



REPORT OF THE ADJUDICATOR

Complaint reference number: #17004

WASPA member(s): Buongiorno SA (0002)

Information Provider(s):

Membership number(s):

Complainant: Consumer

Type of complaint: Subscription service

Date complaint was lodged: 10 April 2012

Date of the alleged offence: 4 April 2012 – 10 April 2012

Relevant version of the Code: 11.6

Clauses considered: 11.3.2, 11.3.3, 11.5.1, 11.5.2

Relevant version of the Ad. Rules: N/A

Clauses considered: N/A

Complaint

Complaint #17004 is the escalation of unsubscribe request #2912324 regarding subscription services charges.

The formal complaint was sent to the WASP on 19 April 2012 and they responded on 26 April 2012.

The complainant replied to the WASP's response on 3 May 2012, refusing resolution.

The WASP provided a further response on 7 May 2012.

From the annexed complaint documents it is apparent that the consumer alleges that he did not subscribe to the services.

Service Provider's response

The Service Provider responded that the consumer subscribed to the 35050 Gold service on 4 April 2012 by responding to a campaign banner stating "Click Here" (which specifically advertised a subscription service), and then by clicking on the word "Confirm" on the service confirmation page which followed. The campaign banner and confirmation page were been provided by the SP as annexures "B1" and "B2" respectively. The SP also alleged that service notifications, including a welcome message were sent, and produced its MT logs to demonstrate this. The complainant refused resolution on the basis of the SP's response, stating that the banner and confirmation page produced by the SP could have been printouts of screens viewed anyone, and that none of the SP's records showed any "origination" from the complainant's MSISDN.

The SP's final reply to the complainant on 7 May 2012 is worth noting. It states that *"Only access to his mobile phone would have been required; to receive the requisite PIN code message that needed to be inserted on the webcampaign in order to complete continue with the subscription process. We reiterate that the subscription process was initiated and completed using the Complainant's MSISDN and mobile phone. If the Complainant maintains that he did not subscribe to our service, then we suggest that he question those who had access to his mobile phone, as someone did legitimately subscribe to our service."*

Sections of the Code considered

- 11.3.1 If a subscription service is initiated by entering a customer's mobile number of 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 identified, 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
- 11.5.1. 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.
-

Decision

1. In the present matter, there is an obvious dispute of fact regarding whether the consumer subscribed to the service on 4 April 2012 or not.
2. The reference in the SP's response of 7 May 2012 that a "*PIN code message needed to be inserted on the webcampaign*" to process the subscription is confusing in light of paragraph's 8.2 and 8.3 of the SP's original response dated 26 April 2010, and indeed the banner and confirmation page produced by the SP as annexures "B1" and "B2". "B1" and "B2" show no evidence of a PIN code needing to be inserted on any web page. "B1" and "B2" appear to show subscription by first clicking on a link in a banner advert entitled "click here" and then by clicking on a link entitled "confirm" on the next web page.
3. Furthermore, the MT log produced by the SP does not show any evidence of a message being sent to the consumer's mobile phone containing a PIN code to be entered into the web page as required by 11.3.1.
4. Given the allegations of the consumer and the totality of the evidence produced by the SP, I am not of the opinion that the subscription process was concluded by sending an SMS to the consumer containing a PIN code which was entered into a web page. Based on the evidence produced, I find on the probabilities that the subscription process could only have been concluded by means of clicking on an initial advertising link which then routed the consumer to a WAP confirmation page. I do not find the SP's statement regarding a PIN code to be credible in the light of the evidence produced. I therefore regard section 11.3.2 of the Code as being applicable to this adjudication and not section 11.3.1.
5. It is difficult to make a determination whether the advertising and confirmation page links were actually clicked on or not. I have proceeded to determine this adjudication on the basis of the SP's evidence including its MT logs and the screenshots that it has furnished.
6. Having regard for the screenshot of the service confirmation page attached to the SP's response of 26 April 2012 as annexure "B2", I find the SP to have breached section 11.3.3 of the Code by failing to include a phone number for customer support on the confirmation page. Section 11.3.3 provides that the confirmation page "must provide" this information in a clear and easy to read manner. It is not enough to only include this information in the welcome message that follows and is sent after the subscription is activated.
7. The SP's written response of 26 April 2012 states in paragraph 8.3 that only after taking the positive steps of clicking on the "join" and "confirm" buttons, would subscription have occurred. It explains that thereafter, having "*become*

a member of the Gold service”, the complainant was notified through the service welcome message confirming subscription. The service message notifications referred to are quoted on the MT logs produced by the SP as annexure “B4”. The logs show that two messages were sent to the consumer on 4 April 2012 after the consumer had become subscribed. The first message was created (according to the SP’s MT log) at 21:30:52. The second was created 10 seconds later at 21:31:02. The two messages read as follows:

