



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	w2Mobile
Information Provider (IP) (if any)	
Service Type	Subscription service
Source of Complaints	Mr B Duchen
Complaint Number	8200
Date received	30 November 2009
Code of Conduct version	8.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 23 November 2009. The SP responded by unsubscribing the complainant, blocking his number and offering a refund. However the complainant was not satisfied with the response and the matter has been escalated as a formal complaint.

The complainant states that he received the following sms message from the SP on 17 November 2009:

"W2mobile totally embarassing club. Cost R20/5days. For help sms Help to 31639 or call 0861000980. To unsubscribe sms STOP to 31639"

He immediately sent a sms back to the short code number 31639 stating he would report the SP to the "Consumer Protection Commissioner" if he received one more message.

He then received a further sms from the SP stating that "*We cannot process your request. You are subscribed to this service. Help: 0861000980. To unsubscribe send STOP to 31639. This message is free of charge*".

The complainant then sent a further sms stating that "*I have not subscribed 2 yr service ever so why am I receiving this spam*". He then immediately received the same response again from the SP.

The complainant then sms'd "*STOP*" to 31639 and reserved all his rights to claim damages for the receipt of unsolicited sms's. He also contacted the telephone number provided and got through to the SP's call centre. He was not able to speak to anyone and was requested to leave a message, which he did.

On 20 November 2009, the complainant was contacted by an employee of the SP who was apparently phoning from a call centre in Australia. The complainant requested the SP's contact details and was given some web site addresses. He also asked where the SP was located and was told it was a German company. He then asked for a South African address and was advised that the SP operated through an aggregator (SybaseMobile365) in South Africa.

The complainant was also advised that he had been subscribed to the SP's service since 18 October 2009 and had already been billed an amount of R 100.00. The complainant denied that he had subscribed to the service. The operator said that she would see about reversing the charges as his subscription may have been due to a technical error.

The complainant requested a local address and contact details for the SP in order to take the matter forward. He was advised that the local person at the help desk had cancer and was unlikely to return to work. He was then told that contact details would be provided in an e mail.

The complainant then contacted his network service provider to query the debits to his account. It was confirmed that his account had been validly debited and he was given a contact number for SybaseMobile365.

The complainant contacted SybaseMobile 365 but the operator who answered the call knew nothing of bank accounts or addresses for the SP. She advised that they simply dealt with STOPS, queries and complaints. The complainant was then given WASPA's details.

On 23 November 2009, the complainant received an e mail from the SP indicating that he had been billed R 200.00 and not R 100.00 as previously indicated. They also requested his name and address in order that a cheque for a refund could be processed. The complainant provided his details while reserving all his rights.

The complainant is seeking full disclosure from the SP on the following:

1. How the SP operates, and their manner of charging and billing;
2. Their physical address and bank account details in South Africa;
3. Proof of his subscription to the SP's "Totally Embarrassing Club";
4. How funds were deducted from his account without confirmation from him or any communication to him that this would be done.

SP's response

The SP states that the complainant's number was originally entered on the following website on 16 October 2009:

<http://www.mobile-africa.net/total-embarrassing>.

The complainant was then sent a WAP push invitation for the SP's service which he responded to on 18 October 2009 by accessing a link to subscribe to the service. The SP sent a welcome message to the complainant's number on the same day.

The SP has provided MSIDN logs relating to the subscription and alleges that this information is unambiguous.

The SP also refers to previous correspondence exchanged with the complainant and believes that it has answered all of his queries, including the relationship between the SP and the network operator and aggregator; how revenue share is accomplished;

the SP's entire company profile and affiliated programs. All contact details and further information were provided and, despite his claims, the complainant has been refunded in full as a gesture of goodwill.

The SP states further that, despite an enormous amount of correspondence, the first time the complainant queried his actual subscription to the service was when he lodged this complaint with WASPA.

Complainant's reply

The complainant again denies that he subscribed to the service.

He also refers to previous discussions and correspondence he had with the SP from 20 November 2009 when he advised the SP that he had never subscribed to the service. The complainant therefore denies that this complaint was the first time the SP knew that he was querying his subscription to the service.

The complainant states that he does not understand the meaning of the information contained in the SP's log and requests an explanation.

Sections of the Code considered

3.10.1. Each member must supply WASPA with contact information (including at least a telephone number and an email address) for a primary and a secondary Code of Conduct representative.

3.10.2. Should the nominated representatives change, or the contact information for the representatives change, the member must notify WASPA of the changes.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

4.1.6. 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.

4.1.8. 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.

5.1.3. For SMS and MMS communications, 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 should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

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.

6.2.12. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

- (a) If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.
- (b) If the transaction is billed at less than R10, the price for the transaction must be clearly indicated as part of, or immediately next to, the link or option that will initiate the transaction and must be visible on the same screen as the link.
- (c) If the transaction is to initiate a subscription service, then the price and frequency of the service must be included directly in the text of the WAP link

or immediately adjacent to it and must be visible on the same screen as the link.

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 and may not be an entry into a competition or quiz.

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. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

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.

11.1.10. 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].

11.1.11. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.

11.2.1. 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.

11.2.2. 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].

or

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

11.2.3. 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.

11.4.1. 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 call [call centre number + "(VAS)" if applicable]. To unsubscribe, click here [WAP link].

11.4.2. 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.

11.4.4. 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.

11.5.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.5.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be ‘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.

11.5.5. Where a service is linked to a specific short code in advertisements for that service, then sending a ‘STOP’ request to that short code should result in the termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.5.8. Members must ensure that the termination mechanism is functional and accessible at all times.

11.5.9. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. U'll then b resubscribed @ [cost of service and frequency of billing].

