



ADJUDICATOR'S REPORT

Complaint reference number:	13772
WASPA member(s):	Mobile Magic ("IP") and Opera Interactive ("SP")
Membership number(s):	The IP's membership number is 1245
Complainant:	Public (a consumer)
Type of complaint:	Adult subscription service
Date complaint was lodged:	2011-07-07
Date of the alleged offence:	Unclear from the case file
Relevant version of the Code:	10.0
Clauses considered:	4.3, 8.1.1, 8.1.3, 11.1.1, 11.1.6, 11.3 generally, 11.5, 11.6, 11.8, 11.9 generally.
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	None

Complaint

This complaint is somewhat unclear. It was lodged by a consumer who apparently objected to an aspect of his subscription to the IP's adult subscription service ("the service"). The IP was informed of the complaint's escalation to a formal complaint by the WASPA Secretariat on 8 July 2011 as follows:

The appended unsubscribe request was logged on the 2011-04-29, but the complainant has

indicated that response.

Therefore, the WASPA Secretariat has no choice but complaint against Mobile Magic.

The complainant's reason for escalating the complaint to a formal complaint was as follows:

A spreadsheet is not proof. Does it mean it is a contract. If I forward you a spreadsheet and it indicates you owe me R50 000 it does not amount to proof.nor does it mean you owe me R50 000.

Neither set of statements is helpful in determining the precise nature of the complaint so I have, instead, considered aspects of the service including the subscription method and messaging; the refund offered to the complainant (more on this below), further comments the complainant made in subsequent correspondence and factors which indicate whether the service, as presented in this complaint's materials, complies with the Code.

In an email from the complainant to the Secretariat dated 28 July 2011 (apparently in response to an email from the IP to the Secretariat the previous day which I deal with below), the complainant implied that he did not subscribe to the service by requesting a "copy of the terms and conditions relating to the service I am alleged to have subscribed to" as well as the service's URI or Web site address.

From these comments, I gather that the complainant disputes whether he subscribed to the service although it's not apparent what relief he seeks from the IP.

The logs the IP submitted to the Secretariat indicate that the complainant subscribed to the service on 2 January 2011. Moments later the logs indicate the complainant was sent the following welcome message:

Welcome to Africa's Best Vids The Best Adult Entertainment Site in Africa. R9 Per Day. To Stop, Txt STOP to 31894 (Help:0800981221)Mobilemagic

Between 4 January 2011 and 2 May 2011, the complainant appears to have been charged roughly R945 in 105 R9 increments. On each occasion, the logs indicate the complainant was sent the following message:

U R subscribed to Mobilemagics Fun Club glam video service. Cost R9/1 Days For help: 0800981221. To unsubscribe, sms STOP to 31894

The mobile number on the logs is the same number the complainant submitted when he lodged his complaint with WASPA. The logs further indicate that the complainant's number

was blocked on 3 May 2011 and the complainant attempted to unsubscribe by sending “STOP lebo” to 31894 on 8 June 2011. The complainant’s attempt to unsubscribe failed as he had already been removed from the service and his number blocked so the IP’s system would not confirm the request.

Service provider’s response

The IP submitted a response to the complaint on 27 July 2011 which included its official response, a supporting email to the complainant requesting bank account details for a proposed refund to the complainant and logs apparently confirming his subscription to the service. It appears from earlier correspondence that the IP terminated the complainant’s subscription, blocked his number, contacted him regarding his complaint and offered to refund him R500.

The IP submitted a fairly detailed response to the Secretariat which I enclose with this report (although I have redacted the complainant’s name). The IP addresses various provisions of the Code and contends that it has, save for omitting the word “Reminder” from its reminder messages, complied with the Code’s requirements in various respects.

The Secretariat received an email from Swiftfire on 15 August 2011, ostensibly on the IP’s behalf describing the subscription process:

I attach three screenshots showing the pages that the user would have seen when he first visited the site. Page 1 is only seen once, the first time that the user visits the URL. Upon clicking “JOIN”, the user has then subscribed. They receive a free-to-user Welcome message and can stop at any time.

Page 2 is the main menu. The user goes to this page once they are subscribed. If they return to the site while still being subscribed, they skip Page 1 and go straight here. I have included two screen shots of Page 2 because the page is long. The reference to this being a subscription site appears prominently at the top, with instructions to see full T&Cs at the bottom. Every link mentions the price of clicking that link. At the bottom, the full price of the service is given again.

The complainant made an interesting comment in his reply, dated 16 August 2011, to the IP’s explanatory email which enclosed the screenshots mentioned below:

Thanks for this. Interesting to note that the page 1 is not the same one I clicked on...the screenshot is not the same.....

This seems to me to be a fairly clear admission that the complainant clicked on something similar to the mechanism employed by the IP and that he initiated a process which resulted in his subscription.