“CONGRATULATIONS! By joining 35050 GOLD U could WIN a New Polo* & other Great PRIZES*. PLUS get Top Hits, Hot Apps & UNLIMITED DOWNLOADS 4 ur mobile. *T&Cs apply”

“Welcome 2 35050 GOLD 4 UNLIMITED Top Hits, Hot Apps & PRIZES on UR Mobile 4 Just R5/day go 2 <http://35050.mobi> to unsub dial *120*5133# help 0214068686”

8. Section 11.5.1 of the Code specifically provides that once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This notification message must take the form of a welcome message, which is required to comply exactly with the prescriptions of section 11.5.2. Moreover, according to section 11.5.1 a welcome message should not be mistaken for an advert or marketing message.
9. The first message sent to the consumer did not comply with the requirements of section 11.5.1 of the Code. The confusing content of the first message does not result in it being a clear welcome message, but contains the words “By joining 35050 GOLD U could WIN....” This implies that the joining has not yet occurred, and the prizes advertised thereafter and general tenor of the message certainly may appear to a reader as marketing material.
10. The second message sent was a welcome message of the required format, but this message was not sent “immediately” after the subscription took place but followed some 10 seconds after an intermediate marketing message had been sent to the consumer. The SP has accordingly breached section 11.5.1 of the Code.

Sanctions

1. I have had regard for the prior adjudication record of the SP. For purposes of this adjudication, I have only had regard for complaints upheld against the SP prior to the date on which this complaint arose. The SP has been held to be in very serious breach of the Code of Conduct on many occasions and several very large fines have been imposed (and mostly paid).
2. Repeated breaches of the Code are very seriously damaging to the reputation of an industry that is already the subject of consumer protection journalists’ constant gaze. The purpose of WASPA is stated in paragraph 1.2 of the Code as being **“to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing association with those services”**.

3. The very purpose of the Code of Conduct has been repeatedly undermined by the SP and numerous findings of breach and significant sanctions have not prevented the SP from persisting in repeatedly breaching the Code. In the circumstances, the following sanctions are imposed:
 4. The experience of the SP, the relatively high number of previous complaints upheld against it for non-compliant subscription services and the particular breaches of this matter must be considered against the importance of these specific provisions in safeguarding the interests of consumers and in upholding the reputation of the WASP industry as a whole.
 5. In the light of all relevant circumstances, the following sanctions are imposed:
 - 5.1 The SP is directed to refund the complainant R15.
 - 5.2 The SP is fined an amount of R5 000 for breach of section 11.3.3 of the Code and an amount of R20 000 for breach of section 11.5.2 of the Code.
-

Subject: [WASPA.Archive] [formal] Complaint Ref:#17004 Escalation of unsubscribe # 2912324

From: "WASPA Complaints [Redacted] [Redacted]"

Date: Thu, 19 Apr 2012 12:47:44 +0200

To: [Redacted]

Dear WASPA member,

The appended unsubscribe request was logged on the WASPA unsubscribe system on 2012-04-10, but the complainant has indicated that they are not satisfied with your response.

Therefore, the WASPA Secretariat has no choice but to escalate this query to a formal complaint against Buongiorno South Africa.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to complaints@waspa.org.za. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

It is recommended that your response should include as much as possible of the following information that is relevant to this complaint:

- Logs as stipulated in clause 11.10.2. of the Code of Conduct
- Information on how this service was or is advertised e.g.: TV, WAP, Internet, SMS, radio
- A copy of the advertisement/marketing material
- In the case of a TV advert please provide flight times and codes
- Statistics on the number of entries/users of this service

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to complaints@waspa.org.za.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the unsubscribe request follows below ---

The user who escalated this request has provided the following reason for escalation: I do however still ask to see the actual subscription request. The log shows messages sent to the subscriber, but no messages originated by him.

The cell phone user does indeed remember receiving the first CONGRATULATIONS message unsolicited ie he had neither sent any sms to anyone, nor replied to any previously received message. He had simply deleted the CONGRATULATIONS message without any further action. He does not recall receiving the second message, and did not initiate the unsubscribe message, but we understand that that was done by MTN.

Please can you continue to investigate. The subscriber DID NOT subscribe to any service by any action on his part, and the R20 charged was therefore taken from his purchased time without authorization.

Thanks again,

Redacted

WASP members

Buongiorno South Africa

Details of the complaint

Mobile number: Redacted
Customer name: Redacted
Customer email: Redacted

Actions requested:

- SP requested to unsubscribe customer
- SP requested to send an SMS confirming this unsubscribe
- SP requested to provide proof of subscription
- SP requested to contact customer regarding a refund

WASPA member response: Buongiorno South Africa

Response to unsubscribe request: Unsubscribed
Confirmation SMS sent to the customer: Sent
Response to the request for a refund: No refund offered
Upload proof of subscription: Uploaded by WASP
Proof of subscription available from <http://secure.ff.co.za/unsubscribe/proof.php?action=view&id=2912324&wasp=9>

Comments

Redacted on 2012-04-10 11:27:55 said:
Complainant writes: Hi there,

One of the guys who works with us discovered that (since 4th April this year), when he bought airtime, R5.00 was deducted from every purchase. His cell-phone number is Redacted

After calling MTN, they referred him to a non-existent landline number Redacted
- allegedly the number for ITOUCH MESSAGING.

