



REPORT OF THE ADJUDICATOR

Complaint reference number:	16735
WASPA member(s):	Sprint Media (IP) / Opera Interactive (SP)
Membership number(s):	1168 / 0068
Complainant:	Public
Type of complaint:	Subscription Service
Date complaint was lodged:	15/3/2012
Date of the alleged offence:	15/9/2010
Relevant version of the Code:	9.0
Clauses considered:	4.1.2; 11.1.1; 11.2.1; 11.2.4; 11.5.2
Relevant version of the Ad. Rules:	Not Applicable
Clauses considered:	None
Related cases considered:	12465; 15187; 12527; 11997; 11033; 8909; 9624; 9978; 10511; 14369

Complaint and Response

1. This complaint revolves around contested subscription to a subscription service.
2. The Information Provider (IP) in this matter is Sprint Media, which provided the service complained of using the systems of Opera Interactive, which accordingly takes the role of the Service Provider (SP) here. As the IP is an affiliate member of WASPA, it is responsible for its infringements of the Code of Conduct.

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3. The Complainant, who is a member of the public, entered an unsubscribe request via the WASPA unsubscribe facility on the 12th of March 2012. The IP duly unsubscribed the Complainant from its service, but he nonetheless persisted in the complaint.
 4. His submission was as follows:
 - 4.1. He had discovered that the IP had been debiting his cellphone account the amount of R6.15 per day since the 5th of March 2010.
 - 4.2. The Complainant did not often check his cellphone statement, and accordingly had only picked the charges after some time.
 - 4.3. He denied subscribing to the service in question and expressed the view that the deductions were made without his consent or knowledge, and demanded a full refund.
 - 4.4. The Complainant recalled looking for a web-based SMS transmission service, at around the time he was subscribed, but does not recall subscribing to anything.
 - 4.5. While he admits receiving reminder messages, these were of such a vague nature that he disregarded them as they appeared to be spam.
 5. The complaint was submitted to the IP on the 15th of March, and the SP was notified of the complaint on the same day. The SP chose not to respond in this matter.
 6. The IP did not refund the Complainant.
 7. The IP responded on the 22nd of March and of its response the following is relevant.
 - 7.1. The Complainant was by his admission looking for a computer-based SMS service at the time he was subscribed to the IP's service, and the service to which he was subscribed (called the "Veage" service) provided such a service.
 - 7.2. By completing the double opt-in process to the IP's service, the Complainant would have had to accept the relevant terms and conditions, and hence must have known the nature of the service.
 - 7.3. The fact that the Complainant does not recall subscribing to the service is due to the passage of time since he subscribed.
 - 7.4. More specifically, the Complainant followed a subscription process described by the IP as follows:

The complainant will have been searching through the Internet for an SMS solution when he was presented with our web advert within Google search (Appendix 1). When he clicked on the link within the advert, he was directed to the WEB Landing Page (Appendix 2) where he was presented with the possibility to send a friend/family member etc. an SMS message through the Veage service. As you can see in appendix 2, the Terms of Usage are prominently displayed, advising the complainant

that by using the service he would be entering a subscription service costing R7 per day.

In order for any initial message to be sent a user has to "TICK" the Terms of Use box ? which again details that the service is a subscription service costing R7 per day. Should the user not "TICK" the Terms of Use box, they would be prompted to confirm that they have read the Terms of Use and have the opportunity to then "TICK" the Terms of Use box. If the box is not ticked, the user does not proceed with the SMS sending.

Once the user has confirmed that they agree to the "Terms of Use" of the service by "TICKING" the box, they are sent an SMS verification message to their mobile device containing a PIN number that needs to be inputted on the WEB page following the landing page (Appendix 3). Once the PIN Code is entered, the system records the OPTIN and the IP address of the computer used (Appendix 6 & 7). In Mr. Faulkner's case, the landing page was first accessed at 15:03:01hrs and the subscription completed by 15:04:12hrs. (See Appendix 5 and 6 OPTIN)

Once he completed the sign-up on the WEB, he received a "Welcome Veage" message on the computer screen (Appendix 4).

- 7.5. The appendices referred to by the IP are attached as Annexure A.
- 7.6. The confirmation message sent to the Complainant on the 15th of October 2010 read as follows:

Congratulations! Enter your code 4765 on the Web or SMS the word: ACTIVATE to number 33533.
- 7.7. After the Complainant allegedly subscribed to the service, the IP sent a welcome message to the Complainant that read as follows:

Info: Unlimited SMS www.veage.com password: 55894 Support 086110647 subscriptionR7/day. To stop txt stop 33533.
- 7.8. The Complainant used the service to send a message on the day of subscription that read as follows:

test message sent
- 7.9. The IP provided logs which confirm its version of events.

