



REPORT OF THE ADJUDICATOR

Complaint reference number:	#12527
WASPA member(s):	Sprint Media S.L. (the Information Provider or "IP") and Mira Networks (the Service Provider or "SP")
Membership number(s):	1168 and 0011
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	2011-03-27
Date of the alleged offence:	2011-03-01 until 2011-03-30
Relevant version of the Code:	10.0
Clauses considered:	6.2.12, 11.2.2
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	None

Complaint

Complaint #12527 is the escalation of unsubscribe request #1306148, logged on the WASPA unsubscribe system on 27 March 2011. The request has been escalated to a formal complaint due to the fact that the Complainant has indicated that she is not satisfied with the IP's response, and that she was not supplied with the information as to where her number was obtained. The Secretariat is of the view that the matter requires further investigation.

Prior to dealing with the facts, it should be noted at the outset that the Secretariat sent the complaint notification in this matter directly to the IP, being Sprint Media S.L., in its capacity as Affiliate Member of WASPA, due to the fact that the IP is responsible for the service complained of. In its capacity as Affiliate Member, the IP is bound by the provisions of the Code. The SP, Mira Networks, was notified on the same day (4 April 2011) but has evidently chosen not to respond to the complaint and has left this to the IP as Affiliate Member.

Furthermore, the unsubscribe request document generated by WASPA also mentions the Wasp Integrat; however it appears that whilst Integrat took steps to unsubscribe the Complainant, it provided no other information or response, and there was no formal complaint notification by WASPA to Integrat.

The Complainant initially communicated with her network provider, stating:

"I would like to find out how it came about that I was subscribed to this service!! I have never sent any request through to subscribe to anything! I would also like to request a refund of the R189 which has so far been deducted off my account without permission!!"

On 29 March 2011, the Complainant wrote:

"I have had R7 per day deducted off my account with Vodacom with a Wasp-Integrat \\\"subscription\\\" which I never made. I have no idea what this subscription even is!!!! So far R189 (from March 1 onwards) has been deducted off my account and as I am not receiving itemised billing, I was totally unaware of this, but just realised that my airtime was getting less very fast. I have never knowingly subscribed to anything – and would never want to!!! - and would therefor request the amount deducted off my account to be re-imbursed by you! I have phoned Vodacom Customer Care and they have unsubscribed me with Ref no: 1306148. Unfortunately their computer could only show them March 2011. I would appreciate it if you could tell me exactly from which date these deductions actually started and I would like proof of subscription as well!!!!!!"

The Complainant also wrote directly to WASPA on 29 March 2011 as follows:

"I have lodged a complaint on your site about illegal deductions from my Vodacom account, but have not heard from you to date. I have spoken to Vodacom and I see that the deduction[s] have stopped since today (29 March). R7/day was deducted from my account since 1 March and to date it amounts to R196! Unfortunately Vodacom could not tell me if there were deductions for February as well. I have no idea how I was subscribed to anything and would appreciate proof of subscription from you!! To my knowledge I have not subscribed to any service and it would be illegal to just deduct money off an account without any consent from the owner. I would appreciate it if you could follow up on this matter and get back to me asap as I do expect a refund from your company!"

The IP notified WASPA as follows on 30 March 2011:

"The number has been unsubscribed and blocked. A confirmation SMS has been sent. No refund offered as the information regarding the subscription was made clearly available to the customer. To dispute this decision, the customer can contact us directly via email support@mobmatic.com. Mobmatic Support"

1 Information provider's response

In response to the Secretariat's request on 30 March 2011 for logs of proof of subscription from the IP, a log was provided, and a formal response to the complaint from the IP was received on 8 April 2011.

The log provided identifies that the Complainant's cell phone number was subscribed to a service called Mobmatic, a service where a consumer can accumulate points and exchange them for products via www.mobmatic.com. It also provides a service where users can send as many text messages to as many people as they like, anywhere in the world. The log document states that the service was activated on 1 March 2011 at 5:16pm via the Mobmatic mobile internet WAP landing page: <http://m.mobmatic.com/ads/wp/reward/>.

The log below (provided by the IP) shows the following information: (i) website registration by the Complainant, (ii) a click to complete activation, (iii) a record of a "claim code" having been submitted from a Blackberry 9300 handset and (iv) a record of a welcome message having been sent by the IP to the Complainant containing a password which the IP confirms was sent "after the WAP subscription".

<<	2011-03-01 17:15:24	Web Registration	1/1	WebSite Mobmatic		Website Registration of 93.186.23.238 (GB) on http://m.mobmatic.com/ads/wp/reward/
>>	2011-03-01 17:15:24	113698191 Delivered On	1/1	41493 Mobmatic	Streaming	CLICK TO COMPLETE ACTIVATION
<<	2011-03-01 17:16:21	113698291 Inbound	1/1	41493 Mobmatic		CLAIM Code:1141IP Address: 196.207.39.254 Page: http://m.mobmatic.com/ads/wp/reward/ User Agent: BlackBerry9300/5.0.0.846 Profile/MIDP-2.1 Configuration/CLDC-1.1 VendorID/168

The following welcome message with their password was sent to the customer's cell phone after the WAP subscription.

