



ADJUDICATOR'S REPORT

Complaint reference number: 15743

WASPA member(s): Buongiorno SA

Membership number(s): 0002

Complainant: Public

Type of complaint: Subscription Service

Date complaint was lodged: 2011-11-30

Date of the alleged offence: 2011-10-10

Relevant version of the Code: 11.0

Clauses considered: 11.3, 11.5 and 11.6

Relevant version of the Ad. Rules: Not considered

Clauses considered: Not applicable

Related cases considered: 11863

Complaint

The complainant submitted the following complaint to WASPA on 11 October 2011, the day after the alleged offence:

Dear Sir,\n\nI received an sms, yesterday, confirming my subscription to Buongiorno @ a cost of R5 per day.\n\n

\n\n1. I have NEVER subscribed to ANY unsolicited rubbish that I receive on my phone\n\n

2. Your consultant, with whom I have just spoken @ 021 4178001 confirms that I have been paying this from 10/9/2011. 3. He has, via reference 107229, confirmed the this subscription is cancelled. I DEMAND that this illegal debit be refunded with IMMEDIATE effect & I require proof of same. It is my intention to escalate this to the relevant authority within the CPA. Roy Wright

(The text of the complaint in my file contains the text anomalies reproduced in the quote above)

The complaint concerns a service which, at first glance, appears to be a competition that originates on a Web site and, once activated, becomes a mobile subscription service. In this particular case, the service's landing page resembles a casino game and the visitor is invited to play a casino-themed game of chance. On a closer reading of the text on the pages I noticed that the text on these pages doesn't refer to competitions and to winning but rather to receiving certain benefits as a "member". I'll return to the service's mechanisms when I deal with the SP's response to the complaint.

The complainant insisted that he did not subscribe to this service. In an email to the WASPA Secretariat dated 12 January 2012, he stated the following:

The information from the provider showed NO proof that I had accepted their offering. They mention a double entry integrity (or something to that effect). I would require proof that I accepted their offering. In the time that I have had a cell phone, I have NEVER subscribed to any service other than the Weather (from MTN).

In response to the Secretariat's offer, conveyed on the same day, to submit the complaint to an adjudicator for adjudication, he replied as follows:

I would be grateful as I have NEVER subscribed to this service.

The complainant's characterisation of how he became a subscriber to the service and how this complaint originated suggests he was spontaneously subscribed to the service without any prior involvement in the subscription process.

Service provider's response

The SP, in its submission to WASPA, explains the subscription mechanism in some detail and how, in the SP's words, "*it is highly improbable – if not impossible – to become subscribed to our service without being aware that one was subscribing to a Buongiorno service*". In order to become a subscriber to services of this nature (the SP refers to complaint 11863 which

concerns a similar subscription mechanism although with a different visual theme – it appears the SP makes use of a number of variations of this sort of campaign with different themes over time), a visitor to one of the service landing pages would first click on a button which, I imagine, would be referred to as a “call to action”. In this case, the button is labelled “SPIN”.

On clicking on this button, the visitor is taken to a second page where the visitor is invited to submit his or her mobile phone number.

Sections of the Code considered

The following provisions of the Code are particularly relevant:

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.

...

11.2.5. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

The initial page (annexure “B1” to the SP’s report) includes a number of indications that the service is a subscription service. The text at the top left of the page reads “SUBSCRIPTION SERVICE R5/day”. The terms and conditions in the lower third of the page clearly indicates that the service is a “mobile subscription service” which carries a charge of “R5 per day”. Interestingly, the terms and conditions go further and advise that the SP recovers the cost from the mobile service provider which, in turn, recovers the cost from the subscribers. What is interesting about this is the level of detail the terms and conditions go into to avoid confusion

as to how the service operates.

The successive pages (anexures “B2” and “B3”) contain the same notice and terms and conditions. In each instance, the terms and conditions are clear that the service is a subscription service. When a prospective subscriber submits his or her mobile phone number, he or she receives the following message:

>> ur CODE is 5350 << 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!

