, that it be processed forthwith on receipt of this report;
- The complainant was confused by the promotional SMS message for the SP's subscription service and recommended that the SP revisit the wording thereof and investigate if such message should be revised to avoid future confusion; and
- The SP should ensure that the complainant is not only unsubscribed from the SP's subscription service, but is also removed from any of the SP's commercial SMS lists promoting the SP's services.

The complainant is advised that should the SP not refund the costs incurred by him, as indicated in their submission, he is welcome to resubmit a complaint and is advised to include the content of the SMS messages received by him from the SP, to allow for a more complete evaluation of the complaint.