



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno
Information Provider (IP):	iTouch
Service Type:	Subscription Service
Complainant:	Public
Complaint Number:	100462
Code Version:	10.0
Advertising Rules Version:	N/A

Complaint

Complaint 10062 is the escalation of unsubscribe request 266819 regarding the complainant insisting that they never used the site that activated the subscription.

The formal complaint was sent to the SP on 2010-07-23 and they responded on 2010-07-30.

The complainant refused resolution on 2010-09-07 due to a refund not being offered.

The secretariat requested further information from the complainant on 2010-09-08.

On 2010-09-22 and 2010-09-29 (via fax) the complainant provided their billing information.

Complaint was assigned for adjudication on 2010-10-04.

Service provider's response

The service provider responded with proof and details of how and when the complainant registered for the subscription service together with examples of the welcome message that was sent in line with what is required of the SP in terms of the WASPA Code. Due to the fact that at no point did the SP withhold any information in the subscription process or thereafter that would not have prevented the complainant from making an informed decision., the SP feels that no refund is merited.

The SP did not however provide proof of the monthly reminder message.

Sections of the Code considered

The service complained of falls within the ambit of subscription related services. The sections of the Code of Conduct applicable to this issue are sections 11.5 and 11.6 respectively.

The requirements of section 11.5 and 11.6 are set out below:

11.5. Welcome message

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information:

1. The name of the subscription service;
2. The cost of the subscription service and the frequency of the charges;
3. Clear and concise instructions for unsubscribing from the service;
4. The service provider's telephone number.

11.6. Reminder messages

11.6.1. 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. The customer may not be charged for these reminder messages.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. SMS HELP [optional keyword] to [short code]/call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

or

Reminder: You are 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 unsub, sms STOP [service keyword] to [short code].

11.6.3. 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 11.6.2.

11.6.4. The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

11.6.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

11.6.6. The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

11.6.7. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

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 SP's response to the complaint, (ii) the complainant's reply, (iii) the proof of subscription, (iii) the proof of the welcome message and it's compliance with the Code (ii) the sections of the Code considered.

I do not feel that the SP contravened the Code with respect to the subscription process or the sending of a welcome message. They have provided proof of subscription as well as a copy of the welcome message which clearly demonstrates all that is required in terms of 11.5 of the Code.

They did not however provide any proof of a monthly reminder message nor can I ascertain whether one was sent from the itemised billing provided.

I therefore cannot rule on whether a refund should be offered until such time as I receive proof of the monthly reminder message sent in compliance with 11.6 of the Code.

If this cannot be provided I feel that the complainant should be refunded.

Claim partly upheld.

Sanctions

Should the SP not provide satisfactory proof of the sending of a monthly reminder message in compliance with the Code within 7 (seven) days of this ruling the SP is to refund the complainant within 5 (five) days of receiving this report.