



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	SMART TECHNOLOGY SOLUTIONS
Information Provider (IP):	Not applicable
Service Type:	Request to Unsubscribe
Complainant:	Public
Complaint Number:	5355
Code Version:	6.2
Advertising Rules Version:	Not applicable

Complaint

The Complainant requested to be unsubscribed from a subscription service on the 17th of July 2008. After making several attempts on his own and lodging various complaints with WASPA, he was notified that he was indeed unsubscribed. The Complainant however was not satisfied with the response and requested a refund. The Complainant also further indicated that he only managed to become unsubscribed in November 2008 after the help of MTN.

Service provider's response

In its initial response the SP stated the following:

Smartcall Technology Solutions on 2008-12-04 14:35:19 said: Have tried to call client, client is unavailable. This client has been unsubscribed from Fantasyfone.co.za since the 24-09-2008 at 10h32. There has been activity on this subscription. Therefore no refund is due. This email serves to confirm that the client is unsubscribed from Fantasyfone.co.za.

The SP then further went and issued the following response after numerous attempts by WASPA for a follow up on their behalf.

Please find below response from our content provider: Hi Lorinda

* Client contacted * Client states that he requested from cointel to be unsubscribed in July * no refund is due as this request was received from Smartcall on the 04/12=08.

Sections of the Code considered

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.

4.1.6. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

4.1.7. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

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.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her.

In this particular instance the Adjudicator is of the opinion that the SP in this matter has not acted according to the various sections of the Code of Conduct as mentioned above. The first failure on its behalf was to make sufficient provisions for the Complainant to unsubscribe. Although the SP states in its initial response that it did indeed unsubscribe the Complainant, it states in a later email correspondence that it unsubscribed the Complainant only on the 24th of September 2007, even though the complaint was already lodged on the 17th of July 2008. This contradicts its initial statement. It further went on to state that its content provider was not prepared to issue a refund since the SP only brought this to its attention on the 4th of December 2008.

Without even going into further detail the Adjudicator is of the opinion that the SP in this matter has not made any real attempt in trying to resolve the matter, neither did it provide the Adjudicator with sufficient proof that it can justify its actions for the withholding of a refund and the Adjudicator therefore finds the

SP in breach of its obligations under the code with regards to client services as well as its methods in addressing subscription services, the managing thereof, and its failed attempts in trying to resolve this matter in a justificatory manner.

The Adjudicator is specifically alerted to the fact that the SP in this matter did not follow section 4.1.5. of the Code, and has therefore failed its customer.

The complaint is 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;
- The SP's subsequent conduct in eradicating any breaches; and
- The SP's failure to take appropriate remediation actions.

The SP is given a formal reprimand and ordered to issue the Complainant with a full refund for any subscription services rendered in this matter within five days of receiving notification hereof..