



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Zed Mobile
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	C Schickerling
Complaint Number	8940
Date received	4 March 2010
Code of Conduct version	8.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 3 March 2010. The complainant was not satisfied with the SP's response and the request has been escalated as a formal complaint.

The complainant states that they were advised by their network service provider that they were being billed approximately R5.00 per day for content charges for a service they had subscribed to.

The complainant states further that they use a 3G network card only to provide internet connectivity when they are away from the office and the sim card in question was never used in a mobile phone. The complainant was advised that the subscription was activated using this number.

The complainant requested a detailed explanation as to how the SP was able to bill amounts to this account without any authorisation.

The complainant was offered a refund but still wanted an answer to their queries.

SP's response

The SP responded by confirming that the complainant had been refunded in full, and provided proof of payment.

The SP provided mobile logs showing the subscription history of the complainant. The subscription was alleged to have been initiated on 12 April 2009 from the Nokia Mobi WAP site and from a Nokia 1680 mobile phone.

Sections of the Code considered

11. Subscription services

Section 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.

Section 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.

Section 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.

Section 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.

Section 11.1.11

If a subscription service can be 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.

Section 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.

Section 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].

Section 11.5.9

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.

Section 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 checked the MO/MT log provided by the SP and there is no proof that a separate confirmation was received from the complainant's handset before any billing took place for the service in question.

It is also not clear from the log provided what content items were downloaded by the complainant for each charge shown.

The SP has contravened sections 11.1.11 and 11.6.2 and the complaint is accordingly upheld.

Sanction

I have noted the previous complaint 6364 which was upheld against the SP for related but not the same contraventions of the Code.

The following sanctions are given:

1. The SP is ordered to refund all amounts charged to the complainant's account and send proof of the refund to the WASPA Secretariat within 7 (seven) days of receiving notice of this report.

2. The SP is fined an amount of R100 000.00.