In the complainant’s case, the SP advised that his PIN code to confirm his subscription was 5350 and stated further that the “*pin code is unique and directed only to the phone of the complainant, as the subscriber*”. The SP advised WASPA, further, that this PIN code is required in order to confirm the nascent subscription on the following page.

In the event a prospective subscriber is unsure of the service’s nature and the consequences of following the steps towards subscribing to the service through the initial Web pages, the penultimate page (annexure “B3”) is the page on which the prospective subscriber is prompted to enter a PIN code he or she receives after passing through the initial two pages. This last page bears the following text immediately after the PIN entry field:

*By clicking confirm, I agree to subscribe to 35050 GOLD subscription service R5/day. I accept the terms and conditions and confirm I am > 18. For help dial 0214178001. **Terms and conditions below (please read)***

This text is immediately below the “SUBMIT” button and above the terms and conditions which also appear on the previous two pages. The SP advised WASPA that –

9. 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.

10. Only on entering the pin code correctly on the second landing page (“B3”) and pressing the "confirm" button would he have become a subscription member of the service and received the requisite "welcome" message – which he did (see MT logs).

Barring a malfunctioning subscription mechanism, it does not appear likely that the complainant would be subscribed to the service without following these initial steps. In its submissions to WASPA, the SP referred to the adjudicator’s report in complaint 11863 which I reviewed. The following paragraph from that adjudicator’s report is relevant and applicable to

this complaint:

The adjudicator is of the view 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 which was charged at R3 per day. The adjudicator accepts that this intention may not be present when interacting through the banner advert and the initial promotional page, but holds 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.

I believe that a similar set of statements may be made about the present complaint although it appears from the adjudicator's report in complaint 11863 that the SP's campaign which formed the subject matter of that complaint did not contain the clear subscription notices that are present in the campaign which forms the subject matter of the current complaint.

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.*

...

11.5. 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.*

On submitting the PIN code, the complainant appears to have received the following messages:

*Welcome 2 35050 GOLD! 4 top Apps, cool games, MP3 hits & more go 2 <http://35050.mobi> on ur mobile! Help 0214178001 Dial *120*5133# 2 unsub(R5/day subscription)*

This welcome message complies with clause 11.5 of the Code and discloses the information that clause requires.

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.

The SP's logs further indicated that the complainant received the following reminder message on 10 October 2011, the day after the subscription appears to have come into effect:

*Reminder: ur subscribed to Buongiorno SA 35050 GOLD. Cost R5/Day. DAILY GIVEAWAYS! For Help call 0214178001. To unsub, sms Stop Gold to 35050 or DIAL *120*5133#*

This reminder message complies with the Code's reminder message format requirements. The complainant appears to have been unsubscribed the following morning and was sent a message confirming the subscription's termination on 11 October 2011.

Sections of the Advertising Rules considered [if applicable]

Not considered.

Decision

Notwithstanding the complainant's insistence that he did not subscribe to the service, the service's subscription mechanism is a double opt-in mechanism comprising notices on the three Web pages and a clear statement in the SMS enclosing the PIN code for the final subscription activation that the consequence of proceeding is subscription to the service.

Conceivably the complainant may have been subscribed to the service in a manner that circumvented this subscription mechanism but no evidence of this was presented and the probability is rather that the complainant did, in fact, subscribe to the service by following the steps described in the SP's submissions.

Accordingly, I dismiss the complaint.

Sanctions

Given the complaint's dismissal, there are no sanctions imposed.

Dear WASPA,

Complaint #15743

1. The code of conduct / Version 11.0 was the applicable version at the time of subscription (10th September 2011), as was the current version applicable to this complaint.
2. The service in question is our 35050 Gold subscription service R5/day (the "service").
3. Also attached, for your ease of reference, are:
 - 3.1. screenshots taken of the landing pages of the campaign in question (marked "**B1**", "**B2**" & "**B3**")
 - 3.2. The BILLING and MT logs.
4. The subscription definitely occurred via the use of a PC, however content download could only have occurred through WAP – i.e. via the subscribers' mobile phone.

