



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	Automatic subscription service with no reminder messages
Complainants:	Alphadine Adams
Complaint Number:	6304
Code Version:	6.2
Advertising Rules Version:	2.3

Complaint

The Complainant lodged the following complaint:

“Today [23rdApril2009] I loaded airtime on my phone (R35), and within a matter of hours all my airtime had been deducted. ITouch deducted R5 from my account in 7 separate transactions. I was subscribed to the service without my knowledge or consent. I did not subscribe nor receive a confirmation sms (as I understand the procedure to be). I called itouch, and i have been billed since October 2008. It is now 6 months later, and in that six months not once have i received an sms informing me I am a subscriber. How do you unsubscribe from a service you have no knowledge about. I would like to be reimbursed for the full amount owing since activation. I have not utilised this so called service since I Allegedly subscribed to it.”

Service provider's response

The SP in its response stated the following:

“We do apologize for the late response in this regard, due to unforeseen circumstances. Please accept our apologies.

The user of this complaint was subscribed via sms. He or she sent in the keyword FREE to 30123 on the 25th October 2008.

DETAIL OPTIONS

key	value=/b>
PayMethod	H

StrDtm	25-10-2008 22:53:17
Sms Sent In	FREE<=pan style='font-size:12.0pt'>
Joining Type	sms
service	teljoy:loadi=:free_trial_free
user<=pan style='font-size:12.0pt'>	+27824995671=/span>

In the reporting information window below, you will find that the Vodacom network had informed us of the monthly reminder sms's being delivered to the user.

We do not deem a refund justified, as our call centre number was sent in the monthly sms's and as well as information on how to unsubscribe from the Service.

Unfortunately all information dated back to 2008 is not kept on the system, as it is archived. In order to retrieve information dating back to last year, we would need a 10 day response period, should you require any further information in this matter regarding sms sent to the user. Should you require any further information, please do not hesitate to contact us.

The user was unsubscribed on the 23rd April 2009, thus monthly reminders stopped as well. We are in the process of viewing messages sent to users monthly and will make changes accordingly to adhere to the WASPA code Of Conduct.”

Sections of the Code considered

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.5. Use of the word “free”

6.5.1. The keyword “free” or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

11.1.2. 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.

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

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.

11.1.5. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.6. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.1.7. 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.

11.1.8. A monthly reminder SMS must be sent to all 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.

11.1.10. Once a customer has subscribed to a subscription service, neither the amount nor frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.1.11. The format of the both the initial notification message and the monthly reminder should comply with the relevant section of the WASPA Advertising Rules.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the SP's response.

The apology offered by the SP is accepted although it must be stated that “unforeseen circumstances” does not validate an excuse for any SP to act in contravention of the WASPA Code’s allotted time periods for submissions.

It is therefore noted that such an apology would not suffice in future.

The Adjudicator has perused the various logs submitted by the SP in this matter and does not think it necessary to acquire a copy of the 2008 logs. The content of the 2009 logs provides enough information to derive to a conclusion.

The allegation of the SP that the Complainant in this matter did subscribe to the service is accepted and the log provided gives a clear indication that this did indeed happen.

The further proof provided by the SP also indicates that the SP did indeed send monthly “reminders” to the Complainant in this matter.

However, the Adjudicator is of the opinion that none of the methods utilized by the SP to conjure the Complainant into subscribing to its services, nor the way in which the SP provided the Complainant with reminder messages, was done in a way that conforms to either the Code of Conduct or Advertising Rules.

In its own words the SP states that the Complainant “sent in the **keyword FREE** to 30123 on the 25th October 2008”

The Code clearly states that the keyword “free” or words with the same or similar meaning (in any language) **may not be used for any service unless that service has no associated charges whatsoever**, excluding network bearer charges.

The Adjudicator therefore has no hesitation in finding the SP in breach of section 6.5.1 of the Code.

This would therefore indicate that the subscription service was null and void and most definitely not a justification in subscribing the Complainant in this matter to the said service.

The Adjudicator is of the opinion that the use of the keyword “free” is misleading and deceptive and finds the SP also in breach of section 4.1.2 of the Code.

The Adjudicator also sees such use as a clear breach of section 11.1.4.

Although further elaboration in this matter might seem futile since it has been established that the Complainant’s subscription was not justified, the Adjudicator does however feel that the method utilised by the SP to issue so-called subscription reminders, is something that deserves further scrutiny.

In its monthly reminders the SP states the following:

“Reminder:LOADIN!Entertainment Anytime!U get 60 gam...”

Not having access to what follows the word “game” is irrelevant in this instance.

The Code clearly states that a monthly reminder SMS must be sent to all 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.

It goes further to state that 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.

The Code then even goes on just to make sure that no confusion exists:

“The format of the both the initial notification message and the monthly reminder should comply with the **relevant section of the WASPA Advertising Rules.**”

This relevant section is section 12 of the Advertising Rules.

Clearly, the SP in this matter does not conform to section 12 of the Advertising Rules and therefore the Adjudicator has no alternative but to find the SP in breach of section 11.1.8, 11.1.9 and 11.1.11.

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; and
- The SP’s subsequent conduct in eradicating any breaches.

The SP is fined the sum of R80 000, 00 payable to the WASPA Secretariat within five (5) days of notification hereof.

The SP is further ordered to refund the Complainant in full.

The Adjudicator further orders that the service provider immediately suspend any similar advertising on any other forum or media until such time as it complies fully with the WASPA Code of Conduct and WASPA Advertising Rules.

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the SP is indeed complying with this.