



REPORT OF THE ADJUDICATOR

Complaint reference number:	15832
WASPA member(s):	Buongiorno SA
Membership number(s):	0002
Complainant:	Ms R Streicher
Type of complaint:	Subscription service
Date complaint was lodged:	6 December 2011
Date of the alleged offence:	16 November 2011
Relevant version of the Code:	11.6
Clauses considered:	section 11.5, 11.6, 11.9, 11.10
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 16 November 2011. The SP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant logs.

The complainant indicated that she was not satisfied with the IP's response and the complaint was escalated to formal adjudication.

The complainant denies that she subscribed to the service.

The complainant also alleges that she did not receive the required welcome message as required by the Code.

The complainant requested a refund.

SP's response

The SP provided its billing and MT logs and screenshots of the landing pages of the campaign in question.

The SP alleges that the subscription occurred via the use of a PC. However content was downloaded via WAP from the complainant's mobile phone.

The SP states that it uses a double-opt in system and that it is highly improbable, if not impossible – to become inadvertently subscribed to its service

On 9 September 2011, the complainant entered her mobile number on the landing page and must have clicked "Send", where after she was sent a text message containing the required pin code (5826).

The complaint did not complete the subscription process on this occasion and opted not to make use the pin code (5826) sent through.

On 10 October 2011, the complainant entered her mobile number on the landing page and must have clicked "Send", where after she was sent a text message containing the required pin code (3758). This text message also confirmed that the service offered was a subscription service.

At the point of receiving the pin code the complainant was still not subscribed to the service. Once she 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 she have become a subscription member of the service and received the requisite "welcome" message, which she did (see MT logs).

The logs provided also confirmed that the complainant received all the required welcome and reminder messages.

The wording of the welcome message sent was as follows:

*"Welcome 2 35050. Go to Wap.35050.co.za on ur mobile 4 Unlimited games,Mp3's & more! Help:0214178001 Dial *120*5133# to unsub(R3/day subscription)"*

The wording of the reminder message sent was as follows:

*Reminder: Ur subscribed to Buongiorno SA 35050 VIP 4 Daily GIVEAWAYS. Cost R3/day. For help call 0214178001. To unsub, sms Stop Vip to 35050 or DIAL *120*5133#*

The SP alleges that the complainant knowingly and deliberately subscribed to the service using a subscription process, which is in accordance with the WASPA Code of Conduct, and as a result, believes that a refund is not justified.

Complainant's reply

The complainant states that she has examined the screenshots provided of the SP's website and confirms that she has never been on these websites, and would never have entered her mobile number on these websites. She has also verified this with both her daughters (11 and 13 years old).

The complainant alleges that the first message she received from 27820048353 was a reminder message from the SP on 9 November 2011 at 18:07.

The complainant disputes the logs and information provided by the SP.

Sections of the Code considered

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, in the following order:

- The name of the subscription service;
- The cost of the subscription service and the frequency of the charges;
- Clear and concise instructions for unsubscribing from the service;
- The service provider's telephone number.

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.

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

11.9.2. 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.

11.9.3. The "STOP" request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.9.4. Where the words "END", "CANCEL", "UNSUBSCRIBE" or "QUIT" are used in place of "STOP" in a request, the service provider must honour the opt-out request as if the word "STOP" had been used.

11.9.5. Where a service is linked to a specific short code in advertisements for that service, then sending a "STOP" request to that short code should result in the termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.6. If a message sent by a customer cannot be parsed by a WASP, then the resulting response to the customer should contain sufficient information for the

customer to be able to unsubscribe from that service, or to be able to contact the service provider's customer support.

11.9.8. Members must ensure that the termination mechanism is functional and accessible at all times.

11.9.10. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. You'll then be resubscribed at [cost of service and frequency of billing].

11.9.13. If a customer sends an unsubscribe request directly to a member, and the request cannot be acted on immediately, the customer must be informed (for example, via a notification of the form "This may take up to 24 hours"). In any case such a request must be acted upon with two working days (48 hours).

11.9.14. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

11.10.1. Members must register all subscription services with WASPA, by providing the following information:

- the name of the service;
- the short code or access method (e.g. WAP) the service uses; the price and frequency of billing for that service;
- the customer support number associated with the service; and unsubscribe instructions for the service.

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information: proof that the customer has opted in to a service or services; proof that all required reminder messages have been sent to that customer; a detailed transaction history indicating

all charges levied and the service or content item applicable for each charge; and any record of successful or unsuccessful unsubscribe requests.

Decision

The logs provided by the SP show that a text message with a unique pin code was sent to the complainant's number on 10 October 2011 and that the relevant welcome and reminder messages were sent to the same number.

In the absence of contrary proof from the complainant, I must accept that the complainant's number was used to subscribe to the SP's VIP subscription service via its "double opt-in" procedure.

I am satisfied that the SP's subscription process is in compliance with the WASPA Code of Conduct and that the complainant was validly subscribed to the service in question.

The complaint is accordingly dismissed.