



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	SMS-Net
Information Provider (IP) (if any)	
Service Type	Subscription service
Source of Complaints	Mr R Hughes
Complaint Number	8725
Date received	9 February 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 responded to the request by unsubscribing the complainant and uploading proof of subscription. No refund was offered by the SP to the complainant. The complainant was not satisfied with the SP's response and the matter has been escalated as a formal complaint for adjudication.

The complainant states that on 24 January 2010, he noticed that he had been billed monthly for a content service since April 2009. His network operator referred him to Samba Trading who advised the complainant that he had downloaded four (4) games from Huge Mob in April 2009 and had then subscribed by sms to receive ringtones (at R15/week) on 25 June 2009.

The complainant was advised that he would be unsubscribed from the service, but no refund would be made.

The complainant denies that he downloaded a game/ringtone or subscribed to any sms service. He states that he has never heard of Samba Trading or Huge Mob. He also states that nobody else has access to his phone.

The complainant notes from the proof provided by the SP that the games were downloaded between 10pm and 1am. He states that he goes to bed between 9pm and 10pm and he turns off his phone when asleep.

The complainant tried to check his account to determine whether he was browsing the internet at the times when the SP alleges he downloaded the games. Unfortunately, browsing times are not listed on his account. However, he did notice that on 7 April 2009, when he is alleged to have downloaded a game known as "Space Monkey", he was not using the internet at all. He also confirmed that on 2 and 5 April 2009, when he is alleged to have downloaded the other 3 games, the data used was tiny and could not be enough to download a game.

The complainant states that he requested proof on 25 January 2010 of his subscription to the ringtone service. No proof has been given. He was told that he had subscribed (at R15/week) on 25 June 2009. This was not possible because he had already been billed an amount of R30 in May 2009 and a further amount of R60 in June 2009.

The complainant has checked through all his 2009 statements and confirmed that he had never sent a sms to any 5 digit number (or any unknown number). He has also never received notification of a subscription of any kind and has never received any ringtones/content from Huge Mob or anybody else.

He also saved all messages received since 1 October 2009 on his phone, and after double checking them all, the complainant confirms that he has not received anything from Huge Mob or any unknown number.

The complainant requests a full refund in the sum of R566.66, plus any amount billed to his account for January 2010. He also requested a written assurance from the SP that he will not be subscribed or charged again.

SP's response

The initial response from the SP was that the query had been escalated to management. A short log was uploaded purportedly confirming the unsubscribe was carried out. However no further response has been received from the SP.

Sections of the Code considered

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.

11.6.2. 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

In the absence of any response from the SP, I must accept the complainant's evidence in support of his denial that he ever downloaded the content referred to and/or that he subscribed to the SP's services.

The SP has therefore breached section 11.1.5 of the WASPA Code.

In the absence of any response from the SP, I must accept the complainant's evidence that he never received in notification or reminder messages for the subscription.

The SP has therefore breached section 11.1.8 of the Code.

The SP has also failed to upload clear logs after receiving a request from WASPA for it to do so. The SP has therefore breached section 11.6.2 of the Code.

The complaint is accordingly upheld.

Sanction

There have been previous complaints made and upheld against the SP in respect of its subscription services. I have also recently adjudicated another complaint against the SP where it was found that the SP has failed to pay a number of outstanding fines handed down from previous adjudications (see report for complaint 7923).

The SP's failure to respond to the initial request to upload proof of subscription and its failure to respond to this complaint has also been noted.

In light of the foregoing, the following sanctions are given:

1. The SP's membership of WASPA is suspended for 6 (six) months.

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2. The SP is ordered to refund all amounts charged to the complainant's account and must provide written proof that it has done so to the WASPA Secretariat within 7 (seven) days of receipt of this report.