



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno
Information Provider (IP):	iTouch
Service Type:	Subscription Service
Complainant:	Public
Complaint Number:	10443
Code Version:	9.0
Advertising Rules Version:	N/A

Complaint

Complaint 10443 is the escalation of unsubscribe request 444120 where the stop request was not honoured.

The formal complaint was sent to the WASP on 2010-09-08 and they responded on 2010-09-13.

The complainant refused resolution on 2010-09-30.

The complainant refused resolution on the basis that she feels the unsubscribe request was not honoured timeously, as a result charges were deducted from her account erroneously and no refund was offered.

Service provider's response

- a. The WASP responded that the complainant had used the incorrect "stop" command to opt-out. They rely on section 11.8.2 of the Code in support of this statement. Accordingly they do not feel they failed to honour an unsubscribe request as to their minds no request was evident.
-

Sections of the Code considered

The service complained of falls within the ambit of the termination of a subscription service and in particular section 11.8.2.

11.8. Termination of a service

11.8.2 Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be "STOP". If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. I also reviewed other complaints relating to this WASP.

I will deal with the following issues raised by the Complainant:

1. The issue of timeous unsubscription;
2. The issue of being provided for a refund for services not subscribed to.

I feel that the SP stretched the meaning of section 11.8.2 of the Code to suit their purposes. They claim that because the Complainant sent the word "stop" as opposed to "stop s" they did not subscribe her. This was not clear and transparent. Section 11.8.2 allows WASPs to use two words where there could be confusion as to which service is being opted out of. This Complainant a) did not subscribe to more than 1 service offered by the SP and b) adding the single letter "s" after a space at the end of the word "stop" is not clear to indicate that anything other than the word "stop" should be sms'd back.

Claim upheld.

Sanctions.

In determining an appropriate sanction, the following factors were considered:

The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and the SP's subsequent responses.

1. The SP is required to amend their process in terms of 11.8.2 to make it clearer that there is a difference between the word "stop" for normal opting out and where an opt out is in respect of multiple services to make it clear that there is a difference and what the difference is that is required. This must be **clear and unambiguous** and should not be confused with the normal opt out process.
2. The SP must refund the Complainant in full.
3. The SP is fined R10 000 for its breach of section 11.8.2 to be suspended pending their compliance with sanction 1 above within 30 (thirty) days of this report.