REPORT OF THE ADJUDICATOR

Complaint reference number:	16800
WASPA member(s):	Peekaboo TV (IP)(1277) / Opera Interactive (SP) (0068)
Membership number(s):	Above
Complainant:	Public
Type of complaint:	Spam
Date complaint was lodged:	2012-03-26
Date of the alleged offence:	
Relevant version of the Code:	11.6
Clauses considered:	Clause 11.3.1-8; 11.5.1; 11.5.2 and 11.6.1-11.6.8; 11.8.1-4 and 11.10.2.
Relevant version of the Ad. Rules:	Not applicable
Related cases considered:	

Complaint

The Complainant denies subscribing to the service and claims that the IP did not comply with the WASPA Code requirements for subscriptions initiated including the welcome and reminder messages therefore. He also refused a full refund demanding that he be compensated at a professional service provider rate for his time. He also admits that he visited the site merely stating that the subscription process was invalid.

Information provider's (IP's) response

The Service Provider referred the case to the IP who is an affiliate member of WASPA and responded to the complaint.

The IP provided logs for the subscription, the welcome and the reminder messages sent.
They stated further, and I quote:

"First, the user appears to misunderstand the requirements around joining subscriptions. In the Code of Conduct v11.6 there is no requirement for a double opt-in comprising an MO from the user where the subscription is initiated via a browser (Section 11.3).

When this user attempted to access Peekaboo's site, our systems checked whether he was already subscribed. He was not. So, the user was redirected to a WAP confirmation page in compliance with 11.3.2, 11.3.3, and 11.3.5 to 11.3.8. The user read the prominent subscription details, and chose to subscribe by clicking on the relevant button. This click represented the "independent transaction" required under 11.2.2

As stated previously the user clicked on the relevant button at 06:30:55 (Row 4 of the spreadsheet). In addition to logging the action, our systems also logged the relevant WAP Header from which we determined that this user was using a Samsung Galaxy S II at the time.
The user does not deny having a Samsung Galaxy S II. The user does not deny going to Peekaboo's site. The user does not deny clicking various buttons on Peekaboo's site. Our logs show that the first page the user went to was a subscription confirmation page, and the user clicked a button to subscribe and thus gain access to the site. Apparently the user did not read what he was clicking on as he was under the mistaken impression that an MO would be required from him before he could be billed.

Second, the user appears to have misunderstood the logs sent to him. The Code requires that the user receive a Welcome Message in plain text (Section 11.5). This message can be seen on Row 5. The Code requires that the user receive a monthly Reminder Message in plain text (Section 11.6). These can be seen on Rows 27 and 56.

The Code does not require that the daily billing messages are sent in plain text. They can be sent direct-to-bill. In this case they were sent direct-to-bill. The user appears to be under the mistaken impression that he should have received an SMS every day. He did not and Peekaboo were not required to send him such messages.
As a point of interest, the fact that the daily direct-to-bill instructions were sent and were processed is evident from the fact that the user was billed. It is not necessary to wait for any further information from MTN to confirm this point.

Third, throughout this entire process Switchfire's and Peekaboo's staff have been calm and professional despite the unreasonable demands of this

user. The user has never denied using the service and consuming the content. He does not dispute any of the evidence (that he was using a Samsung Galaxy S II, that he did visit the site, that he did click on various buttons perhaps without fully understanding what he was clicking). His argument has always been that he should not have been charged due to a range of perceived technicalities, and that he would pursue a case via WASPA if he was not paid a substantial sum that bore no relevance to the amount of money spent.

Despite the unreasonableness of this user's position, our staff repeatedly attempted to satisfy this user seeking and achieving authorization for larger and larger goodwill gestures, gestures that are far more generous than standard industry practice.
For these reasons and for the reasons point out in previous replies, we kindly request that this complaint be closed on the grounds of being frivolous and without merit."

Sections of the Code considered

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.

11.3.2. 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.

11.5. 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, in the following order:
(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.
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.

11.6.4. 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.

11.8. Reminder message for WAP services
11.8.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.6.2 or the the following format must be used: 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, click here [WAP link].

11.8.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.8.3. The WAP link in the reminder message must begin with "www" to ensure that all phones recognise this as a clickable link.
11.8.4. All of the other requirements set out in section 11.6 of the Code continue to apply to services where the primary means of interacting with the service us via WAP.

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:
(a) proof that the customer has opted in to a service or services;
(b) proof that all required reminder messages have been sent to that customer;
(c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
(d) any record of successful or unsuccessful unsubscribe requests.

Decision

It is not in dispute that the Complainant visited the IP's site. However he claims that the subscription process was flawed due to the fact that the processes as required by the WASPA Code and as set out above were not followed.

Notwithstanding this claim, the IP has provided logs as required by sections 113.1-11.3.8, 11.5.1 and 11.5.2, 11.6.1-11.6.8; 11.8.1-11.8.4, 11.10.1 and 11.10.2.

The Complainant then disputed these on the basis that the Service Provider's shortcode on smscode.co.za is not 400479 as set out in the logs but 40479. However, the shortcode 400479 matches the Service Provider on WASPA's systems.

There is a question about the differing time stamps however this can be explained by any number of technical issues. For example, it is possible for log time stamps to differ from the date-time the subscriber receives/sends SMS messages as the WASP could be recording the date-time they passed it to the network or received the status report back from the network because of queuing due to volumes, network congestion etc.

In this instance and based on the facts before me I find the Information Provider not to be in breach of the Code.

As an aside, it is worth pointing out that even if the Information Provider had been held to be in breach of the Code of Conduct, at no point would damages have been awarded to the Complainant and at most his pecuniary reimbursement would be related to charges erroneously deducted.

Sanctions

None.