Research on the internet led me to a different company (Bon-Journo), Redacted who advised they used to be iTOUCH, but that I could call a specific call center number Redacted. This number was again answered by Bon-Journo, but they could at least check their so-called records, and said the subscription was taken out on the 4th April, but was cancelled (must have been by MTN) yesterday 9th April.

Whilst it would seem that the unauthorized subscription (under no circumstances was any sms sent to 35050 at any time, nor any website visited) has now been cancelled, a total of R20-00 was claimed by MTN/iTouch and the cell phone user did NOT authorize this.

I previously has a case with MobiMex (or something to that effect), which was finally cancelled, but the R360-00 NEVER refunded, even though I won the case.

I ask that you investigate the above case, and arrange for the R20-00 to be credited to **Redacted**, as I again feel MTN is abusing its position.

Thanks,

Redacted

Buongiorno South Africa on 2012-04-10 17:55:42 said:
Member has been unsubscribed and confirmation sms has been sent. No refund is offered. Thanks. **Redacted**

archive mailing list
archive@waspa.org.za
<http://lists.waspa.org.za/mailman/listinfo/archive>

Manage unsubscribe request #2912324 ([Edit this request](#))

Status: Closed

Flagged for special attention: No

Mobile number: **Redacted**

Customer name: **Redacted**

Customer email: **Redacted**

WASP responses

WASP	Status	WASP Response	SMS Confirmation	Proof of subscription	Refund	Customer contacted
Buongiorno South Africa	Processed	Unsubscribed	Sent	Uploaded by WASP (view)	No refund offered	No

Secretariat actions:

Escalate this request to a formal complaint.

Please provide a reason for escalating this request to the complaints team:

[Escalate this request](#)

Comments

Author	Date	Time	Comment
Reda	2012-04-10	11:27:55	Complainant writes: Hi there, One of the guys who works with us discovered that (since 4th April this year), when he bought airtime, R5.00 was deducted from every purchase. His cell-'phone number is Redacted . After calling MTN, they referred him to a non-existent landline number Redacted - allegedly the number for 'ITOUCH MESSAGING'. Research on the internet led me to a different company (Bon-Journo), Redacted who advised they 'used to be iTOUCH', but that I could call a specific call center number – Redacted . This number was again answered by 'Bon-Journo', but they could at least check their so-called records, and said the subscription was taken out on the 4th April, but was cancelled (must have been by MTN) yesterday – 9th April. Whilst it would seem that the unauthorized subscription (under no circumstances was any sms sent to 35050 at any time, nor any website visited) has now been cancelled, a total of R20-00 was claimed by MTN/iTouch and the cell 'phone user did NOT authorize this. I previously had a case with MobiMex (or something to that effect), which was finally cancelled, but the R360-00 NEVER refunded, even though I 'won' the case. I ask that you investigate the above case, and arrange for the R20-00 to be credited to Redacted , as I again feel MTN is abusing its position. Thanks Redacted
Buongiorno South Africa	2012-04-10	17:55:42	Member has been unsubscribed and confirmation sms has been sent. No refund is offered. Thanks. Redac
Reda	2012-04-18	15:04:13	Escalation reason: I do however still ask to see the actual 'subscription' request. The log shows messages sent to the subscriber, but no messages originated by him. The cell 'phone user does indeed remember receiving the first 'CONGRATULATIONS' message – unsolicited – ie he had neither sent any sms to anyone, nor replied to any previously received message. He had simply deleted the 'CONGRATULATIONS' message without any further action. He does not recall receiving the second message, and did not initiate the 'unsubscribe' message, but we understand that that was done by MTN. Please can you continue to investigate. The subscriber DID NOT subscribe to any service by any action on his part, and the R20 charged was therefore taken from his purchased time without authorization. Thanks again Redacted

Add a new comment:

[Add comment](#)

History

User	Date	Time	Action	Detail
MTN	2012-04-09	16:43:57	logged	<i>None</i>
Buongiorno South Africa	2012-04-09	19:31:39	wasp_update	unsub response changed from "None" to "Unsubscribed"
Buongiorno South Africa	2012-04-09	19:31:39	wasp_update	confirmation sms changed from "Requested" to "Sent"
Reda	2012-04-10	11:27:55	updated	Customer name changed from "" to "Redacted"
Reda	2012-04-10	11:27:55	updated	Customer email changed from "" to "Redacted"
Reda	2012-04-10	11:27:55	updated	Proof of subscription required changed from "Not requested" to "Requested"
Reda	2012-04-10	11:27:55	updated	Refund requested changed from "Not requested" to "Requested"
Reda	2012-04-10	11:27:55	updated	WASP status changed from Processed to Open (new) for Buongiorno South Africa
Reda	2012-04-10	11:27:55	updated	WASP response changed from Unsubscribed to None for Buongiorno South Africa
Cron	2012-04-10	13:00:36	autoreminder	Buongiorno South Africa
Buongiorno South Africa	2012-04-10	17:55:42	wasp_update	unsub response changed from "None" to "Unsubscribed"
Buongiorno South Africa	2012-04-10	17:55:42	wasp_update	refund changed from "Requested" to "No refund offered"
Buongiorno South Africa	2012-04-10	17:55:42	proof_supplied	Buongiorno South Africa
Reda	2012-04-13	15:01:01	closed	<i>None</i>
Reda	2012-04-18	15:04:13	escalated	Formal complaint #17004

