



REPORT OF THE ADJUDICATOR

Complaint reference number:	16542
WASPA member(s):	Buongiorno SA
Membership number(s):	0002
Complainant:	Mr E Stillerman
Type of complaint:	Subscription service
Date complaint was lodged:	27 February 2012
Date of the alleged offence:	21 February 2012
Relevant version of the Code:	11.6
Clauses considered:	11.1 – 11.10
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	11863; 16382

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 21 February 2012. The SP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant logs.

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

The complainant denies that he subscribed to the service and is requesting a refund.

SP's response

The service in question is the SP's 305050 GOLD subscription service.

The SP enclosed its MT records with its response, and refutes the complainant's allegation that the records are not authentic.

Despite there being proof that the complainant subscribed to the service, the SP did offer the complainant a refund. However the complaint was escalated as the complainant maintains that it remains unresolved.

The SP states that:

1. The subscription element advertised was at all times visible and advertised on the relevant pages as per the WASPA Code and Ad Rules.
2. There was a clear link to the SP's terms and conditions for the service which included all the necessary subscription details, as well as how to qualify for the Reward Program associated with this service.
3. A double-opt in mechanism is used to subscribe to the service whereby potential subscribers must enter their phone number (MSISDN) on the web page, whereafter they are sent a pin number to their phone. At this point the potential subscriber would not be subscribed to the service in question. Once the pin number is entered on the confirmation web page and the subscriber clicks on the CONFIRM button, they become subscribed to the service.
4. Immediately below the CONFIRM button frame, the potential subscriber is informed of the subscription element of the service(s), the cost thereof and referred again to the SP's terms and conditions.
5. Subscribed customers would also receive all the requisite "welcome" and "reminder" messages for the service with the required information.

Based on the above, the SP submits that the complainant, or someone with access to his phone, knowingly and intentionally subscribed to the service, even if his/her intention was, in addition to subscribing, to participate in the associated competition/promotional draw.

Complainant's reply

The complainant alleges that the logs only record calls made to his phone. He denies that any calls or SMS messages were ever made from his cell number to the SP regarding this service or at all. He further denies that the logs constitute proof of subscription.

The complainant denies ever having seen or accessed the promotional campaign pages referred to 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 8 December 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 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.