



REPORT OF THE ADJUDICATOR

Complaint reference number:	13195
WASPA member(s):	Zed Mobile (1008) (IP) / Mira Networks (0011) (SP)
Membership number(s):	SMSNET-SA (0084)
Complainant:	Desiree jacobs
Type of complaint:	Subscription service
Date complaint was lodged:	2011-05-26
Date of the alleged offence:	2009-07-28
Relevant version of the Code:	9.0
Clauses considered:	2.24; 6.2.12, 11
Relevant version of the Ad. Rules:	2.3
Clauses considered:	9.2; 9.3; 9.3.15
Related cases considered:	2044, 5646, 5329, 5905, 6364, 9762, 8940, 9809

Complaint

The consumer complains that she was subscribed to a service almost two and a half years ago for which she was billed on a monthly basis. She claims that she requested WASPA to unsubscribe her from the service, but no record of this first request could be found and the consumer has not provided more detailed information. The consumer states that she has only recently become aware that the monthly messages that she received from Club Zed were reminder messages. She also states that she never made use of any of the services offered by Club Zed. She states that she is not aware of how she got subscribed to the service but that she never requested this subscription service. She claims a full refund.

Service provider's response

"The subscription with Club Zed was initiated on 28/07/2009 from a Nokia 6600 handset.

Our logs reflect that the mobile number 0832300246 made a first enquiry to join our service by clicking on a Michael Jackson Banner on the Nokia Mobi site.

After the user clicked on this Michael Jackson banner, they were diverted to a landing page. At this stage the cell phone number was not subscribed yet.

The subscription was confirmed after the user clicked on the 'click here to confirm button' on the landing page after they was presented with the following information:

- 1. That Club Zed is a Subscription service
- 2. That there is a charge of R4,99 per day associated with the service
- 3. That he/ she will get access to games ringtones and wallpapers from Zed
- 4. As well as the terms and conditions, which state our contact details, how to unsubscribe and that if the user is not the bill payer that they are to obtain the bill payers consent

From the logs I can see that the respective Welcome Message was indeed delivered to your handset. The welcome message read as follows:

*Welcome to Club Zed! In a moment you will receive access to the latest games,ringtones & more!R4.99/day CC:0861106472 Unsubscribe:Dial *120*31933#*

We have also been sending monthly reminder messages (see attached) which were all successfully delivered to your mobile handset. These messages are to firstly to confirm that the subscription has been successfully activated and/or to alert the user that they have activated a subscription service and to inform he customer that they are still subscribed to Club Zed.

The fact that the subscriber did not read these messages is not a fault of Club Zed. Our subscription services works similar to a gym subscription. You get billed monthly whether you attend the gym or not. The reason we sent reminder messages is to give you the opportunity to unsubscribe if you have forgotten that you belong to our club and to give you the opportunity to do so at any time – we also include the means of how to do this in each monthly reminder (which were sent to your phone 21 times in total).

You have advised that you have contacted WASPA “a long time ago” to ask them to unsubscribe you from Bling Mobile as well as from Zed Mobile, but they do not hold any correspondence at all for your cell phone number in this regard (we have asked them for the correspondence).

A partial refund of R1 000 will be given as a sign of good faith from our side – please let us have your bank details with a return email so that we can process this refund as soon as possible. We can unfortunately not refund any more as all the relevant monthly reminders were delivered (see attached for proof).

Sections of the Code considered

2.24 The service is a subscription service as defined in section 2.24

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

....

(b) If the transaction is billed at less than R10, the price for the transaction must be clearly indicated as part of, or immediately next to, the link or option that will initiate the transaction and must be visible on the same screen as the link.

(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.

11.1.1 The promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

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.

11.3.1. The WAP confirmation page must display the following information in a clear and easy to read manner:

- (a) The name of the service
- (b) The price and frequency of billing
- (c) A phone number for customer support

11.3.4. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.5. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.4. Welcome message

11.4.1. 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.

11.5. Reminder messages

11.5.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

11.5.2. The reminder messages specified in 11.5.1 must adhere exactly to the following format, flow, wording and spacing:

You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

11.5.4. The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

11.5.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

11.7. Reminder message for WAP services

11.7.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.5.2 or the following format must be used: *You are subscribed to [name of service provider] [content/service description]. Cost [cost of*

service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, click here [WAP link].