Sections of the Code considered

This complaint concerns two broad sections of the Code. The first deals with adult services and the second concerns the subscription process itself. With respect to adult services, section 8 of the Code includes the following requirements:

8. Adult services

8.1. Required practices

8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.

8.1.2. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.

8.1.3. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult content service.

The IP submitted screenshots of the mobile Web pages the complainant would presumably have seen and clicked on in order to become subscribed to the service. While the screenshots do indicate that they relate to adult content and that they relate to a subscription service costing “R9/day”, they don’t appear to “clearly” indicate that the service concerned is an “adult service”, especially not on the landing page where “JOIN” and “Cancel” buttons are positioned above and below (respectively) the text indicating the service’s name, subscription nature, cost and other salient information reading as follows:

Welcome to the ULTIMATE VIDEO GLAMOUR SUBSCRIPTION SERVICE SITE! You will not want to go anywhere else after seeing our cute girls. Access to the site requires your cellphone number. Video Star is a subscription service by clicking yes you agree to pay R9/day with additional content charged at R9 Per Vid. To unsubscribe SMS STOP to 31894 or call our helpline: 0800981221. Alternatively contact: Support@Mobile-magic.eu. By clicking YES you agree with the above terms and conditions. We reserve the right to send you promotional material. Service provider: Mobile Magic Ltd*

Positioning the “Cancel” button below the text is a somewhat disingenuous tactic apparently

intended to de-emphasise the option to cancel as opposed the more prominent option to “JOIN”. This positioning detracts from what should ideally be a more balanced subscription mechanism. I also notice that while the text above mentions clicking a “YES” option, the buttons are labelled “JOIN” and “Cancel” which is somewhat misleading.

It is also not as clear as it could be that the service is restricted to consumers over the age of 18. The circled “18” is an indication of this but is not unequivocal.

That said, the complaint does not appear to be that the service was misleadingly represented as a non-adult service and the complaint was confused by this.

Regarding the Code’s requirements relating to subscription services, a few of the provisions are pertinent:

11.1. Promotion of subscription services

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.

11.1.6. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

...

11.3. Subscription initiated via web or WAP

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

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

(a) The name of the service and an indication that it is a subscription service

(b) The price and frequency of billing

(c) A phone number for customer support

...

11.5. Welcome message

11.5.1. *Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.*

11.5.2. *The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information:*

(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.

...

11.6. Reminder messages

11.6.1. *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. The customer may not be charged for these reminder messages.*

11.6.2. *The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:*

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

or

Reminder: 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 unsub, sms STOP [service keyword] to [short code].

11.6.3. *The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.6.2.*

11.6.5. *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.*

...

Sections of the Advertising Rules considered [if applicable]

I did not consider the Advertising Rules when reviewing this complaint.

Decision

The subscription process, initial welcome message and reminder messages (I consider the message sent with each day's charge to be the equivalent of a reminder message) are substantially compliant with the Code's requirements. The welcome message should perhaps state "To Unsub, SMS STOP to 31894" rather than "To Stop, Txt STOP to 31894" but the meaning is clear enough. Similarly, the reminder messages don't include the word "Reminder" as the Code requires. Then again, the reminder messages are sent daily whereas the Code requires at least 1 reminder message a month. The goal is to remind the subscriber that he or she is subscribed, which service the subscription relates to and the service's salient details.

While the complainant appears to dispute whether he subscribed to the service, the messages distributed through the service and the advisories on the service's mobile site are clear as to the service's nature and, even if the complainant was confused by the messaging before becoming a subscriber, the daily reminders ought to have alerted him to the service's subscription nature and he was afforded ample opportunity to terminate the subscription.

The complainant was initially offered a R500 payment as a goodwill gesture and I note from the correspondence that the complainant was ultimately paid R639 by electronic funds transfer on 20 October 2011.

Sanctions

The service was not wholly compliant with the Code's requirements but I don't see any evidence from the documentation I was briefed with to indicate that this played a role in the complaint's genesis. The complainant was afforded multiple opportunities to rectify as mistaken subscription, assuming that subscribing was in error (there is no evidence to support this), and he didn't take advantage of those opportunities. When he did submit a request to be unsubscribed it was effective and removed him from the IP's database.

The IP has since refunded the complainant R639.

Given the facts and correspondence before me, I see no basis to impose sanctions on the IP given that, to the extent the service was non-compliant with the Code, the extent of the non-compliance was not apparently material to this matter and does not warrant a further penalty. I do instruct the IP to ensure that any similar campaigns are brought more fully into compliance with the Code, particularly on the grounds I mention in this report.

Dear WASPA Complaints Team,

I would like to thank you for allowing me to respond to the formal complaint made by Mr [REDACTED] [REDACTED] [REDACTED]. It is distressing that this case has gone formal as we have done everything in our power to satisfy Mr [REDACTED]'s complaints.