MO/MT	created	acked	mo proc/mt deliv	service	from	to	operator	message
MT	2012-04-04	2012-04-04 21:30:53	+02 2012-04-04 21:31:01	+02(35050_gold_standard	Redac	Redac	mtn	CONGRATULATIONS! By joining 35050 GOLD U could WIN a New Polo* & other Great PRIZES*. PLUS get Top Hits, Hot Apps & UNLIMITED DOWNLOADS 4 ur mobile. *T&Cs apply
MT	2012-04-04	2012-04-04 21:31:03	+02 2012-04-04 21:31:09	+02(35050_gold_standard	Redac	Redac	mtn	Welcome 2 35050 GOLD 4 UNLIMITED Top Hits, Hot Apps &PRIZES on UR Mobile 4 Just R5/day go 2 http://35050.mobi to unsub dial *120*5133# help 0214068686
MT	2012-04-09	2012-04-09 19:31:30	+02 2012-04-09 19:31:38	+02(35050_gold_standard	Redac	Redac	mtn	So sad to see you go :(You have been unsubscribed from 35050 GOLD. To re-subscribe sms START to 35050. U'll then b resubscribed @ R5/day. We'll be waiting!

Subject: Re: [WASPA.complaints] [formal] Complaint Ref:#17004 Escalation of unsubscribe # 2912324

From: [Redacted]

Date: Thu, 26 Apr 2012 15:34:17 +0200

To: [Redacted]

Dear Waspa,

Please find attached formal response to complaint #17004 inclusive of documented campaign / log evidence on this matter.

We trust this is to your satisfaction.

Should you require anything further on this matter, please revert back and we shall address accordingly.

Best Regards
Buongiorno SA

-----Original Message-----

From: WASPA Complaints [Redacted]

Sent: 19 April 2012 12:48 PM

To: [Redacted]

Subject: [formal] Complaint Ref:#17004 Escalation of unsubscribe # 2912324

Dear WASPA member,

The appended unsubscribe request was logged on the WASPA unsubscribe system on 2012-04-10, but the complainant has indicated that they are not satisfied with your response.

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- Logs as stipulated in clause 11.10.2. of the Code of Conduct
- Information on how this service was or is advertised e.g.: TV, WAP, Internet, SMS, radio
- A copy of the advertisement/marketing material
- In the case of a TV advert please provide flight times and codes

- Statistics on the number of entries/users of this service

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the unsubscribe request follows below ---

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The cell phone user does indeed remember receiving the first CONGRATULATIONS message unsolicited ie he had neither sent any sms to anyone, nor replied to any previously received message. He had simply deleted the CONGRATULATIONS message without any further action. He does not recall receiving the second message, and did not initiate the unsubscribe message, but we understand that that was done by MTN.

Please can you continue to investigate. The subscriber DID NOT subscribe to any service by any action on his part, and the R20 charged was therefore taken from his purchased time without authorization.

Thanks again,

Redacted

WASP members

Buongiorno South Africa

Details of the complaint

Mobile number: **Redacted**

Customer name: **Redacted**

Customer email: **Redacted**

Actions requested:

- SP requested to unsubscribe customer
- SP requested to send an SMS confirming this unsubscribe
- SP requested to provide proof of subscription
- SP requested to contact customer regarding a refund

WASPA member response: Buongiorno South Africa

Response to unsubscribe request: Unsubscribed Confirmation SMS sent to the customer: Sent Response to the request for a refund: No refund offered Upload proof of subscription: Uploaded by WASP

Proof of subscription available from
<http://secure.ff.co.za/unsubscribe/proof.php?action=view&id=2912324&wasp=9>

Comments

Redac on 2012-04-10 11:27:55 said:

Complainant writes: Hi there,

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Thanks,

Redacted

Buongiorno South Africa on 2012-04-10 17:55:42 said:
Member has been unsubscribed and confirmation sms has been sent. No refund is offered. Thanks **Redacted**

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2012.0.1913 / Virus Database: 2411/4959 - Release Date: 04/25/12

Response Waspa - Complaint #17004.doc	Content-Type: application/msword Content-Encoding: base64
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B1.doc

