



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Venista
Information Provider (IP) (if any)	n/a
Service Type	Subscription service
Source of Complaints	Ms E M Labuscagne
Complaint Number	6278
Date received	21 April 2009
Code of Conduct version	7.0

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe facility in respect of her subscription to the SP's music club content subscription service. The complainant denied ever subscribing to this service and requested proof of subscription as well as a refund from the SP.

The complainant states that she had received a number of messages relating to the service over the past months but had deleted these messages. It was only when she later discovered that she was being charged for such messages, that the complainant then logged her unsubscribe request.

After further investigation with her network operator, the complainant discovered that an amount of R420.00 had been charged to her account since 25 December 2008. The matter was not resolved informally despite the SP tendering a refund of R560.00 (R460 as a refund and R100 to cover the cost of converting a sterling cheque into rands).

This complaint was then escalated because the SP failed to provide proof of subscription.

SP's response

The SP has unsubscribed the complainant from the music club content subscription service and initially offered a refund of R560.00 to the complainant (as above). However, the complainant subsequently received 2 x R20 notes in the post from the SP which appears to have been tendered as a refund. No further explanation for this action has been given by the SP.

Upon request from the WASPA Secretariat and once this complaint had been escalated, the SP has provided the relevant logs relating to the complainant's number.

It appears from the information contained in the SP's log that an opt-in request to subscribe for the service was received via WAP from the complainant's number on 25 December 2008 at 14:39.

The following message was sent to the complainant:

Get+the+singles+chart+on+your+mobile+each+week+and+choose+two+top+quality+Ringtones!+Help%3A+0861106514.+To+stop+txt+STOP+to+31201.+Cost+R20+per+5+days

The SP sent further monthly reminder messages confirming the complainant's subscription to the service on the following dates:

- a) 20 January 2009;
- b) 19 February 2009;
- c) 21 March 2009; and
- d) 20 April 2009.

These messages read as follows:

*Thanks+for+your+membership.+Help%3A+0861106514.+To+stop+txt+STOP+to+31
201.+Cost+R20+per+5+days.*

Sections of the Code considered

Reference has been made to sections 4.1.1, 4.1.5, 11.1.2 and 11.1.4 in the complaint.

Section 4.1.1 reads as follows:

Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

Section 4.1.5 reads as follows:

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.

Section 11.1.2 reads as follows:

Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.

Section 11.1.4 reads as follows:

Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

In addition, the following sections have been considered:

Section 11.1.8 reads as follows:

Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (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.*

Section 11.1.10 reads as follows:

Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing]. Help? Call [call centre number + "(VAS)" if applicable]. To unsubscribe, [unsubscribe instructions].

Section 11.2.1 reads as follows:

A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

Section 11.2.2 reads as follows:

The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

Section 11.2.3 reads as follows:

The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.2.2.

Section 11.2.4 reads as follows:

The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

Section 11.4.1 reads as follows:

For services where the primary means of interacting with the service is via WAP, either the format set out in 11.2.2 or the the following format must be used: U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, dial [USSD code1 + "(VAS)" if applicable] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, click here [WAP link].

Section 11.4.2 reads as follows:

Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required. 11.4.3. The WAP link in the reminder message must begin with "www" to ensure that all phones recognise this as a clickable link.

Section 11.4.4 reads as follows:

All of the other requirements set out in section 11.2 of the Code continue to apply to services where the primary means of interacting with the service is via WAP.

Decision

Based on the logs provided by the SP after this complaint was escalated, and in the absence of any contradictory evidence, I accept that there was a valid opt-in request from the complainant's number on 25 December 2009.

It also appears from the logs provided that a valid confirmation message and further monthly reminder messages were sent to the complainant's number by the SP regarding her subscription to the service.

I am satisfied that the SP has dealt with the unsubscribe request and that the complainant has been validly unsubscribed from the service.

I also do not believe that the complainant is entitled to any refund because she was validly subscribed to the service. The offer of R40.00 by the SP must therefore be seen as an *ex gratia* payment rather than any acknowledgement of any wrongdoing on the part of the SP.

The SP has not contravened any of the provisions of the WASPA Code and this complaint is accordingly dismissed.