



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Sybase 365
Information Provider (IP): (if applicable)	AMV Holding Limited
Service Type:	Subscription
Complainant:	Member of Public
Complaint Number:	3344
Code version:	Code v5.7 and Ad Rules v1.6

Complaint

1. On the 14th of February 2008 the Complainant, a member of the public, posted the following complaint on the WASPA website at URL www.waspa.org.za:

Affiliations: I am not employed by, or otherwise associated with one of WASPA's member companies

Affiliation_Information:

Name_WASP: AutopageCellular

OtherID:

Code_Breached:

Detailed_Description_Complaint: I keep on getting SMS messages like this.

\\"Reminder: You are a member of HOTMOB. Thanks for using our service Provider: Bluestream Mobile. Subscriptions: Billed at R30 per 5days 16+\"

I have not suscribed to any such service or want to belong to them. I do not even know what services they provide. I have been billed over R1000 over the last 3 months by this sort of scam and have spoken to Auto page who only give me the contact details of the company doing the billing. who tell me they will stop the billing but dont. They will not refund the money. I only want a bussiness phone to make calls and a SMS from time to time. I would like to get this Scam type billing blocked and get a refund of my money. Auto Page do not feel obliged to do much even though they deduct the money any pay these scam artists with no authorization of contract to pay these people.

Please could you help me in this regard.

Cell phone wireless device seems to be an open ended way for people to bill and rip you off for anything they like.

Tick_as_appropriate: Service provider has not resolved my complaint to my satisfaction

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

Response

2. The WASPA Secretariat established that the Service Provider in this case was Sybase 365, and forwarded the complaint to that member. The SP responded on the 29th of February. Its response may be summarised as follows:

- 2.1. The SP did not supply the advertised service, which was in fact provided by AMV Holding Limited ("the IP"), which has an "SMS Services Agreement" with the SP in terms of which the SP makes shortcode(s) available to the IP. The IP in turn agrees to abide by the WASPA Code of Conduct (as required by clause 3.9.1 thereof) and agrees to become a member of WASPA (I note that the IP is indeed listed as a WASPA affiliate member on the website at URL www.waspa.org.za.)

3. The SP attached to its response a response from the IP which reads:

We received the following MO to 31434 for our Direct Dish subscription club from an Advert in Dish magazine:

2007-07-14 19:01:50 Mobile 365 31434 DDC60344

The link for the site was then sent to the users handset along with the following message as shown on the attached extract:

Thanks 4 using Hotmob!Content on its way!Click on it 2 get ur content!Probs?Call 011-461-0317 or refer 2 ad.Txt stop to unsub.Sub 30ZAR every 5days.16+

The user has also been sent the following monthly reminders:

Reminder: You are a member of (temp). Thanks for using our service. Provider: Bluestream Mobile. Subscription: billed at R30 per 5 days 16+

We have received no stops from the user.

We have now ensured the user has been removed from all future messages.

4. The IP also provided a listing of messages received from and sent to the Complainant's number. There was no indication as to whether this is an exhaustive list.

5. Only one message from the Complainant's number was listed, which reads as follows:

14-Jul-2007 Sat 19:01 [removed] South Africa 31434 DDC60344

This corresponds with the message listed in the IP's response above as that in which the Complainant subscribed to the service.

6. The outgoing messages listed commence on the 14th of July 2007 (the same day on which the IP alleges the Complainant subscribed to the service) and end on the 14th of February 2008. It is not clear if the messages were terminated on that day as a result of the complaint or if the IP merely furnished the WASPA Secretariat with records up until that date.
7. The first outgoing message was sent on the 14th of July 007, the same day as the Complainant allegedly subscribed to the service. The message reads as follows:

Thanks 4 using Hotmob!Content on its way!Click on it 2 get ur content!Probs?Call 011-461-0317 or refer 2 ad.Txt stop to unsub.Sub 30ZAR every 5days.16+

8. Regular reminder messages were sent to the Complainant which read as follows:

Reminder: You are a member of HOTMOB. Thanks for using our service.
Provider: Bluestream Mobile. Subscription: billed at R30 per 5 days 16+

9. An analysis of the message listing shows that these reminder messages were sent on the following dates:

9.1. 19 Jul 2007

9.2. 23 Aug 2007

9.3. 27 Sep 2007

9.4. 01 Nov 2007

9.5. 06 Dec 2007

9.6. 10 Jan 2008

9.7. 14 Feb 2008

That is, 35 days apart.