Sections of the Code considered

8. The conduct complained of took place on or about the 15th of October 2010, and consequently version 9.0 of the WASPA Code of Conduct is applicable. The following clauses have relevance:

4.1. Provision of information to customers

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

11.1. Promotion of subscription services

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services".

This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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.

11.2.4. 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 number which is then confirmed or validated on the web page, or
- (b) contain a URL with a unique identifier, which, when clicked, validates the handset number.

11.5. Reminder messages

11.5.1. 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.

11.5.2. The reminder messages specified in 11.5.1 must adhere exactly to the following format, flow, wording and spacing:

You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

or

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 unsubscribe, sms STOP [service keyword] to [short code].

Sections of the Advertising Rules considered

9. Not Applicable
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Decision

10. I have been given no reason to doubt the truth of the IP's version of events, or of the contents of the IP's logs. I accept that the Complainant was probably looking for a computer based SMS transmission service, and that he stumbled upon the IP's web page. Whether he intended to subscribe to the IP's service or not is another matter.

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11. Several potential infringements of the WASPA Code of Conduct appear from the parties' submissions, and I will deal with each in turn.

Promotion of subscription services

12. The provisions of clause 11.1.1 are clear enough: promotional material for subscription services must "prominently and explicitly" identify the services as such. An examination of the IP's "Web landing page" and "web confirmation page" shows that the IP did not do this. The services are described as subscription services only in small print in the terms and conditions at the bottom of each page. The "Web Banner" does not go even that far. The pages in question can be found in Annexure A and were provided by the IP.
13. The IP has infringed clause 11.1.1 of the Code of Conduct.

Bundling

14. Clause 11.2.1 states that customers may not be subscribed to a subscription service as a result of a request for a non-subscription service. By following the screenshots provided by the IP, it is apparent that this is precisely what is likely to occur. I will not deal with the "Web banner" as it is by no means certain that all traffic would be directed to the web page from the banner.
15. The Landing Page ostensibly provides the facility for a consumer to send an SMS. As remarked above, the identification as a subscription service is not prominent, and in any event there is no indication given on the page that sending such an SMS would result in subscription to a service.
16. After the consumer enters a message he or she is taken to the "web confirmation page". This page lists the draft message, and asks the consumer to enter a PIN which has in the meantime been sent to him or her per SMS. There is no indication on the page that by entering the PIN the consumer will be subscribed to a subscription service; rather the page advises that the consumer must confirm that he or she is the owner of the listed cellphone number. The text "1 sms pending" also gives the impression that the consumer must just confirm ownership of the cellphone number before the SMS can be sent.
17. After the consumer enters the PIN number the SMS is indeed sent – but the consumer is subscribed to the service. By subscribing consumers in this way, the IP has infringed clause 11.2.1 of the Code of Conduct – the consumer intends to send an SMS, and finds that he or she has been subscribed to the subscription service.

Misleading Practice

18. The above practice is blatantly misleading, and the IP is in effect tricking consumers into subscribing to its service. What probably happened to the Complainant is that he found this website and decided to test it (the text of the message that he actually sent bears this out). He did not know that by doing so he had subscribed himself to the IP's subscription service and ended up paying a substantial amount to the IP as a result.

19. I have little doubt from the manner in which this system has been set up that that the IP intended to mislead consumers. Accordingly I find that the IP has infringed clause 4.1.2 of the Code of Conduct.

Confirmation Message

20. Clause 11.2.4 governs the content of confirmation messages, and allows either for a PIN number that is entered in a web page OR a URL that validates the handset number when clicked. The IP chose to include a PIN in its confirmation message, but has also included the option to SMS the word "ACTIVATE" to a certain short code. This is an infringement of clause 11.2.4.

