



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	
Service Type	Subscription service
Source of Complaints	Mr V Chow
Complaint Number	8594
Date received	28 January 2010
Code of Conduct version	8.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 27 January 2010. The SP unsubscribed the complainant but no refund was offered as the SP advised that the complainant had been validly subscribed to the service in question. The complainant was not satisfied with the SP's response and the matter was escalated as a formal complaint for adjudication.

The complainant stated that he had never subscribed to this service provider, never called their number or sent any SMS's to their numbers. However, from September 2009, his phone bill was unexpectedly high. The complainant was advised by his network provider that he was being billed for a content service and was given the SP's details.

The complainant demands a full refund.

SP's response

The SP identified the relevant IP and requested that the complaint be redirected to the IP as it was a WASPA member.

The SP did confirm that it had reviewed this service and was satisfied that the web registration process, welcome messages, threshold messages, monthly reminder, billing frequency and unsubscribe process for the service were all compliant with the WASPA Code of Conduct.

IP's response

The IP was then requested by the WASPA Secretariat to indicate if a refund was due or not, and if no refund was due, to provide a reason for its decision. The IP was also requested to provide complete logs regarding this subscription, a screen shot of the advert which the complainant responded to, billing logs, MO, MT, reminder messages, welcome messages, threshold messages etc. The IP was also requested to provide a step-by-step explanation of the actions of the complainant when subscribing to the service.

The IP provided customer service logs for the complainant and confirmed that all required information for the subscription was provided to the complainant.

The IP states that the service was activated by the customer requesting a PIN and the given PIN being entered on the website. Following this, all service information was sent to the customer. The required welcome message was then sent successfully to the customer's handset.

The site that the customer accessed has long since been discontinued. The IP states that it has a very strict policy of deleting sites when they are no longer marketed. This prevents any 'legacy' sites being present in the public domain and causing compliance concerns. The IP did however manage to retrieve an archived screenshot of the relevant site which was marketed by the IP during this period.

The customer enters their cell number on the first page of the site and is then sent a PIN message as per the attached logs. The customer then enters the PIN online and

they are then subscribed to the service. The customer receives a welcome message after joining informing them of all charges and containing all service information. The customer can stop the service at any time by sending STOP and indeed did so, as can be seen from the logs provided.

The IP does not believe the complainant is entitled to a refund as he was validly subscribed to the service.

Complainant's reply

The complainant denies being aware of the website provided by the IP in its response. He does admit that he received a message from the IP but dismissed the message as a junk marketing message that he received regularly and which he disregarded.

The complainant also questions why billing for the service only commenced in September 2009 when, according to the IP's logs, he was subscribed since May 2009.

Sections of the Code considered

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 us 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.

Decision

I have perused the screenshot of the promotional web page for the service as provided by the IP. I am satisfied that the page is compliant with section 11 of the Code.

The issue that remains in dispute is whether the complainant validly subscribed to this service. The IP states that once a customer has entered their number on the site, they are sent a PIN and a specific confirmation of this PIN is then requested before the service is activated.

The IP states that the complainant's number was entered on the site and a PIN was sms'd to his number. The complainant's handset was then used to enter the given PIN in order to activate the service.

The complainant has denied that he ever visited any website operated by the IP or that he subscribed to this service. He does admit receiving a message from the IP, which he states was disregarded as junk marketing.

The complainant has offered no further evidence to contradict the IP's version that the correct PIN was entered on the site from the complainant's handset.

I am satisfied on a balance of probabilities that the IP received a valid opt-in request before activating this service.

I am also satisfied that all necessary welcome notifications and monthly reminders were sent to the complainant's number, setting out details of the subscription and providing the complainant with the option to unsubscribe from the service. The complainant did not respond to any of these messages until 26 January 2010 when a "STOP" instruction was sent to the relevant short code. The complainant was then unsubscribed from the service.

Based on the foregoing, the complaint is accordingly dismissed.