Below we list a few points relevant to this complaint, but first we would like to give a bit of background about our company, Mobile Magic.

Mobile Magic Background

I have been working in the premium-rate industry for 10 years now in a range of global companies including Eckoh plc. I set up Mobile Magic in 2009 to leverage this experience and give the consumer a better deal, both a better user experience and better value for money.

We take customer satisfaction very seriously. This is why we always offer a full refund to anyone who complains as we believe that "Word of Mouth" is the best way to advertise, added to this we are also aware that some people do not follow instructions correctly and in certain cases are upset that they have been charged. Thus we will make good will gestures on each case that arises.

As such we are distressed that Mr [REDACTED] is not satisfied either with the service or with our customer support efforts after the fact.

Issues of this Complaint

Reading the complaint, one cannot help but think that Mr [REDACTED] is arguing semantics. He does not explicitly deny using the service. He never claims that he was misled in any way. Indeed, his argument appears to be that a spreadsheet (i.e. logs of his interactions with the service) does not constitute a contract.

As we have tried to explain to Mr [REDACTED] over the course of a number of phone calls, the spreadsheet is a dump of interactions between himself and our systems via the systems of his carrier; via the systems of our aggregator, Oxygen8; and via the systems of our service provider, Switchfire.

The contents are not in dispute as they can be verified by his carrier, by our aggregator, and by our service provider. The fact of the matter is that he entered into an electronic contract when he was presented with the subscription confirmation page, read the prominent pricing information, and agreed to join the subscription.

As far as I am aware, Mr [REDACTED] is not disputing these facts. Rather he is disputing whether we have sufficient evidence to prove these facts.

For the avoidance of doubt, I have gone through the WASPA Code of Conduct and can confirm that we met all the requirements relating to Subscription Services. Specifically, ...

11.1. Promotion of subscription services

We complied with all these requirements. The cost of the subscription is clearly stated in the form specified.

11.2. Subscription process

We complied with all these requirements. To Subscribe, Mr [REDACTED] had to initiate "an independent transaction" on a separate Subscription Opt-In page.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

Users are taken to a separate Subscription Opt-In page that clearly states that this is a subscription service, lists the price and frequency of the subscription, and asks the user to confirm their acceptance. Mr [REDACTED] visited this page on 2 Jan 2011 and clicked "JOIN" at 15:42:25.

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

- a. The name of the service and an indication that it is a subscription service
- b. The price and frequency of billing
- c. A phone number for customer support

The subscription confirmation page includes this information.

11.3.6. 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.

It is made perfectly clear that clicking the "JOIN" button will subscribe the user.

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

The welcome message was sent immediately after Mr [REDACTED] clicked the "JOIN" button.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information:

- 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.

The welcome message includes this information.

11.6. Reminder messages

11.8. Reminder message for WAP services

In retrospect our reminder messages are missing one word that is specified by the Code. Specifically they do not start with the word "Reminder". Otherwise they conform exactly to the wording and word order specified.

I believe the reason the word "Reminder" was dropped so as also to comply with 11.1.6. We are happy to change the wording.

Our Attempts at Resolution

We first made contact with Mr [REDACTED] on 3 May 2011. Our first action was to put him on our Block list. By so doing, our system would not allow him to access any further WAP sites and our system would never again send him any MTs -- free-to-user or premium-rate. As an aside, this is why he did not receive a stop confirmation on 8 Jun 2011, as his MSISDN had already been blocked over a month before.

The second thing we did was to explain the user experience. Given that we did nothing wrong, we then negotiated a goodwill gesture of R500, which he accepted. We ended the conversation by agreeing that we would send him the logs and he would send us his banking details, see attached email from our Customer Services Manager. Upon receiving the logs, he then opened a new line of argument where he disputed the validity of a spreadsheet -- and thus reneged on our agreement to accept a goodwill gesture.

We then made contact again as he had not returned his banking details as promised, we again explained the situation and offered him a full refund, which he then refused and decided to take further action.

Conclusion

We have no previous formal complaints lodged against us or upheld in South Africa or elsewhere. We are very disappointed that Mr [REDACTED] is seeking adjudication in this case where I believe his use of the service and agreement to subscribe are beyond dispute.

If Mr [REDACTED] would still like the offer of a full refund, we are more than happy to make this payment.

Your sincerely

James Arnold

Mobile Magic

Access page - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Most Visited Getting Started

Access page

AFRICA'S GLAMOUR BABES

18

SUBSCRIPTION: R9/day

CLICK

JOIN

NOW

Welcome to the ULTIMATE VIDEO GLAMOUR SUBSCRIPTION SERVICE SITE! You will not want to go anywhere else after seeing our cute girls. Access to the site requires your cellphone number. Video Star* is a subscription service by clicking yes you agree to pay R9/day with additional content charged at R9 Per Vid. To unsubscribe SMS STOP to 31894 or call our helpline: 0800981221. Alternatively contact: Support@Mobile-magic.eu. By clicking YES you agree with the above terms and conditions. We reserve the right to send you promotional material.