Reminder Message

21. The IP's logs show that it sent reminder messages to the Complainant once a month during the period of the subscription.
22. Clause 11.5.2 is explicit as to the content of reminder messages which "...must adhere exactly to the following format, flow, wording and spacing..."
23. The text of the reminder messages for November and December 2010 and February 2011 respectively are listed below:

.reminder INFO TXT u r subscribed to Sprint Media VEAGE SMS! AVOID EXPENSIVE SMS CHARGES.Help 0861106472 cost R7/day to unsubscribe txt stop 33533 free msg.

reminder INFO: SEND UNLIMITED SMS AND MORE!! u r subscribed to Sprint Media MOBOMATIC. Help 0861106472 cost R7/day to unsub, dial stop 33533 free msg

Reminder: sending SMS with mobmatic is unlimited & worldwide! Help 0861106472. u r subscribed 2 SM MOBOMATIC/cost R7/day.2 unsub,sms stop 33533. free msg 16plus

24. These messages clearly do not adhere exactly (or indeed even particularly closely) to the requirements set out in clause 11.5.2. What is more worrying is that the service is described as "Veage" in only one of the messages – the others (including all those not quoted) refer to "Mobmatic", which is certainly a service provided by the IP, just not the one subscribed to.
25. The IP has infringed clause 11.5.2.

Sanctions

26. The IP is ordered to refund the Complainant all amounts charged for subscription to the IP's "Veage" service from the date of subscription until the date of termination of subscription.
27. I have adjudicated complaints 16319, 16333, 16668 and 16735 together. For the sake of convenience I will deal with sanctions for all of these complaints in this report.

28. To recap, the IP was found to have infringed the following clauses of the Code of Conduct in the above complaints. I have normalised code clauses to version 11.6, and noted where clause numbers have changed across Code of Conduct versions.

Complaint	Clauses Infringed	Version	Date of Offence
16319	4.1.2; 5.3.1; 11.1.1	11.0	3/11/2011
16333	4.1.2; 5.1.3; 11.1.1; 11.3.1; 11.6.2	11.0	31/10/2011
16668	5.3.1; 11.1.1; 14.3.13	11.6	8/3/2012
16735	4.1.2; 11.1.1; 11.2.1; 11.3.1 (11.2.4 in v9.0); 11.6.2 (11.5.2 in v9.0)	9.0	15/9/2010

29. The IP joined WASPA in October 2009, and its record of compliance with the Code of Conduct is not a particularly happy one. There exist five complaints where the IP has been found to have infringed clauses that it also infringed in one or more of the complaints dealt with here. Of these, only three were published before any of the dates of offence listed above, which would have given the IP the opportunity to mend its ways in accordance with the findings.

Complaint	Clauses Infringed	Version	Penalty	Date of Publication
12527	11.2.2	10.0	R20 000 fine	22/6/2011
11997	11.2.2	10.0	R20 000 fine	5/7/2011
11033	11.4.1; 11.5.2	9.0	R20 000 fine	29/7/2011

30. Due to the report publication dates, the IP would not have seen the reports relating to clause 11.2.2 before the similar conduct complained of in complaint 16735. Note that I have found that the IP had infringed the related clause 11.2.1, but this is merely a matter of interpretation and amounts to the same offence.
31. The only report relating to confirmation and welcome messages is that in complaint 11033. This was published after the conduct that gave rise to complaint 16735, but BEFORE that for complaint 16333. The adjudicator in complaint 11033 imposed a fine of R20 000 for the IP's infringements of clauses 11.4.1 and 11.5.2.
32. Beyond the above, the IP's previous record is of little assistance in helping to determine an appropriate sanction. Apart from its infringements of clauses 11.4.1 and 11.5.2 it would not have had the opportunity to act on the findings of the relevant reports. The record does not reflect any

successful complaints against the IP for the other clauses infringed in the present complaints.

