



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	SMSNET-SA
Information Provider (IP) (if any)	
Service Type	Subscription service
Source of Complaints	J Framiah
Complaint Number	6811
Date received	17 June 2009
Code of Conduct version	7.4

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 2 June 2009. The SP provided unsubscribed the complainant and provided proof of subscription.

The complainant was not satisfied with the SP's response and the complaint was accordingly escalated to the formal complaint procedure.

The complainant stated that he had previously tried to contact the SP on 30 May and 1 June 2009 but nobody answered the phone. He also denied that he had subscribed to the service.

Regarding the proof of subscription, the complainant states that the document provided only indicates a R15 charge whereas he was charged in excess of R200.00.

SP's response

The SP has stated that the reason for the unavailability of its helpline was due to a problem with its Telkom lines.

The SP states that the complainant was not subscribed to any service but rather made single purchases and downloads. Proof of the download history for the complainant's number was furnished with the response.

The SP states further that its subscription service costs R15 per week, whereas each single purchase has its own price attached. The complainant downloaded 3 games for R40 and four games for R20 each.

Complainant's reply

The complainant denied that he downloaded any of the games referred to by the SP from his phone and persisted in his claim to have these charges reversed.

Sections of the Code considered

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2. Members are committed to lawful conduct at all times.

4. Customer relations

4.1. Provision of information to customers

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.

4.1.8. Customer support may not be provided via premium rated numbers, and may only be provided via standard-rate or VAS-rate numbers.

4.1.9. Members undertake to inform their wireless application service customers that they are bound by this Code of Conduct. Members also undertake to make these customers aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer wish to do so.

4.1.10. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

11. Subscription services

11.1. Manner of subscription

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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. *An advert for a subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.*

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

11.1.5. *Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.*

11.1.6. *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.*

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

11.1.8. *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.*

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

11.1.10. *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].

Decision

Based on the download history provided by the SP, it appears that the complainant was never subscribed to any of the SP's services. Instead, a number of games were downloaded to the complainant's number on 2, 12 and 25 April 2009.

The complainant has denied that he downloaded any games to his phone but has offered no further evidence to contradict the SP's download history.

The complainant was not charged a weekly subscription fee but was charged an individual price of either R40 or R20 for each downloaded game.

I am therefore of the view that there is no basis for a refund being paid to the complainant.

Regarding the inoperability of the SP's helpline, I have noted the SP's excuse regarding problems with its Telkom lines. However, the SP has offered no details of these problems or of the relevant dates and times. The SP has also not provided a voice mail system for the complainant to leave a message.

I am therefore of the view that the SP has contravened section 4.1.7.

Sanction

The SP is fined an amount of R25 000.00. This fine will not be suspended pending the lodging of an appeal.