B1.doc	Content-Type: application/msword Content-Encoding: base64
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B2.doc

B2.doc	Content-Type: application/msword Content-Encoding: base64
---------------	--

B3.doc

B3.doc	Content-Type: application/msword Content-Encoding: base64
---------------	--

B4.xls

B4.xls	Content-Type: application/vnd.ms-excel Content-Encoding: base64
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B5.xls

B5.xls	Content-Type: application/vnd.ms-excel Content-Encoding: quoted-printable
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RESPONSE TO COMPLAINT 17004:

- 1 On 19 April 2012 we received notification from WASPA Complaints that a formal complaint, numbered 17004 (the “**Complaint**”), had been lodged against us by a member of the public (the “**Complainant**”).
- 2 Based on the facts surrounding the Complaint, we submit that the version of the WASPA Code of Conduct applicable to this Complaint is version 11.6 (this version will hereinafter be referred to as the “**Code**”).
- 3 The grounds for the Complaint, to put it concisely, is that the Complaint denies that the Complainant subscribed to our 35050 GOLD service (the “**Service**”).
- 4 We confirm that, for some inexplicable reason, our call centre did not provide the records evidencing subscription when they were requested by the Complainant. We apologise to the Complainant for this, and confirm that we have addressed and reprimanded our call centre accordingly.
- 5 Please now find attached hereto:
 - 5.1 The campaign through which the Complainant became subscribed (annexures “**B1**” – “**B3**” (both inclusive))
 - 5.2 Our MO/MT logs (annexure “**B4**”); and
 - 5.3 Our billing records (annexure “**B5**”)
- 6 Despite the complainant's claims in this matter, the records provided in paragraph 5.2, do evidence that the Complainant did subscribe to our 35050 Gold service (the “**Service**”) and was therefore legitimately billed for this Service.

Subscription to the Services:

- 7 We believe that the campaign and subscription process contained therein is compliant with the Code and the Advertising Rules (the “**Rules**”). Please see below for more detail.
 - 7.1 The banner (“**B1**”) and the confirmation page (“**B2**”) both contain the requisite subscription information on each page, in the prescribed format, as is required by the Code and the Rule.



8 We confirm that the campaign is compliant with the double opt-in requirements set by the Code under section 11.3 (inclusive of relevant sub-sections). By way of further amplification, we are instructed to advise that

- 8.1 potential subscribers are made fully aware, on the banner and confirmation page of the service, that what is being offered is a subscription service at a daily charge;
- 8.2 if the potential subscribers are interested then they have to click the “*join*” or “*confirm*” button before being subscribed;
- 8.3 only after taking the positive step of clicking the “*join*” or “*confirm*” does the potential subscriber then become subscribed to the service.

Upon taking the positive steps of becoming a member of the Gold service the complaint was notified through the service welcome message confirming the subscription undertaken by the complainant. The service message notifications are link directly to the complainants network provider, which entitles us to be notified of any failed messages that might not have been sent to the complaint on the day of subscription. The logs (see B4) does not indicate any such failed message claims.

The Service Welcome message: (please see B4)

- 8.4 Welcome 2 35050 GOLD 4 UNLIMITED Top Hits, Hot Apps &PRIZES on UR Mobile 4 Just R5/day go 2 <http://35050.mobi> to unsub dial *120*5133# help 0214068686

9 By adopting this procedure before subscription it is highly improbable that a potential subscriber could subscribe to the service without intending to do so. The Complainant, or someone with access to his mobile phone, must have followed the above process and subsequently become subscribed to the Service.

- 9.1 Billing Cost:

Upon reviewing the log (B5) the complainant was billed a total of R15 in total successful billing during the subscription period.

10 In addition to the above:

- 10.1 On the confirmation page, before subscribed the potential subscriber has access to our terms and conditions, which confirm the subscription element of the service being offered – this is not a requirement of the code.
- 10.2 Our campaigns contain a further welcome page, which we will refer to as the “Welcome” page (“B3”). This page follows the confirmation page and is only accessible to customers who have actually completed the subscription process, and



become subscribed. Once they have reached this point, they can be in no doubt that they have become subscribed to our Service.

- 10.3 Once subscribed the Complainant received the prescribed Welcome message containing the a) subscription element of the Service; b) the cost thereof; c) our helpline details; and b) an instruction on how to unsubscribe (which instruction was easy to follow and implement) (see "B4").
- 11 On the evidence it is difficult to argue that the Complainant, or someone with access to his mobile phone, did not act positively to become a member of the Service - a Service which any reasonable person, at the time of subscribing, would have known or should have known was a subscription service, billed at R5 per day.
- 12 We have now provided further evidence as requested by the Complainant, evidencing the subscription. We trust that the Complainant is now satisfied and that this Complaint will now be reviewed as "resolved" by WASPA.
- 13 We have not dealt with each and every other possible section of the Code which would be applicable to this campaign. To do so without further guidance as to alleged claims would be practically impossible. Therefore, should this be referred to adjudication – which we submit it should not – the Adjudicator and/or the Complainant wish us to deal with other specific sections of the Code adhered on the campaign, they are free to revert to us and we will gladly address these specified sections.
- 14 Based on the original complaint and the above, we submit that the Complainant, or someone with access to her mobile phone, did knowingly and actively subscribe to the Service.