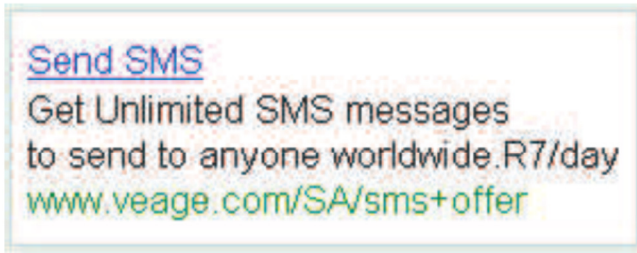
33. Many of the infringements found in the present complaints are characterised by an element of dishonesty on the part of the IP. In all of the complaints the IP was found to have infringed clause 4.1.2, and in complaint number 16668 the IP was also found to have falsified logs submitted to the WASPA Secretariat, which is an infringement of clause 14.3.13.
34. An examination of the sanctions imposed by adjudicators for infringements of clause 4.1.2 shows that relatively lower sanctions are imposed where intention to mislead has not been shown (8909 – R50 000 fine, 9624 – R50 000 fine, R 40 000 suspended), while a more onerous sanction is imposed where intention is found, such as the R150 000 fine imposed in complaint 9978.
35. On the two previous occasions where a member was found to have infringed clause 14.3.13, a suspension of membership was imposed (30 days in complaint 10511 and three months in complaint 14369).
36. I have found that the IP's infringements of clause 4.1.2 were intentional in all the above complaints, and an infringement of clause 14.3.13 is by its nature intentional.
37. The existence of WASPA as a self-regulatory body is dependant to a large part on the honesty of its members in their dealings with WASPA. The long-term viability of the WASPA industry as a whole is undermined when participants in the industry mislead consumers. As a result, members who are guilty of such conduct can expect a harsh response from an adjudicator. In view of the seriousness of the infraction, a fine is not appropriate.
38. Accordingly the following sanction is imposed on the IP for its infringements of clauses 4.1.2 and 14.3.13:
 - 38.1. The IP's membership of WASPA is suspended for a period of six months.
 - 38.2. The WASPA Secretariat is to issue a notice in terms of clause 14.5 of the Code of Conduct in respect of the IP for the period of its suspension.
39. In view of the gravity of the sanction imposed in respect of clause 4.1.2 and 14.3.13, I do not find it necessary to impose a fine on the IP for its infringements of clauses 5.1.3, 5.3.1, 11.1.1, 11.2.1, 11.3.1 (clause 11.2.4 in version 9.0 of the Code), 11.6.2 (clause 11.5.2 in version 9.0 of the Code). While these infringements are serious, a further sanction would not be productive. The IP must however rectify its behaviour while its membership is suspended. This will also have the effect of protecting the interests of consumers.
 - 39.1. The IP's membership of WASPA is suspended until such time as the WASPA Secretariat has satisfied itself that all of the IP's

services are compliant with the above clauses, as well as clause 6.5.1 (as per paragraph 30 of report 16668).

- 39.2. The WASPA Secretariat may charge the IP a reasonable fee for time spent in ensuring compliance.
- 39.3. The WASPA Secretariat is to issue a notice in terms of clause 14.5 of the Code of Conduct in respect of the IP for the period of its suspension.
40. The suspensions imposed under paragraphs 38 and 39 will commence immediately and run concurrently.
41. If the IP appeals the finding or sanction hereof, the sanction imposed under paragraph 39 will not be suspended but will remain in force until the condition for its release is satisfied. The reason for this is the danger of serious prejudice to consumers posed by the IP's conduct. If the suspension imposed under paragraph 38 is not overturned on appeal, that sanction will continue to run for its full term less the period that the IP's membership was suspended under paragraph 39.
42. If the sanction imposed in respect of clauses 4.1.2 and 14.3.13 is overturned on appeal, the appeals panel is requested to substitute an appropriate fine or other sanction for the IP's infringements of those clauses as well as clauses 5.1.3, 5.3.1, 11.1.1, 11.2.1, 11.3.1 (clause 11.2.4 in version 9.0 of the Code), 11.6.2 (clause 11.5.2 in version 9.0 of the Code).

Annexure A

A1: Veage Web Banner



A2: WEB Landing Page

A screenshot of a web landing page for sending SMS. At the top, there are three buttons: "Send", "Save now", and "Discard". Below them are two input fields: "My number:" with an example "0712345678" and "To:" with an example "0712345678 or international +27712345678". A "Check Spelling" link is on the right. A large empty text area is in the center. At the bottom, there is a "Send" button, a "Characters left: 160" indicator, and a checkbox for agreeing to terms of use. A small "Terms of use" text is at the very bottom.

A3: VEAGE Web Confirmation Page

Sending SMS

My number: 0777777777

To: 0777777777

You must confirm you are the owner of this cell phone: 0777777777

1 sms pending...

Enter the PIN code that was sent to your cell phone.

Terms of use: Veage subscription service cost only R7 per day and offers you unlimited SMS to any phone. To take advantage of this service you need to be 16 years or older and have the bill payers permission. To cancel this service, SMS stop to 33533 or contact support 0213002334 / support@veage.com. Send SMS via WEB (fixed internet) or WAP (mobile internet). We recommend WEB as WAP may be subject to additional data cost imposed by your network operator. Please contact your Network Operator for more information. This is an independent service operated by Sprint Media S.L and is not connected to any network operator, media group, search engine or affiliate in any way. We reserve the right to send you free promotional SMS relating to this and other services operated by Sprint Media S.L. For more information please see www.veage.com. General Terms and Conditions and Privacy Policy apply.