



**Wireless Application Service Providers' Association**

## Adjudicator's Report

Complaint number	30615
Cited WASPA members	Tristar Trading LTD (1452)
Notifiable WASPA members	Opera telecom Pty Ltd (0068)
Source of the complaint	Public
Complaint short description	Failure to unsubscribe
Date complaint lodged	1 June 2016
Date of alleged breach	2014
Applicable version of the Code	14.4 ( <i>but see decision</i> )
Clauses of the Code cited	4.2, 5.4, 6.1, 6.2, 6.3, 6.4, 6.5, 8.7, 15.3, 15.6, 15.7, 15.8, 15.17, 15.19, 15.20, 15.26, 15.27, 15.31
Related complaints considered	

Fines imposed	na
Is this report notable?	<b><i>Not notable.</i></b>
Summary of notability	

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### **Initial complaint**

The complainant sent a “stop” message to the service on a number of occasions but continued to be billed, and was billed more than the subscription amount.

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### **Member’s response**

The WASP described the subscription process, and submitted that it terminated the service on receipt of the request on 7 February 2016.

The WASP appears to accept that there was a billing irregularity and offered a refund of R2000 in this respect.

It also raised, with respect to the “stoop” requests, that the dates of given for the request are in December 2014 and before. It raised clause 24.6. which states that “A complaint must be made within six months of the date of the alleged breach of the Code. WASPA may, at its discretion, accept a complaint after this six month window, if the complainant provides a compelling reason for the delay in lodging the complaint.”

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### **Clauses**

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

5.4. Members must have honest and fair dealings with their customers.

6.1. The “**billing threshold**” for any service is a total cost of R200 for that service for any calendar month.

#### **Requirement to confirm billing over the threshold**

6.2. The requirement to send notifications and to confirm billing over the threshold only applies to services where the customer is not already confirming the billing of the service. Specifically, subscription services (where the customer is already confirming the service via a confirmation step) and ad hoc billing (where the customer is required to confirm each individual transaction) do not require billing threshold notices.

6.3. Once a customer reaches the billing threshold for a service, the member must send that customer a notification that they have reached that limit. The member must keep a record of this notification, and provide that information to the customer, on request.

6.4. Where a member is in control of the billing for a service, in addition to the notification, a communication must be obtained from the customer confirming acceptance of any costs over the billing threshold before any additional charges can be billed. The member must keep a record of this communication, and provide that information to the customer, on request.

6.5. Once a customer reaches any multiple of the billing threshold for a service, the member must send that customer a further notification of the total cost incurred for that service so far. The member must keep a record of this notification, and provide that information to the customer, on request.

8.7. Pricing information must not be misleading. The price must be the full retail price of the service, including VAT. There must not be any hidden costs over and above the price included in the pricing information.

15.3. For all subscription and notification services the member must keep a record of the source of the service initiation request, and all subsequent interactions with the customer. Those records must be made available to the customer, on request. Records must be kept for a period of at least three years after the customer terminates the service.

15.6. Once a customer has joined a subscription service, neither the amount and frequency of the billing nor the frequency of the service may be increased without the customer’s explicit permission.

15.7. Once a customer has joined a notification service, the amount of the charges may not be increased, nor may the trigger for the notification service billing be altered without the customer’s explicit permission.

15.8. Billing for subscription services must not exceed the total amount specified in the pricing information.

15.17. Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. This message is referred to as the “welcome message”. The customer must not be charged for the welcome message.

15.19. A reminder SMS message must be sent to a subscription or notification service customer within 30 days of the initiation of the service, and once per calendar month thereafter. This message is referred to as the “reminder message”. The customer must not be charged for any reminder message.

15.20. The reminder message must be a single message for each service the customer is subscribed to, and must not contain any line breaks or carriage returns. The reminder message must begin with the word "reminder" and then contain only the following additional information:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,
- (d) instructions for terminating the service, and
- (e) (optionally) a link to a WAP landing page or a web page describing the service.

15.26. If a member is unable to immediately act on a service termination request received from a customer, the customer must be informed. (Example: "This may take up to 24 hours to be processed.")

15.27. The processing of any service termination request must not be unreasonably delayed and must be honored within two working days (48 hours).

15.31. Once a customer has terminated a service, a message confirming this must be sent to that customer. This message must specify the service the customer has terminated, and the customer must not be charged for this message.

## Decision

There are a number of procedural issues and challenges thrown up by this complaint, which I will try to address.

I start by noting that, while a number of other issues seem to have been raised prior to the formal upgrading of the complaint and during the communication on this complaint, the formal complaint that was referred to me has two issues:

- The failure to unsubscribe;
- The overcharging.

I am limited to those issues.

That being said, I do note for the comfort of the complainant that the type of campaign that initiated this subscription has been ruled against in a number of other decisions and the WASP in question has been significantly sanctioned.

My next issue is that it is almost impossible to decide which version of the Code is relevant to this matter. The alleged failure to unsubscribe occurred in 2014, but the Head of Complaints assigned clauses from, so far as I can make out, version 14.4 of the Code, which was the relevant version at the date of complaint.

It goes without saying that the WASP cannot have been expected to comply with version 14.4 in 2014. However, it is correct that on a question of procedure, version 14.4 is indeed the applicable version. Given my findings, this issue does not need to be addressed further.

The facts of the matter are this. The complainant – properly or improperly (this question is, as I have observed, not before me) – was subscribed to the service. We know that, no matter what reminder messages were or were not sent, she was aware of the subscription by 31 October 2014 when, on her own version, she attempted to unsubscribe. (The WASP correctly pointed out that she sent this request to the wrong number. I am of the opinion that the WASP could not reasonably be expected to receive this message or, if they did receive it, understand that it was meant for another service.) She attempted this again in November and December 2014, and then took no further steps until 2016.

The WASP has raised clause 24.6. which states that “A complaint must be made within six months of the date of the alleged breach of the Code. WASPA may, at its discretion, accept a complaint after this six month window, if the complainant provides a compelling reason for the delay in lodging the complaint.”

The complainant, being fully aware of her subscription and continuing to be billed and receive reminder messages from October 2014, made no attempt after December 2014 to contact the WASP, or to complain to WASPA, for the next 20 months. She gives no explanation as to why she used the incorrect number to try to unsubscribe. In February 2016, she used the correct number and was unsubscribed.

I have sympathy for the fact that the complainant is an older woman and may have been confused by the service. However, having become aware of the service and clearly being aware that she needed to send the “stop” message, I find it hard to regard her subsequent decision to simply ignore the problem as reasonable.

The complainant has not given any compelling reason for the delay. **Given this, I am of the opinion that Clause 24.6 applies and that the complaint has effectively prescribed.**

I note that the billing error appears to be accepted by the WASP as a valid concern, and in its communication of 15 July 2016 stood by its offer to refund R2000. Given that I have found that the complaint has prescribed, I cannot *order* the WASP to make a refund. **However, I**

**request the WASP to honour this offer and make the proffered refund in the interest of professional resolution of the matter.**