



REPORT OF THE ADJUDICATOR

Complaint reference number:	16403
WASPA member(s):	FunZoo (IP); Dialogue Mobile (SP)
Membership number(s):	0112
Complainant:	A Sirkissoon
Type of complaint:	Subscription service
Date complaint was lodged:	13 February 2012
Date of the alleged offence:	29 November 2011
Relevant version of the Code:	11.6
Clauses considered:	11.2.1; 11.3; 11.10.2
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 29 November 2011. It appears that the complainant was subscribed to subscription services offered by 3 different WASP companies, including the IP in this complaint. (The complainant has lodged separate complaints against the other 2 WASPs.

The SP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant MO/MT logs. The IP also gave the complainant a full refund of all amounts billed to his/her account.

However, the complainant did not accept the logs given as proof that he had specifically opted-in to the service in question and maintained that the debits made against his account were unauthorised.

The complainant requested that the complaint be escalated to the formal adjudication process.

SP's response

The SP provided a response from the IP, whose own membership of WASPA appears to have been discontinued prior to the adjudication of this complaint.

The IP states that the service was promoted via the internet. Consumers could access the service by clicking on a banner advert on a mobile website from their phone. They would be redirected to a landing page for the service (a screenshot of which was provided by the IP).

The consumer would then click on the [Join Now](#) link on the landing page and would then be signed up to the subscription service and redirected to a further confirmation page (a screenshot of which was also provided by the IP).

The IP alleges that the complainant's handset was used on 11 June 2009 to subscribe to the XXXVIDEOS service (shortcode 31241) at 07:57 (GMT).

A confirmation message was sent on 12 June 2009 at 16:23 which stated:

Congratulations U have Joined MyMoco & u'll get 1 video every 6 days for R19.98 / 6 days. Data charges may apply. Cancel, txt stop to 31412. Help +27-11461319.

The IP states that the complainant opted out of the service on 13 December 2011 at 17:49. The number was unsubscribed from all the IP's services as requested and an unsubscribe confirmation message was sent to the complainant as follows:

You are now unsubscribed from the SUBSCRIPTION service. To join again, simply text babe to 31296. You will then receive a hot videos every 3 days at R10/3 days

The SP states that the IP has advised that it has discontinued the service in question prior to the adjudication of this complaint.

Sections of the Code considered

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.

11.3.1. 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.

11.10.2. 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

I have considered the IP's explanation for the subscription process followed for its XXXVIDEO subscription service, as well as the screenshots and MO/MT logs provided.

The IP has provided a screenshots of a mobile webpage which were allegedly accessed by the complainant after clicking on a banner advert on another mobile website. No details are given of the specific banner advert or its contents.

The IP alleges that the complainant clicked on the Join Now link and was then automatically subscribed to the service. The complainant was directed to the second page which contains the videos available for download.

The IP alleges that a separate confirmation message was sent to the complainant's handset. However this message did not contain any validation PIN or any explanation of a confirmation process or a URL with a unique identifier, which, when clicked, would validate the complainant's handset number.

The second page accessed after the complainant allegedly indicated an interest in the subscription service when he clicked the Join Now link does not constitute a proper confirmation page as required by the Code, nor does it display the required information.

It is noted that the complainant was allegedly subscribed to the service in June 2009 and the current wording of version 11.6 of the Code is different to the wording of version 7.4 of the Code which was in effect at that time with reference to the confirmation process to be followed for WAP enabled subscriptions.

However, even on the wording of the Code at that time, the subscription process described by the IP does not comply with the requirements of the Code in that it does not provide any procedure for confirmation that it was the complainant's handset that was used to access the site and join the service.

In light of the foregoing, I am not satisfied on the evidence provided by the SP that the complainant specifically opted-in to this service, and therefore find that there has been a contravention of clause 11.2.1 of the Code.

The complaint is accordingly upheld.

Sanction

In determining an appropriate sanction, the following factors were considered:

1. The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;
2. The nature of the service in question; and
3. The seriousness of the contravention of the Code.

I have noted that no previous complaints have been upheld against the SP and this is taken into account as a mitigating factor.

I have also noted that the IP is no longer a WASPA member and may have discontinued the service in question. The complainant has also received a full refund.

However, the automatic subscription of consumers to subscription services offered by WASPs is viewed in a serious light, especially when such services are of an adult nature. These are taken into account as aggravating factors.

In light of the foregoing, the following sanctions are given:

1. The SP is requested to provide written confirmation to the WASPA Secretariat within 7 days of this report being delivered to the SP that this and any other adult subscription services offered by the IP via shortcode 31241 have been discontinued;
2. The SP is issued with a formal warning to ensure that any of its content providers who offer adult subscription services accessible via WAP, follow the subscription process compliant with clause 11.3 of the Code of Conduct.