10. A message was also sent to the Complainant on 14 September 2007 reading as follows:

FREE GAMES, VIDS, TONES and MORE!! reply SABONUS to this sms
NOW 4 instant access 2 FREE content! Subscription R30/5day. sms STOP
to quit. help@blue-stream.biz

Portion of the Code Considered

11. The following clauses of the WASPA Code of Conduct are of relevance:

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:

- (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.

11.1.8. A monthly reminder SMS must be sent to all content subscription service customers containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

11.1.9. The monthly reminder SMS must adhere to the following format:

- (a) The monthly reminder must begin with either "Reminder: You are a member of NAME OF SERVICE" or "You are subscribed to NAME OF SERVICE".
- (b) Any marketing for a new service must appear after the cost and frequency of the existing service and the service provider's telephone number.

Decision

12. I have no reason to disbelieve the IP's version that the Complainant, or at least someone using the Complainant's number, subscribed to the content in question. There has been no suggestion that there was interference with the Complainant's handset or a "man-in-the-middle" attack of some sort and so my opinion is that the subscription to this service was a valid one.

13. I also have no reason to disbelieve the IP's version that no unsubscribe request was received by SMS from the Complainant.
14. The IP certainly complied with the provisions of clause 11.1.7 when the Complainant subscribed to the service.
15. The conduct of the IP after the provision of the service commenced is however problematic on two counts which I will deal with separately.

Complaints Procedure

16. The Complainant says that he complained several times to "...the company doing the billing..." concerning the continuing charges he was incurring in respect of this service, but that the charges were not stopped despite assurances that they would be.
17. If the Complainant had categorically stated that he had complained to the IP and that it had not acted on his unsubscribe request I would have found the IP in breach of clause 4.1.5 of the Code of Conduct. As I do not have adequate information as to who he complained to, I am unable to find a breach in this regard. I note however that in complaint 3098 the same IP's complaints procedure was found to be deficient and the WASPA Monitor was requested to investigate it.

Manner of Subscription

18. Clause 11.1.8 clearly states that reminders should be sent monthly. The IP sent such reminders to the Complainant every 35 days. Months 35 days in length are conspicuous by their absence from the Gregorian calendar. Best practice is to send reminders on the monthly anniversary of a customer's subscription to a service.
19. More seriously, in the version of the reminder messages contained in the complaint and in the version provided by the IP there is no mention of the IP's telephone number as required by clause 11.1.8 (c) of the Code of Conduct.
20. I thus find that the IP has breached clauses 11.1.8 and 11.1.8 (c) of the WASPA Code of Conduct.

Sanction

21. WASPA has always closely scrutinised the provision of subscription services due to the potential for abuse of the public. For this reason infringements of the Code of Conduct relating to this field are severely dealt with by adjudicators.
22. On the other hand the IP included unsubscribe instructions in both its initial SMS to the Complainant and the SMS of 14 September 2007. The Complainant can hence not argue that he had no notice of how to unsubscribe from the service, which is really the cause of his complaint. While the IP certainly did prejudice the Complainant by not providing its telephone number in reminders, the infringements

were not as prejudicial to the Complainant as they would have been if there had been absolutely no indication of how to unsubscribe.

23. Taking the above into account while mindful of the importance of enforcing the Code of Conduct in this service area, I impose the following sanctions on the IP:
 - 23.1. The IP is to refund all monies paid by the Complainant in respect of the subscription service in question from the 14th of July 2007 to date.
 - 23.2. The IP is to ensure that it immediately removes the Complainant from membership of all subscription services that it offers, if it has not already done so.
 - 23.3. The IP is to ensure that its reminder messages include its telephone number and that they are sent out at least once every calendar month. This change must be effected within five days of notice of this report.
 - 23.4. The IP is fined an amount of R 5 000.00, payable within five days of notice of this report.
24. The WASPA Secretariat is requested to bring the contents of this report relating to the IP's complaints procedure to the attention of the WASPA Monitor.
25. The WASPA Monitor is also requested to check that the IP has complied with the provisions of paragraph 23.3.

10 March 2008

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