

Case Reference	R/E/I/057
Title	Funmobile's Charging for Unsolicited SMS Chat Service
Case Opened	17 July 2006
Case Closed	3 October 2006
Complainant	IDA initiated enforcement proceeding
Respondent	Funmobile Pte Ltd ("Funmobile")
Case Summary	<p>An End User received promotional SMS message on his mobile phone from Funmobile for its Chat Service. When he sent a "stop" message to indicate that he wishes to stop receiving the promotional SMS message, he was unknowingly subscribed to the Chat Service by Funmobile.</p> <p>Subsequently, he received SMS chat messages and was charged \$0.80 per message. The End User then contacted Funmobile to quit from the Chat Service. However, the chat messages continued to be sent to him.</p>
IDA's Determination	<p>Based on IDA's investigation, IDA determined that Funmobile had breached Section 3.3.3 (read with Section 3.3) of the Code, summarised as follows:</p> <p><i>Section 3.3.3 requires a licensee to provide in its End User Service Agreement that end users will not be required to pay for any telecommunication service that the End User did not consent to receiving. In addition, Section 3.3 clearly states that IDA will treat a licensee's willful, reckless, or repeated failure to fulfill such obligation as a contravention of this Code.</i></p> <p>Funmobile took the position that the accidental registration was based on End Users' "intent" to send a message to Funmobile. Although the End User sent wrong keywords (other than the prescribed keyword), they were registered by default to the chatroom.</p> <p>However, IDA viewed that such accidental registration to the Chat Service should not have occurred at all. Funmobile should have taken steps to configure its system in such a way that there would be no risk of accidental registration. In this case, the End User should not be registered as he had failed to send the prescribed keyword to clearly indicate his intent to register to Funmobile's Chat</p>

Service. Funmobile should not have configured its system in such a way that resulted in End Users being automatically registered to its Chat Service even when they failed to observe the registration instruction by Funmobile.

Funmobile also explained that the failure to terminate the Chat Service at the request of the End User was due to a technical problem, which was subsequently corrected. IDA discovered that Funmobile had failed to ensure that its system was configured in a manner which would recognise the “Stop” keyword received as End Users’ wanting to quit the SMS Chat Service. This resulted in End Users receiving more chat messages and eventually being charged for these messages. The reason given that it was due to a technical problem showed that Funmobile was reckless and wilful, considering that at least 344 End Users were affected.

Based on the above, IDA concluded that Funmobile had recklessly failed to fulfill its obligation under Section 3.3.3 of the Code and hence, found Funmobile in breach of Section 3.3.3 read with Section 3.3 of the Code.

IDA imposed a financial penalty of **S\$10,000** on Funmobile for breaching Section 3.3.3 (read with Section 3.3) of the Code.