REPORT OF THE ADJUDICATOR

Complaint reference number:	15664
WASPA member(s):	Buongiorno ZA
Membership number(s):	002
Complainant:	Mr B Van Der Merwe
Type of complaint:	Subscription service
Date complaint was lodged:	23 November 2011
Date of the alleged offence:	23 November 2011
Relevant version of the Code:	11.0
Clauses considered:	11.2; 11.3; 11.5; 11.6
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	n/a

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 14 November 2011. The complainant requested a refund which was refused by the IP.

The complainant maintained that he had not subscribed to the service and the complaint was therefore escalated to a formal complaint in terms of clause 14.3 of the WASPA Code of Conduct (''the Code'').

IP's response

The service in question is the IP's 35050 Gold subscription service (the "service"). The IP attached the following documents to its response:

a) screenshots taken of the landing pages of the campaign in question;

b) the BILLING and MT logs.

The IP alleges that the subscription occurred via a PC.

The IP uses a double-opt in system for users to become subscribed to the service. The IP alleges that it is therefore unlikely or impossible for someone to be subscribed without being aware of it.

The requisite subscription text is visible on the landing page of the webpage and the service is identified as a subscription service in the pin code message, the welcome message, as well as the reminder messages sent to the subscriber.

On 17 September 2011 the complainant entered his mobile number on the landing page and must have clicked "Send", where after he was sent a text message containing the required pin code (5714) (the "pin code"). The pin code is unique and directed only to the phone of the complainant, as the subscriber.

At the point of receiving the pin code the complainant was still not subscribed to the service. Once he received the pin code the complainant still had a choice, before becoming subscribed, to enter the pin code on the landing page.

Only on entering the pin code correctly on the second landing page and pressing the "confirm" button would he have become a subscription member of the service and received the requisite "welcome" message, which was sent (see MT logs).

The IP also referred to the adjudicator's report in complaint number #11863, where it was held that the reasonable customer would, when clicking on the confirm button on the subscription confirmation webpage, have an understanding of the fact that he or she was joining a subscription service, and that the intention required by section 11.2.2 would be present at the critical time when the customer takes the last positive step prior to being subscribed.

The logs confirm that the complainant received all the required welcome and reminder messages.

Sections of the Code considered

11.2. Subscription process

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.

11.3. Subscription initiated via a browser (web or WAP)

11.3.1. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

(a) contain a PIN which is then confirmed or validated on the web page, or

(b) contain the name of the service, an explanation of the confirmation process, and a URL with a unique identifier, which, when clicked, validates the handset number.

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

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:

[Application name] has requested that your mobile number be made available.

11.3.5. The information listed in 11.3.3 and 11.3.4 above must be presented as text and not as an image.

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.

11.3.7. 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.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

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.

11.6.4. 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.

11.6.5. 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.

11.6.6. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

11.6.7. The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

11.6.8. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

Decision

I am satisfied that the IP has complied with sections 11.2, 11.3, 11.5 and 11.6 regarding this service and the complaint is accordingly dismissed.