



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	14644
<b>WASPA member(s):</b>	Buongiorno SA
<b>Membership number(s):</b>	0002
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription Service
<b>Date complaint was lodged:</b>	2011-08-30
<b>Date of the alleged offence:</b>	2011-08-01
<b>Relevant version of the Code:</b>	11.0
<b>Clauses considered:</b>	11.1.1, 11.2.1, 11.2.2, 11.2.3
<b>Relevant version of the Ad. Rules:</b>	Not applicable
<b>Clauses considered:</b>	Not applicable
<b>Related cases considered:</b>	11863

---

### Complaint & Response

1. The complainant in this matter alleges that the member subscribed him to a subscription service and charged him without his consent.
2. The member is a full member of WASPA, and the complainant is a member of the public.
3. The complainant made an unsubscribe request using WASPA's unsubscribe facility, and the member confirmed on the 29<sup>th</sup> of August that it had unsubscribed the complainant from the service in question. It did not offer the member a refund, and provided MO/MT logs to prove subscription.
4. The complainant advised that he had not registered with any WASP, but had nevertheless been charged R5.00 per day by the member since the 8<sup>th</sup> of August. He also demanded a refund.
5. On the 30<sup>th</sup> of August the complainant requested that the matter be escalated to a formal complaint on the following basis:

I have no recollection of ever subscribing to this. No one else has had the use of my phone and I certainly received no warning of ever being charged R5.00 per day. I don't even know what this is about. I am convinced this was done in a very underhand way to extract money off my account.

6. The WASPA Secretariat sent the member formal notice of the complaint on the 31<sup>st</sup> of August, and the member responded to it on the 6<sup>th</sup> of September.
7. The member's submission was comprehensive, with a detailed description of its subscription process with accompanying screenshots, and another copy of the MO/MT log mentioned above. In its submission the member referred to the adjudicator's report in complaint number 11863 in support of its contention that its subscription process was in compliance with the Code of Conduct. For reasons set out below, it is not necessary to set out the member's submissions herein.
8. The complainant rejected the member's response on the same date, advising that he did not receive any notification from the member and was not aware that he would be charged R5 per day.

---

### **Sections of the Code considered**

9. The conduct complained of took place after the 8<sup>th</sup> of June 2011, so version 11.0 of the WASPA Code of Conduct is applicable to this complaint. The following sections have relevance:

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.

11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, it must be reasonably clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

---

### **Decision**

10. If the complainant's allegations are well-founded, the member has infringed section 11.2.1, alternatively section 11.2.2 read with section 11.2.3 of the Code of Conduct.

- 
11. On closer inspection of complaint number 11863, I found that it dealt with exactly the same subscription service operated by the member, and that the subscription process as described by the member in its submission in this complaint is the same as that examined in that one.
  12. Complaint 11863 dealt with two aspects of the member's subscription process:
    - 12.1. a banner advertisement for a competition run by the member, and
    - 12.2. the website that the user was taken to on clicking on the banner advertisement, through which the user would be subscribed to the member's service.
  13. The adjudicator in complaint 11863 found that the banner advertisement used by the member to funnel traffic to its website infringed section 11.1.1 of the Code of Conduct. The website itself, however, and the subscription process that was effected through it, were found to be compliant with the Code of Conduct (apart from an infringement of section 11.2.5 which is not applicable here).
  14. I have read the report in complaint number 11863, and am in agreement with it. As that report is in respect of the very service and subscription method complained of here, it is not necessary to analyse the member's submissions in this matter regarding its subscription system.
  15. The member in its submission says that the complainant subscribed to the service via its website, which would have then been in the manner examined in complaint number 11863. There is no indication however that the complainant was directed to the website by means of a banner ad as in complaint 11863, so I do not apply that aspect of the adjudicator's report.
  16. The only information I have been provided regarding the subscription process is the member's submission that describes the website and subscription process.
  17. The MO/MT logs provided by the member show that:
    - 17.1. A confirmation code was sent to the complainant's MSISDN on the 1<sup>st</sup> of August 2011. The message reads:

>> ur CODE is 6298 << enter it in the web confirmation page & you will be subscribed to 35050 GOLD from Buongiorno at R5/day 4 Top Apps, MP3 hits & tons more!
    - 17.2. A welcome message was sent the same day.
  18. Unfortunately, nothing in the complainant's submission gives me cause to doubt the information contained in the member's logs. While members have been known to falsify logs, this is a serious breach of the Code of Conduct, and members who are found to do so are dealt with harshly. However, unless a complainant provides compelling proof that contradicts information contained in logs, it is difficult for an adjudicator to disregard them.
  19. Accordingly, in the light of the information provided, I must conclude that the member's subscription process for the service in question was compliant with

the Code of Conduct, and that the complainant subscribed to the service by following the steps set out in the member's website. It is very possible that he was attracted by the promotional competition advertised by the member and did not pay close enough attention to the statements on the website that he was subscribing to a subscription service, or to words to that effect in the confirmation SMS quoted above. However, I am satisfied that the content of the website and the subscription process followed gave him sufficient notice that he was in fact subscribing to a subscription service.

20. Accordingly, the member has not infringed section 11.2.1, or section 11.2.2 read with section 11.2.3.