11.8. Termination of a service

11.8.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.8.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be '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.

Sections of the Advertising Rules considered

9.2 Display rules for cost and Terms and Conditions. This section mandates certain conditions for the display of cost and Terms and Conditions. It specifically requires:

- *Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif font*
- *The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.*

9.3 General rules. This section deals with abbreviations that may be used.

9.3.15 This section deals with the requirements for subscription services, inter alia that the word "Subscription service" must be prominently displayed and must indicate charges in a particular manner.

Decision

After receiving the initial documentation I requested further information from the WASP as well as the consumer to establish the relevant facts. The WASP responded timeously with all of the information requested. I pertinently requested the following information from the consumer on 5 July 2011, but have received no response as yet:

1. The complainant states: How is it that the reports as provided by the service provider do not substantiate their very own response." The complainant needs to elaborate on this statement which is not obvious to me from the documents provided with specific reference to the incongruities.

2. Any substantiation of the complaints lodged with Autopage such as dates, emails etc.

3. Details about when she first became aware of being billed for these services and the steps that she took between July 2009 and June 2011 to resolve the issue. The statements contained in the complaint are rather vague and without particularity.

4. Can the complainant please provide me with samples of her cellphone bills from Autopage spanning the period July 2009 and June 2011 (2 samples per year should suffice).

5. The complainant refers to page 2 of the excel spreadsheet which reflects a cancelled subscription. The only reference which i could find is on the first page

entitled "Subs" which shows the cancellation to have been made on 5 June 2011. Can she please elaborate to what exactly she is referring to here.

The complaint relates to an initial advertisement on a third party site that looked as follows:



This advertisement does not fully comply with the WASPA Advertising Rules as it does not contain the word "Service" as required by section 9.3.15. This advertisement also does not fully explain what the service is or what content will be available.

Where the customer clicked on the initial advertisement, the customer was diverted to a landing page which I can unfortunately not reproduce here for technical reasons.

This landing page also did not fully comply with the advertisement rules set out in section 9.3.15 of the Advertising Code. Although it contains all of the elements required it is not set out in the correct font sizes as required. More specifically, it is required that the cost of the subscription service must be in at least 15 pt or 80% of the largest access number, whichever is the greater. In this case the pricing is not prominently displayed and is not at least 15 pt. The get up of this landing page is clearly designed to give as little prominence as possible to the pricing and the fact that this is a subscription service. The smaller than prescribed print adds to this fact. This is in essence also a contravention of section 11.1.1 of the Code.

This confirmation page also does not comply with the provisions of section 11.3.1 which requires the confirmation page to display the prescribed content in a clear and easy to read manner. The essential information is obscured by large graphics immediately above the subscription price and fact that it is a subscription service, both of which is in the smallest print on the page. This is also a contravention of section 6.2.12(b) which requires the price and frequency of the subscription service to be immediately next to the link or option to initiate the transaction. In this case there are large graphics between the link and the pricing.

From the logs provided by the WASP it is clear that it complied with its obligations in respect to the Welcome message and monthly Reminder messages. The consumer confirms that she failed to read any of these reminders which contained unsubscribe notices until fairly recently.

In summary the WASP has breached the following provisions of version 9.0 of the Code of Conduct and version 2.3 of the Advertising Rules:

- (a) Section 9.3.15 of the Advertising Rules
- (b) Sections 11.1.1, 11.3.1 and 6.2.12(b) of the Code of Conduct.

Sanctions

Although a number of previous complaints have been lodged against this WASP none of the reported complaints dealt with this service or contraventions of a similar nature to the contraventions found here.

The contraventions may seem to be of a technical nature only, but in my opinion the get up of the particular pages presented to consumers is aimed at misleading consumers to inadvertently join a subscription service. This is in my view a serious contravention.

In this particular instance however, the consumer was negligent in not immediately responding to the welcome message or failing to read most of the reminder messages sent to her on a monthly basis, 21 in total. It is also noted from the logs that the consumer never made use of any of the content services offered by the WASP.

The following order is made:

1. That the WASP refunds the consumer in full within 14 days of notification of this order.
2. That the WASP is fined the sum of R 20,000, payment of the entire amount being suspended for a period of twelve months on condition that the WASP is not found in breach of sections 9.3.15 of the Advertising Rules or Section 11.1.1, 11.3.1 or 6.2.12(b) of the Code of Conduct during this time.