35050 Gold Banner



Service Confirm Page



Get all your favourite WWE Raw stars on your phone now!



Simply click on the confirm link to join now!

[CONFIRM](#)

By clicking confirm, I agree to subscribe to 35050 GOLD subscription service R5/day, I accept the terms and conditions and confirm I am 18+ years old.

Click to read [terms and Conditions](#)
(please read)

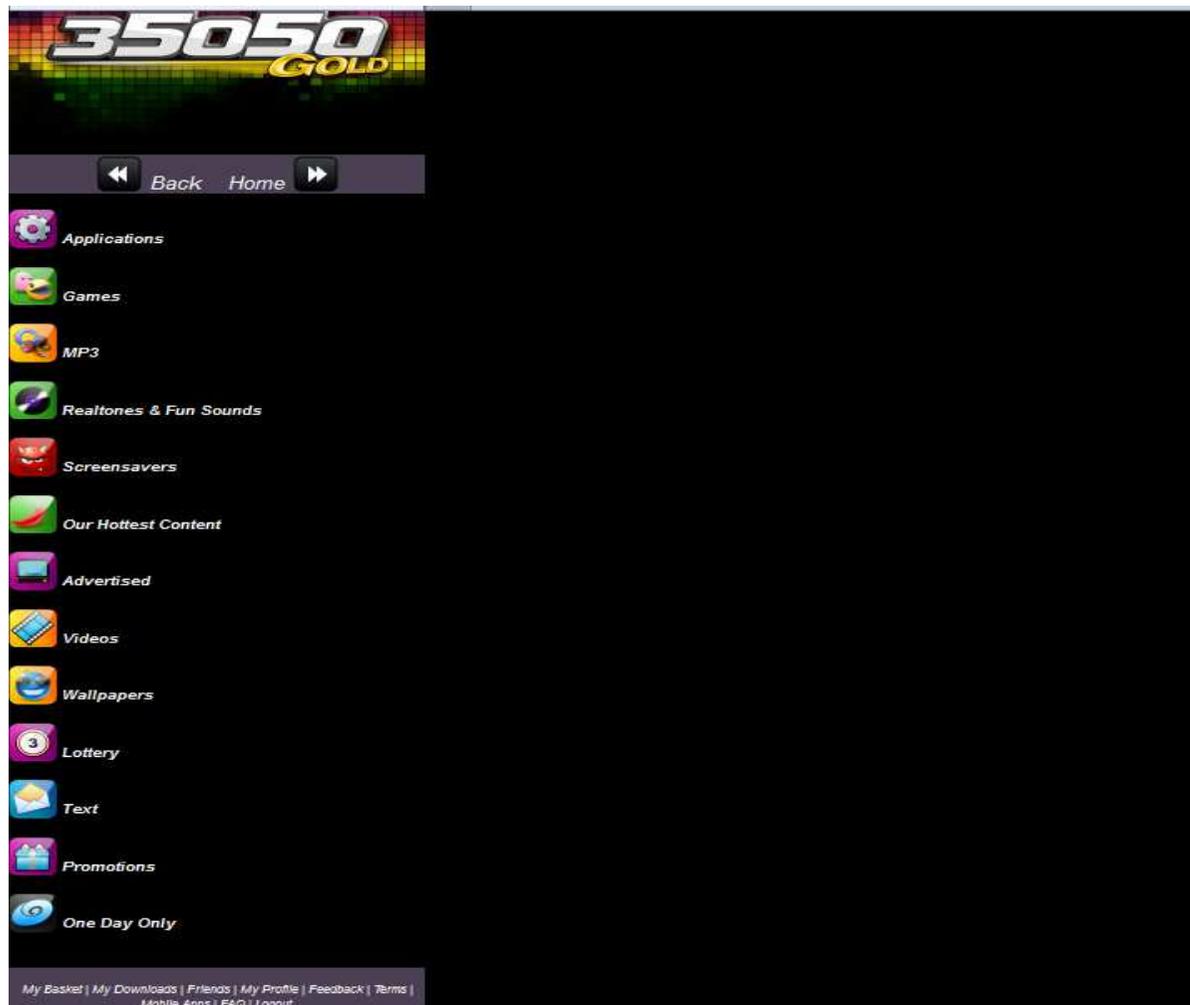
*Compatible Handsets Only
*rewards T and C's apply

[Back](#)

[FAQ](#) | [T&C](#) | [Privacy](#)

"B3"