>>	2011-03-01 18:15:48	113698291 Sent	1/1	41493 Mobmatic	Streaming	WELCOME: COLLECT POINTS 4 PRODUCTS 24/7 Visit www.mobmatic.com Password: 52070920. support@mobmatic.com 0213002334 subscriptionR7/day 2 unsub txt stop 41493. 16
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In addition, the IP's formal response dated 8 April responds to the query for information regarding how the Complainant's number was obtained. It states that its logs show that the Complainant registered her number in their database responding to an online marketing campaign on 30 April 2010, via their WAP mobile internet landing page. It then explains that any consumer using its services must be opted-in to the services in order for their mobile account to be billed. In South Africa, in order for their systems to verify an opt-in, they operate a "Call to Action" process whereby the consumer will respond to requested actions to subscribe to the service. They go on to explain that in this case, the logs show that the Complainant responded to the following online marketing campaign on 1 March 2011 via the Mobmatic WAP mobile internet landing page.

Congratulations!
Your 0 account
has been
rewarded **1,500**
points!

Redeem now for
your **choice of**
product in our
online store.
Shipping
included!

[CLAIM NOW](#)

Support:
help@ems.cx

Mobmatic has requested that your mobile number be made available. Clicking on Claim Now you're declaring to be 18+ and are accepting both the [terms and conditions](#) and to receive free promotional SMS relating to this and other services operated by Sprint Media S.L. Mobmatic is an entertainment subscription service for just R7/day. To opt-out from promotions, sms STOP to 39856 or contact Support@mobmatic.com or call 0213002334. [Privacy Policy](#).

The IP explains that the service was activated with the opt-in code, in this instance meaning that the Complainant first pressed on the "CLAIM NOW" link depicted above and then "*completed the steps to subscribe*". The IP's systems received the Claim code upon completion of this process, and the billing process was activated once the opt-in was received from the mobile number. The IP's logs show the mobile user details and welcome message sent to the Complaint.

In response to this information, the Complainant writes on 18 April 2011 as follows:

"Thank you very much for this reply. I remember a message that said: "You earned x amount of talking points. To retrieve them...click here!" After that, I

did not receive any message that says that the costs of whatever it is, would cost me R7/day as I received nothing and would have stopped it immediately, had I known and been informed about the R7/day!!! How can that be allowed?"

2 Sections of the Code considered

"6.2.12. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

(a) ...

(b) ...

(c) If the transaction is to initiate a subscription service, then the price and frequency of the service must be included directly in the text of the WAP link or immediately adjacent to it and must be visible on the same screen as the link."

"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

Section 6 of the Code deals with Advertising and Pricing. Section 6.2.12 (c) specifically states as follows:

"6.2.12. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

(a) ...

(b) ...

(c) If the transaction is to initiate a subscription service, then the price and frequency of the service must be included directly in the text of the WAP link or immediately adjacent to it and must be visible on the same screen as the link."

In relation to subsection (c) above, while the subscription service is advertised at R7 per day, the price is not included directly in the text of the WAP link that initiates the transaction, nor immediately adjacent to it (the WAP link being the "CLAIM NOW" link which initiates the subscription process). The pricing details appear well below the link, are not part of it, nor next to it, and are not clear either – but printed very small.

The IP is accordingly in breach of section 6.2.12(c) of the Code.

Section 11.2.2 states further as follows:

"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."

The word "independent" in section 11.2.2 has a clear and unambiguous meaning as the opposite of the word "dependent", which in turn means to be reliant upon something else. It follows that if a request to join a subscription service is dependent

on any other request, it would not be an “independent” request. In the present matter, the subscription request is dependent on a consumer initiating and completing a request for “1500 points”, i.e. the subscription request is not an independent transaction request but is wholly dependent on the consumer claiming points for the purpose of redeeming a product in the IP’s online store.

The service accordingly breaches section 11.2.2 of the Code.

Sanctions

The following sanctions are now imposed:

1. The IP shall refund the Complainant all sums debited against her account plus interest thereon at the rate of 15,5% per annum calculated daily and compounded monthly in arrears from date of debit until date of refund.
2. A fine of R20 000.00 is imposed on the IP, to be paid to the Secretariat within 10 working days of the date of delivery of this report failing which:
 - 2.1 the IP shall be suspended from WASPA; and
 - 2.2 the SP, Mira Networks, shall suspend all subscription services to the IP;
until such time as the fine has been paid in full.
3. The SP and IP are directed to furnish to WASPA a list of all subscription services currently offered by the IP in conjunction with the SP and all such further information as may be required so as to enable the WASPA Monitor to assess the subscription initiation processes utilised by such services for compliance with the Code.