11.5.12 If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

11.6.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
 - (b) proof that all required reminder messages have been sent to that customer;
 - (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
 - (d) any record of successful or unsuccessful unsubscribe requests.
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Decision

In adjudicating this complaint, I will deal with the following issues raised by the complainant:

1. Has the SP provided its company and contact details as required by the WASPA Code of Conduct?
2. Was the complainant validly subscribed to the SP's content service?
3. Was the SP's unsubscribe facility functional and was the complainant's unsubscribe request handled correctly?

1. The SP's company and contact details

The SP is registered as an affiliate member of WASPA. Its details are listed on the WASPA website as follows:

Web site: <http://www.mobile-africa.net>

Phone number: 086 100 0980
Email: info.za (at) w2mobile.com
Postal address: W2mobile GmbH, P.O. Box 190247, 50499 Cologne

I accessed the SP's website at the above URL on 10 March 2010 at 10:06 am and was directed to a promotional web page for an "Extreme TV" content subscription service run by the SP. The web page did not contain any information regarding the SP's registered company name and physical address.

The SP has therefore breached section 4.1.3 of the WASPA Code of Conduct.

2. Proof of valid subscription

The SP has stated in its response to the complaint that the complainant's number was originally entered on the following website on 16 October 2009:
<http://www.mobile-africa.net/total-embarrassing>.

The web page provides visitors with an opportunity to "*Type in your number and join*". Below the box where the visitor enters their number it is stated that this is a subscription service and the pricing of the service is given as "*R20/5days*".

The terms and conditions at the bottom of the web page state the following:

By entering your mobile number and clicking the "get it!" button you allow us to use your mobile phone number to respond to your requests, process your transactions for the service, and send you information about service benefits, improvements and promotions via text messaging. You agree to receive promotional messages in the future.

This subscription service is available for all networks. You will receive 2 videos per 5 days which will be charged at R 10 per item (R20/5days). Download charges may apply. Errors Billed. All prices incl. VAT. The shown item(s) are part of the subscription service and are indicative of the content items that will be received. To cancel the service, send STOP to 31639. Bill payer's permission required. Min. age 18+ or with permission of parent or guardian. By subscribing to this service you allow us to use your mobile phone number to respond to your requests, process your transactions for the service, and send you information about service benefits, improvements and promotions via text messaging. You agree to receive promotional messages in the future. Check your phone for compatibility. Information and promotions may continue to be sent after de-registration. w2mobile operates

according to the South African Wireless Application Service Providers' Association Code of Conduct. IP: w2mobile. Helpdesk: 0861000980 or info.za@w2mobile.com

The complainant was then sent a WAP push invitation for the SP's Total Embarrassing service on 16 October 2009. This appears from the log provided by the SP.

The SP alleges that the complainant (or someone using his phone) accessed a link on this WAP message on 18 October 2009. It appears from the SP's explanation that, by accessing the WAP link, the complainant opted-in to the service and was then subscribed.

The SP sent the following welcome message to the complainant's number on the same day:

Welcome+to+the+Total+Embarrassing+subscription+service!+Help%3A+0861000980.+To+stop+sms+STOP+to+31639.+Cost+R20+per+5+days

This is confirmed by the log provided by the SP.

The complainant was then billed by the SP for WAP push messages to access content items every 5 days for the period 23 October 2009 to 17 November 2009. This is confirmed by the log provided by the SP.

On 17 November 2009, the SP sent the following message to the complainant's number:

U+r+subscribed+to+w2mobile+Total+Embarrassing+Club.+Cost+R20%2F5days.+For+help%2C+sms+HELP+to+31639+or+call+0861000980.+To+unsubscribe%2C+sms+STOP+to+31639.

It was at this point that the complainant alleges he became aware of his subscription to this service.

Section 6.2.12 of the WASPA Code provides that for any transaction initiated via WAP, where the transaction is billed at R10 or more, specific confirmation from the customer must be obtained and the SP must keep a record of such confirmation.

The SP has stated that the complainant's subscription (for content items charged at R10) was initiated via WAP. However, the SP did not obtain specific confirmation from the complainant and/or has not kept a record of such confirmation. The SP has therefore breached section 6.2.12 of the Code.

3. Functionality of SP's unsubscribe facility

The complainant sent 2 sms messages before sending his "STOP" request to the relevant short code. I am satisfied that the first messages sent by the complainant were not worded correctly, thus the reason why the SP did not action any unsubscribe request. Once the complainant had sent his "STOP" request on 17 November 2009, he was immediately unsubscribed by the SP. This is confirmed in the logs provided by the SP.

I have also taken note of the complainant's comments regarding the accessibility and functionality of the SP's telephone help line number. I am satisfied that the SP has not contravened the WASPA Code in this regard.

Conclusion

The SP has contravened sections 4.1.3 and 6.2.12 of the WASPA Code of Conduct. The complaint is accordingly upheld in this regard.

Sanction

It has been noted that the SP has refunded the complainant in full. It has also been noted that no other previous complaints have been made and/or upheld against the SP.

However, the SP's lack of transparency in respect to the website address listed with WASPA and the fact that this URL directs to another promotional website, where there are no company or physical address details for the SP, is concerning.

The Code is also very clear on the requirements for WAP initiated transactions. These provisions have been included to ensure that unsuspecting users are not subscribed for services they don't intend to join. This is clearly the case with the current complaint.

Taking the foregoing factors into account, the following sanctions are given:

1. The SP is fined an amount of R 75 000.00.
2. The SP is ordered to provide the WASPA Secretariat with an alternative URL for a website which contains all the information required by section 4.1.3 of the Code within 7 (seven) days of receipt of this report.
3. The SP is ordered to suspend its Total Embarrassing Club subscription service until it has provided written confirmation to the WASPA Secretariat that the subscription process for the service complies with section 6.2.12 of the Code.