REPORT OF THE ADJUDICATOR

Complaint reference number:	12349
WASPA member(s):	Venista (1088) (IP) / Sybase 365 (0069) (SP)
Membership number(s):	10088 and 0069
Complainant:	Competitor
Type of complaint:	Subscription Service
Date complaint was lodged:	2011-03-16
Date of the alleged offence:	Not ascertainable
Relevant version of the Code:	10.0
Clauses considered:	Clause 5.1.2, 5.1.3, 11.1.1, 11.2.1 and 11.2.2.
Relevant version of the Ad. Rules:	Not applicable

Related cases considered:

Complaint

Complainant alleges that a WAP url was sent to his MSISDN. No further details were provided. When the user clicks on the WAP url a subscription service is accessed. Although the page states that it is a subscription service there is no independent step to subscribe but you are rather subscribed when you download a video.

The complainant also states that opt out instructions are not in the message sent to the user.

Service provider's response

The SP denies breaching the Code at all or that certain sections are applicable. They deny as follows:

- Section 5.1.2 was breached in that they allege several opportunities to opt out.
- Section 5.1.3 is not applicable due to the message being a WAP push notification and not an SMS or an MMS.
- Section 11.1.1 has not been breached due to the fact that the nature of the service as a subscription service is stated several times.

- 11.2.1 is not breached because there are multiple steps to follow before you are subscribed.
- Section 11.2.2 has not been breached due to the fact that the nature of the service as one of subscription is stated several times.

Sections of the Code considered

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. For SMS and MMS commercial communications, a recipient should be able to stop receiving messages from any service by replying with the word "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. The reply "STOP" procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

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.

11.2.1. 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.

11.2.2. 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.

Decision

Due to the Complainant's failure to provide either the WAP message complained of or their ISDN I am not able to verify the facts with regards to that element of the complaint. Accordingly I dismiss this aspect of the case.

On the remaining elements of the service I find that the SP has complied with the provisions of the Code fully and dismiss these elements of the case as well.

Sanctions

None.