Service provider: Mobile Magic Ltd

Cancel

free vid

Done



Amateur South African Women who need 24hr filling, see all their filthy vids now!

18+ See bottom for full T&Cs and details of subscription - Mobile Magic Ltd HELP: 0800981221 Support@Mobile-magic.eu

TODAYS TOP 10

- [1. Getting Stuffed in the Kitchen \(1vid x R9\)](#)
- [2. Cassie F*ng*ring H*rself \(1vid x R9\)](#)
- [3. S*xxy Bl*nde with P*rfect T*ts \(1vid x R9\)](#)
- [4. H*orny Hip Hop St*r - Guess Who \(1vid x R9\)](#)
- [5. T*ght W*t P*ssy G*lore \(1vid x R9\)](#)
- [6. M*ss Br*tain H*dden S*x T*pe \(1vid x R9\)](#)
- [7. S*xxy Ch*nese G*rl Sl*wly Str*ps \(1vid x R9\)](#)
- [8. Fam*us Soap Star C*ught G*ving He*d \(1vid x R9\)](#)
- [9. Pr*etty in P*nk B*ts \(1vid x R9\)](#)
- [10. Str*ight from the M*uth \(1vid x R9\)](#)

AMATEUR

- [Dirty amateur housewives \(1vid x R9\)](#)
- [Horny Teacher Getting Humped \(1vid x R9\)](#)
- [Amateur first timer f*sts \(1vid x R9\)](#)
- [Horny babe home alone \(explicit\) \(1vid x R9\)](#)
- [Girlfriends, wives, lovers and swingers \(1vid x R9\)](#)
- [Wife in Lingerie Undressing \(red hot\) \(1vid x R9\)](#)

ASS

- [tight round ass treat! \(explicit\) \(1vid x R9\)](#)
- [Debbie's dirty surprise \(1vid x R9\)](#)
- [I love it from behind \(uncensored video\) \(1vid x R9\)](#)
- [Perfect ass pleasure \(1vid x R9\)](#)
- [Bootylicious Babe! \(explicit\) \(1vid x R9\)](#)
- [Sweet ass on Camera! \(Uncensored\) \(1vid x R9\)](#)
- [Perfect Round Ass Blond \(explicit\) \(1vid x R9\)](#)

ASIAN

- [Asian Fantasy \(dirty\) \(1vid x R9\)](#)
- [Nasty Babe in Action \(Erotic\) \(1vid x R9\)](#)
- [Undressing And Stroking \(1vid x R9\)](#)



South African Amateurs m [XHT...]

File Edit View History Bookmarks Tools Help

Most Visited Getting Started

South African Amateurs m [XHTML-....]

[Nasty Girls In Action \(1vid x R9\)](#)
[Sexy babes with toys \(1vid x R9\)](#)
[Street hookers wide open \(1vid x R9\)](#)
[Sexy babe gets it \(filthy\) \(1vid x R9\)](#)

LATINA
[Glamorous latina babe perfectly sucking meat \(1vid x R9\)](#)

LESBIAN
[Blonde cuts off girlfriends panties n l*cks \(1vid x R9\)](#)
[Sexy sl*t gets it hard \(1vid x R9\)](#)

MATURE
[Mature Babes \(1vid x R9\)](#)
[Red Hot Milfs \(1vid x R9\)](#)

RUSSIANS
[Filthy Russian babes \(uncensored\) \(1vid x R9\)](#)
[Strippers going wild \(explicit\) \(1vid x R9\)](#)

JUST NINETEEN
[Drunk college chicks - Watch \(1vid x R9\)](#)
[Young And Curious Babe Exploring Her Body \(1vid x R9\)](#)
[Wild teens in front of a crowd \(1vid x R9\)](#)
[Sweet teens getting dirty \(1vid x R9\)](#)
[Emmas dirty naughty secret \(1vid x R9\)](#)
[Shy babe goes dirty \(uncut\) \(1vid x R9\)](#)

[Included Vids - CLICK HERE!!!](#)

T&Cs: 18+ Only! ULTIMATE VIDEO GLAMOUR SUBSCRIPTION SERVICE SITE! R9/day with content charged at R9 per vid. To unsubscribe SMS STOP to 31894 or call our helpline: 0800981221. Alternatively contact: Support@Mobile-magic.eu. We reserve the right to send you promotional material. You must have the bill payer's permission. Service provider: Mobile Magic Ltd.

[Help and Terms and Conditions](#)

Done