35050 Gold Home/Welcome Page



MO/MT	created	acked	mo proc/mt deliv	service	from	to	operator	message
MT	2012-04-04 21:30:52 +0200	2012-04-04 21:30:53 +0200	2012-04-04 21:31:01 +0200	35050_gold_standard	Reda	Reda	mtn	CONGRATULATIONS! By joining 35050 GOLD U could WIN a New Polo* & other Great PRIZES*. PLUS get Top Hits, Hot Apps & UNLIMITED DOWNLOADS 4 ur mobile. *T&Cs apply
MT	2012-04-04 21:31:02 +0200	2012-04-04 21:31:03 +0200	2012-04-04 21:31:09 +0200	35050_gold_standard	Reda	Reda	mtn	Welcome 2 35050 GOLD 4 UNLIMITED Top Hits, Hot Apps & PRIZES on UR Mobile 4 Just R5/day go 2 http://35050.mobi to unsub dial *120*5133# help 0214068686
MT	2012-04-09 19:31:29 +0200	2012-04-09 19:31:30 +0200	2012-04-09 19:31:38 +0200	35050_gold_standard	Reda	Reda	mtn	So sad to see you go :(You have been unsubscribed from 35050 GOLD. To re-subscribe sms START to 35050. U'll then b resubscribed @ R5/day. We'll be waiting!

rq_target	date_format(rq_tstamp, '%Y-%m-%d %T')	rq_action	rq_operator	rq_price_poi	amount	rq_service_id	rs_status	rs_error_desc
Redacte	2012-04-04 21:30:52	charge	mtn	500	5.00	za_35050_gol d	nacknr	Insufficient funds
Redacte	2012-04-05 02:58:14	charge	mtn	500	5.00	za_35050_gol d	nacknr	Insufficient funds
Redacte	2012-04-05 16:28:01	charge	mtn	500	5.00	za_35050_gol d	nacknr	Insufficient funds
Redacte	2012-04-06 03:00:50	charge	mtn	500	5.00	za_35050_gol d	nacknr	Insufficient funds
Redacte	2012-04-06 16:26:23	charge	mtn	500	5.00	za_35050_gol d	ack	
Redacte	2012-04-07 03:04:03	charge	mtn	500	5.00	za_35050_gol d	nacknr	Insufficient funds
Redacte	2012-04-07 16:27:04	charge	mtn	500	5.00	za_35050_gol d	ack	
Redacte	2012-04-08 02:59:57	charge	mtn	500	5.00	za_35050_gol d	nacknr	Insufficient funds
Redacte	2012-04-08 16:27:52	charge	mtn	500	5.00	za_35050_gol d	nacknr	Insufficient funds
Redacte	2012-04-09 03:04:31	charge	mtn	500	5.00	za_35050_gol d	nacknr	Insufficient funds
Redacte	2012-04-09 16:29:25	charge	mtn	500	5.00	za_35050_gol d	ack	

Subject: Re: [WASPA.complaints] Resolution of complaint Ref:# 17004 Escalation of unsubscribe # 2912324

From: [Redacted]

Date: Thu, 3 May 2012 11:57:11 +0200

To: [Redacted]

Hi [Redacted],

I have again referred the attachments to the subscriber, and he is absolutely adamant that he NEVER clicked on any of the so called 'campaign' banners. In addition, whilst he cannot prove the four x R5-00 (R20.00) deducted from the air-time he purchased, his personal management of the limited amount of time he purchases has led to his calculation that R20.00 was taken from him. In view of the fact that he did not purchase much time over the few days in question, I am of the opinion that he is correct.

I want to add that I can vouch for the integrity of the subscriber, and know that his word is trustworthy.

Reviewing the 5 attachments, I must again say I cannot see any records or logs which reflect his cell phone number or sim card. Everything provided originates from Buongiorno.

Specifically:

'B1' is a printout of a 'campaign' screen which could have been sent to anyone

'B2' is a printout of a 'campaign' screen which could have been sent to anyone

'B3' is another printout of a screen which could have been sent to anyone

'B4' is a record of the billing raised by Buongiorno/MTN and proves that our complaint is true and valid. It is interesting to note that the first attempted billing is shown to have been made on April 4, and did not go through because of insufficient funds? How then could the subscriber have been using his 'phone on that day?

'B5' is a table which shows that the total UNAUTHORISED billings Buongiorno/MTN WOULD HAVE debited, would have been R30.00, had the funds been available.

Unless we're missing something, no records show any origination from either the cell 'phone or sim card in question?

In view of these two facts, namely:-

1. The integrity of the subscriber in question
2. The absence of any records tying the 'campaign' screens to either the subscriber's cell or sim card,

Neither the subscriber in question nor I can accept the matter as resolved, and we therefore ask that you kindly continue to pursue the matter further to resolution.

