



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Mira Networks
Information Provider (IP) (if any)	Winikaya
Service Type	Unsolicited commercial mail / competition
Source of Complaints	Mr C Du Plessis
Complaint Number	4695
Date received	15 August 2008
Code of Conduct version	6.1

Complaint

This complaint has been escalated from the informal complaint procedure. The complaint refers to the following unsolicited sms advertising the SP's Winikhaya competition service:

Thanks for helping kids in need. You can win R500 000 this month, and R5000 in prizes today! Why not try again? Good luck! R7.50 AUG31208802.

The complainant alleges that he has received the sms continuously and is not able to unsubscribe because there is no unsubscribe functionality. When the complainant manually requested to be unsubscribed from the mailing list he was charged R7.50. His request was not actioned and he continued to receive the message.

SP Response

In response to the unsubscribe request made via the WASPA unsubscribe system, the SP stated that the complainant's number could not be found and therefore they could not action the unsubscribe request.

After the complaint was escalated, the SP has now implemented a nominal rated stop shortcode for the Winikaya service and users can now send STOP to the shortcode 32345 to be removed from the Winikaya database.

The SP also apologised on behalf of its client, Winikhaya, and tried to contact the complainant to offer a refund. They were not able to speak to the complainant directly and the woman who answered at the complainant's number is alleged to have been verbally abusive and told the SP's representative not to call again.

Sections of the Code considered

5. Commercial communications

5.1. Sending of commercial communications

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

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. Any mechanism for allowing a recipient to remove him or herself from a database must not cost more than one rand.

5.1.4. Notwithstanding 5.1.3, for SMS and MMS communications:

(a) A recipient should be able to stop receiving messages from any service by replying with the word '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. The reply 'STOP' procedure must be included at the start of any messaging service, for example: "reply STOP to opt out".

(b) Recipients of premium rate or non-replyable messages must have the option to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). This opt-out instruction must be included in every commercial premium rate or non-replyable message, for example. "sms STOP to 32xxx to opt out".

5.1.5. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

9. Competitions

9.1. Provision of information

9.1.1. Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

9.1.2. Any promotional material for a competition service must include details of how the competition operates.

9.1.3. Interactive competition services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

9.1.4. Promotional material must clearly state any information which is likely to affect a decision to participate, including:

(a) the closing date;

(b) any significant terms and conditions, including any restriction on the number of entries or prizes which may be won;

(c) an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes;

- (d) any significant age, geographic or other eligibility restrictions;
- (e) any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item;
- (f) the entry mechanism and workings of the competition.

9.1.5. The following additional information must also be made readily available on request, if not contained in the original promotional material:

- (a) how and when prize-winners will be informed;
- (b) the manner in which the prizes will be awarded;
- (c) when the prizes will be awarded;
- (d) how prize-winner information may be obtained;
- (e) any criteria for judging entries;
- (f) any alternative prize that is available;
- (g) the details of any intended post-event publicity;
- (h) any supplementary rules which may apply;
- (i) the identity of the party running the competition and responsible for the prizes.

9.1.6. Competition services and promotional material must not:

- (a) use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants;
- (b) exaggerate the chance of winning a prize;
- (c) suggest that winning a prize is a certainty;
- (d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

9.1.7. Any customer entering an IVR, SMS or MMS competition after the competition has closed must be sent a reply indicating that the competition has already closed. This is in order to prevent a customer from spending unnecessary time on a call or submitting repeated entries for a competition after the closing date or time.

9.1.8. If a competition closes at a specific time of day, then that time must be clearly communicated to all entrants. For live television competitions, an appropriate count down or advanced warning must be provided.

Decision

Based on the SP's response and the corrective action now taken by it, I can assume that the SP is not disputing the merits of the complaint.

The SP has committed a number of contraventions of the WASPA code. The sms's sent by the SP are in breach of section 5 in the following ways:

1. There is no facility allowing the complainant to remove himself from the message originator's database.
2. When the complainant did try to manually unsubscribe, he was charged R7.50 which is much more than one rand.
3. The complainant was not able to stop receiving the messages by replying with the word 'STOP'. The reply 'STOP' procedure was not included at the start of the message.

Although the complaint does not refer to any contravention of section 9 of the WASPA code, and I am not able to decide on this issue, it appears that the messages being sent by the SP also do not comply with the provisions of this section in numerous respects. I bring this to the Secretariat's attention with a view to a possible further complaint.

Sanctions

The SP's contravention of the code as above is serious. As mentioned by the complainant, there is scope for widespread consumer harm. The SP has now implemented a STOP mechanism which could have been done with relative ease before the service began. The fact that people who try on their own accord to unsubscribe are charged R7.50 is unconscionable.

The SP is ordered:

1. To refund the complainant all amounts charged to him.
2. To pay a fine in the sum of R75 000.00.

These sanctions will not be suspended pending any appeal by the SP.

The SP is also encouraged to investigate the nature and content of these messages further to determine whether they are comfortable that they do not fall foul of other provisions of the WASPA code.