SUBSCRIPTION PROCESS:

5. Due to our double-opt in system, which is even more stringent than that prescribed by the Code, it is highly improbable – if not impossible – to become subscribed to our service without being aware that one was subscribing to a Buongiorno service.
 - 5.1. In addition to the requisite subscription text being visible on the landing page of the campaign, the fact that the service is a subscription service is recorded in the pin code message, the welcome message, as well as the reminder messages sent to the subscriber.
- This will be referred to in more detail below.
6. In consideration of the campaign as a whole, it is clear that before subscribing the complainant was made fully aware, on the landing pages of the service, that what is being offered was a subscription service at a daily charge of R5/per day. See:
 - 6.1. The top of left hand side of all pages ("**B1**", "**B2**" & "**B3**") – "*Subscription service R5/per day*"; and
 - 6.2. Beneath the "Confirm" button ("**B3**") it also states that, "*By clicking confirm, I agree to subscribe to 35050 GOLD subscription service R5/per day...*".
 7. In addition the complainant is on all pages ("**B1**", "**B2**" & "**B3**") referred to our terms and conditions before subscribing - this is not a requirement of either the Code and/or the Advertising Rules (the "Rules").

8. On 10th September 2011 the complainant entered his mobile number on the landing page (“B2”) and must have clicked "Send", where after he was sent, from ourselves, a text message containing the required pin code (5350) (the "pin code") from Buongiorno. As already stated above, this text message also confirms that the service offered is a subscription service, charged at R5 per day"

>> ur CODE is 5350 << 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!

The pin code is unique and directed only to the phone of the complainant, as the subscriber.

9. 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.

10. Only on entering the pin code correctly on the second landing page (“B3”) and pressing the "confirm" button would he have become a subscription member of the service and received the requisite "welcome" message – which he did (see MT logs).

11. The above process is in line with the Code and the Rules.

12. We also refer you to the Adjudication in complaint number #11863, where the adjudicator found, at para 20 of his/her report, as regards our subscription process, that:

“The adjudicator is of the view 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 which was charged at R3 per day. The adjudicator accepts that this intention may not be present when interacting through the banner advert and the initial promotional page, but holds 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” (our underlining).

13. The logs confirm that the complainant received all the required welcome and reminder messages - which messages again confirmed the subscription element of the service, the cost thereof, as well as instructions on the unsubscribe process. The respective messages read:

Welcome 2 35050 GOLD! 4 top Apps, cool games, MP3 hits & more go 2 <http://35050.mobi> on ur mobile! Help 0214178001 Dial *120*5133# 2 unsub(R5/day subscription)

See attached logs.

On the 10th October 2011 the complainant was through the reminder message reminded of the service as is a standard industry practice. The reminder is clear and supplies all information on how to unsubscribe as well as informs the user of the 24x7 contact number.

Reminder: ur subscribed to Buongiorno SA 35050 GOLD. Cost R5/Day. DAILY GIVEAWAYS! For Help call 0214178001. To unsub, sms Stop Gold to 35050 or DIAL *120*5133#

See attached logs

UNSUBSCRIBE PROCEDURE:

14. Once subscribed the complainant was at all times – through the welcome message - provided with detailed instructions on how to unsubscribe, as well as our help line number if he experienced any problems. See logs and paragraph 13 above.

The complainant obviously understood this unsubscribe procedure as it was this procedure which the complainant utilised to unsubscribe from our 35050 service, having been it via our 24x7 contact number or, utilizing the instruction within the welcome and reminder message.

See attached logs.

ADDITIONAL OBSERVATIONS:

15. Please also note that visually it is quite evident on the landing pages that there are additional content items available via the service – as is required by the Code.

CONCLUSION:

16. The information provided illustrates that that the complainant knowingly and deliberately subscribed to the service using a subscription process which is in accordance with the Code, as noted the user has been unsubscribed from the 35050 gold service as having been notified of the relevant information in both the welcome and reminder message on how to end the subscription service. We fail to understand the denial portrayed by the complaint as in viewing the campaign as a whole the complainant undoubtedly was made aware of the service intensions and the cost associated to the service.

