

WASPA Member (SP)	Atinco SA
Information Provider (IP)	N/A
Service Type	Unsubscribe
Source of Complaint	Gerda
Complaint Number	#4467
Code of Conduct Version	6.1
Date of Adjudication	27/09/2008

Complaint

In this matter an unsubscribe request has been escalated to a formal complaint as it has not been satisfactorily resolved by the SP.

The Complainant who escalated the request has provided the following reason for escalation: No response from Atinco, despite numerous reminders.

SP Response

Despite numerous attempts by the Waspa Secretariat, no response was received from the SP.

Sections of the Code considered

Without the Complainant specifying which sections of the Code were breached, the Adjudicator, after reviewing the Complaint, considered the following sections of version 6.1 of the Code of Conduct:

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.

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

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

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

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

13.3.4. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint.

13.3.5. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. In this matter the WASPA Secretariat has made numerous attempts to elicit a response from the SP. It is regretful that the SP in this matter has failed to respond and the Adjudicator, in terms of section 13.3.5, has to assume that the SP does not wish to respond or is either ignorant of the WASPA Complaint procedure.

Based on the complaint raised by the Complainant, the Adjudicator in the absence of any response by the SP has no alternative but to assume that none of the above sections of the code were adhered to, hence the Complainant's failure to unsubscribe or failure to be unsubscribed by the SP. Although such an assumption might be construed as harsh, it is imperative for SPs to realise that without them submitting a response, an Adjudicator has no other alternative.

The complaint is therefore upheld.

In determining sanctions against the SP the following factors are considered:

- The prior record of the SP with regard to breaches of the relevant sections of the WASPA Code of Conduct; and
- The SP's failure to respond.

Having found no previous record of any misconduct on behalf of the SP, the Adjudicator has found it appropriate not to levy any fine against the SP. The SP is however formally reprimanded to adhere to all aspects of the code and more specifically those mentioned above. The SP is also ordered to refund the

Complainant for any content downloaded and to unsubscribe the Complainant within five (5) days of notification hereof.