Kind regards

[Redacted]

-----Original Message-----

From: WASPA Complaints (Lorraine Hartzler) [Redacted]

Sent: 03 May 2012 10:55 AM

To: [Redacted]

Subject: Resolution of complaint Ref:# 17004 Escalation of unsubscribe # 2912324

Dear [Redacted]

Regarding your complaint against Buongiorno SA, we have received the following correspondence from the service provider:

[see below/attached email response]

We would like to check that the service provider has resolved this complaint to your satisfaction. If so, we will close the complaint and notify the service provider that we have done so.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to complaints@waspa.org.za.

Warm regards,
WASPA Secretariat

----- Original Message -----

Subject: Re: [WASPA.complaints] [formal] Complaint Ref:#17004

Escalation of unsubscribe # 2912324

Date: Thu, 26 Apr 2012 15:34:17 +0200

From: [Redacted]

Reply-To: [Redacted]

To: [Redacted]

Dear Waspa,

Please find attached formal response to complaint #17004 inclusive of documented campaign / log evidence on this matter.

We trust this is to your satisfaction.

Should you require anything further on this matter, please revert back and we shall address accordingly.

Best Regards

Buongiorno SA

--
This message has been scanned for viruses and dangerous content by MailScanner, and is believed to be clean.

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2012.0.1913 / Virus Database: 2425/4974 - Release Date: 05/02/12

Subject: Re: [WASPA.complaints] Complaint Ref:# 17004 Escalation of unsubscribe # 2912324

From: [Redacted]

Date: Mon, 7 May 2012 16:22:38 +0200

To: [Redacted]

Dear Waspa,

Further to our first response – which we believe to be self-explanatory and easy to follow - please note our further comments below.

Whilst we cannot speak to the Complainant's integrity, we can confirm that our records confirm that the Complainant, or someone with access to his mobile phone, did initiate and complete the subscription process. There is no legitimate reason to question our records.

Whether or not the Complainant had funds for his MSISDN at the time of subscription is irrelevant – he would not have needed funds on his mobile to subscribe. Only access to his mobile phone would have been required; to receive the requisite PIN code message that needed to be inserted on the webcampaign in order to complete continue with the subscription process.

We reiterate that the subscription process was initiated and completed using the Complainant's MSISDN and mobile phone. If the Complainant maintains that he did not subscribe to our service, then we suggest that he question those who had access to his mobile phone, as someone did legitimately subscribe to our service.

Should the Complainant and/or the Adjudicator require us to clarify and/or deal with any other aspect surrounding this matter, please revert to us and we will do so as best we can.

Yours faithfully
Buongiorno SA

-----Original Message-----

From: WASPA Complaints [Redacted]

Sent: 03 May 2012 01:34 PM

To: [Redacted]

Subject: Complaint Ref:# 17004 Escalation of unsubscribe # 2912324

Dear [Redact]

Please take note of below response from complainant.

Please advise if you would like to add any additional information to this complaint before proceeding to adjudication.

Regards
Lorraine
WASPA

----- Original Message -----

Subject: Re: [WASPA.complaints] Resolution of complaint Ref:# 17004 Escalation of unsubscribe # 2912324

Date: Thu, 3 May 2012 11:57:11 +0200

From: [Redacted]

Reply-To: [Redacted]

To: [Redacted]

Hi Lorraine,

I have again referred the attachments to the subscriber, and he is absolutely adamant that he NEVER clicked on any of the so called 'campaign' banners. In addition, whilst he cannot prove the four x R5-00 (R20.00) deducted from the air-time he purchased, his personal management of the limited amount of time he purchases has led to his calculation that R20.00 was taken from him. In view of the fact that he did not purchase much time over the few days in question, I am of the opinion that he is correct.

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In view of these two facts, namely:-

1. The integrity of the subscriber in question 2. The absence of any records tying the 'campaign' screens to either the subscriber's cell or sim card,

Neither the subscriber in question nor I can accept the matter as resolved, and we therefore ask that you kindly continue to pursue the matter further to resolution.

Kind regards

Redacted

-----Original Message-----

From: WASPA Complaints (Lorraine Hartzer) Redacted

Sent: 03 May 2012 10:55 AM

To: Redacted

Subject: Resolution of complaint Ref:# 17004 Escalation of unsubscribe # 2912324

Dear Redacted

Regarding your complaint against Buongiorno SA, we have received the following correspondence from the service provider:

[see below/attached email response]

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Warm regards,
WASPA Secretariat

----- Original Message -----

Subject: Re: [WASPA.complaints] [formal] Complaint Ref:#17004
Escalation of unsubscribe # 2912324
Date: Thu, 26 Apr 2012 15:34:17 +0200
From: [Redacted]
Reply-To: [Redacted]
To: [Redacted]

Dear Waspa,

Please find attached formal response to complaint #17004 inclusive of documented campaign / log evidence on this matter.

We trust this is to your satisfaction.

Should you require anything further on this matter, please revert back and we shall address accordingly.

Best Regards

Buongiorno SA

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No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.1913 / Virus Database: 2425/4974 - Release Date: 05/02/12

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.1913 / Virus Database: 2425/4982 - Release Date: 05/06/12