17. For the reasons stated above it is rather evident that the complainant subscribed to the service out of his own accord. The complaint is currently no longer subscribed to our mobile subscription service as requested.

18. We trust that this matter is resolved to the secretariats satisfaction.

Yours Faithfully
Buongiorno ZA

SUBSCRIPTION SERVICE R5/day

Compatible Handsets only

get ur LUCKY NUMBER

You could get a *rock the boat!* Dream Holiday*

10	72	76	32
51	2	83	42
61	71	64	34

SPIN!



PLUS EVERYDAY SOMEONE WILL RECEIVE A REWARD*

That's right, just by being a member you could be the next person to receive a reward. Keep checking 35050.mobi out. Rewards change often and they become more and more exciting!

Unlimited Downloads!
Best MP3s, Games, Wallpapers, Apps + More!



Terms and Conditions (please read)

*Available through the 35050 Gold Rewards program. T&Cs apply.

35050 GOLD Terms and Conditions

35050 GOLD offering and pricing
35050 GOLD is a mobile subscription service charged at R5 per day and offers you unlimited downloads of the content available while you remain subscribed. The daily charge will be recovered directly from your service provider and you will in turn pay your service provider. You authorise us to recover the relevant amounts directly from your service provider who you authorise to pay us. You confirm that you are allowed to provide the authorisations mentioned.
35050 GOLD has a great amount of content—from java games to applications, songs and other cool features to enjoy and customise your phone with. We have



You could get a *rock the boat!* Dream Holiday*

Is It Your Lucky Day?

The interface features a dark blue background with a red banner at the top and bottom. In the center, four purple rounded rectangles contain the numbers 6, 51, 17, and 13. Below these is a white input field with a mobile phone icon on the left and a 'CONTINUE' button with a right-pointing arrow on the right. The scene is decorated with gold coins and money bags.

PLUS EVERYDAY SOMEONE WILL RECEIVE A REWARD*

That's right, just by being a member you could be the next person to receive a reward. Keep checking 35050.mobi out. Rewards change often and they become more and more exciting!

Unlimited Downloads!
Best MP3s, Games, Wallpapers, Apps + More!



[Terms and Conditions \(please read\)](#)

*Available through the 35050 Gold Rewards program. T&Cs apply.

[35050 GOLD Terms and Conditions](#)

35050 GOLD offering and pricing

35050 GOLD is a mobile subscription service charged at R5 per day and offers you unlimited downloads of the content available while you remain subscribed. The daily charge will be recovered directly from your service provider and you will in turn pay your service provider. You authorise us to recover the relevant amounts directly from your service provider who you authorise to pay us. You confirm that you are allowed to provide the authorisations mentioned.

35050 GOLD has a great amount of content—from java games to applications, songs and other cool features to enjoy and customise your phone with. We have



You could get a  Dream Holiday*

Is It Your Lucky Day?



You have received an SMS with ur CODE

Enter your CODE:

CONFIRM >

By clicking confirm, I agree to subscribe to 35050 GOLD subscription service R5/day. I accept the terms and conditions and confirm I am >18. For help dial 0214178001.

Terms and Conditions below [\(please read\)](#)



PLUS EVERYDAY SOMEONE WILL RECEIVE A REWARD*

Thats right, just by being a member you could be the next person to receive a reward. Keep checking 35050.mobi out. Rewards change often and they become more and more exciting!

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[Terms and Conditions \(please read\)](#)

*Available through the 35050 Gold Rewards program. T&Cs apply.

35050 GOLD Terms and Conditions

35050 GOLD offering and pricing

35050 GOLD is a mobile subscription service charged at R5 per day and offers you unlimited downloads of the content available while you remain subscribed. The daily charge will be recovered directly from your service provider and you will in turn pay your service provider. You authorise us to recover the relevant amounts directly from your service provider who you authorise to pay us. You confirm that you are allowed to provide the authorisations mentioned. 35050 GOLD has a great amount of content—from java games to applications, songs and other cool features to enjoy and customise your phone with. We have

