



REPORT OF THE ADJUDICATOR

Complaint reference number:	17131
WASPA member(s):	US Cellcom (IP); Mira Networks (SP)
Membership number(s):	1046; 0011
Complainant:	M Du Toit
Type of complaint:	Subscription service
Date complaint was lodged:	7 May 2012
Date of the alleged offence:	11 April 2014
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:	15817

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 11 April 2012.

The IP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant logs. The IP did not offer a refund to the complainant as it alleged that she had validly subscribed to the service in response to a promotional SMS.

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

SP's response

The SP provided logs showing that the following promotional SMS message was sent to the complainant on 19 January 2012:

Your account ##### shows unclaimed mobile points in January! To redeem send GO to 39853. TopSMS Subscription R7/day. OptoutTxtStop.

The logs indicate that the complainant responded on the same day by SMS'ing the word "GO" to the given short code.

The following message was then sent to the complainant:

Send YES to 39853 to complete your subscription and receive your Mobile Points. For help call 0861106472 R7day.

The complainant sent back a message with the words "GO OK".

The following confirmation and welcome messages were then sent to the complainant:

CONGRATS! Exchange now your Mobile Points for unlimited SMS. Visit www.thelobop.com to activate. Your username is: #####, password: 170624

Welcome: You are now subscribed to BONUS SMS, R7/SMS, 7 SMS/week, reply Stop to unsubscribe, support: 0861106472, www.thelobop.com

Complainant's reply

The complainant acknowledged that she responded to the IP's promotional message but she understood the message to mean that she could redeem unclaimed mobile points without there being any obligation to pay any monies.

The complainant does not recall the reference to the subscription charge of R7 per day being included in the original messages she received.

The complainant stated that she never intended to subscribe to any service where she was required to spend money.

She also believes that the password provided was needed to activate her subscription and she confirms that she never used the password provided.

The complainant states that when she received the welcome message she realised that it was a paying service and then did nothing further to activate the subscription.

The complainant queried how the IP gained access to her cellphone account to learn that she had unclaimed mobile points.

The complainant once again requested a full refund of all amounts deducted from her account.

Sections of the Code considered

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.

11.2.1. 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.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

11.2.6. The confirmation message described in 11.2.5 must include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

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.

11.10.2. 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 IP's subscription process is compliant with clause 11 of the WASPA Code. However in respect of this particular complaint, the complainant was requested to send the word "YES" to activate the subscription. The complainant did not send the word "YES", but instead sent the words "GO OK".

In terms of the IP's own activation rules, this subscription should never have been activated.

There is also no evidence before me that the IP sent any reminder messages to the complainant in the months following the subscription being activated and the complainant's request to unsubscribe. Had the relevant monthly reminder messages been sent, the complainant could have taken steps to unsubscribe sooner and avoid further charges being made against her account.

Even if it can be accepted that the complainant properly subscribed to the service, it appears that she did not have the requisite intention to do so, and that she was labouring under a misunderstanding that there was no cost involved in redeeming her mobile points when she responded to the IP's initial promotional message .

The complaint is accordingly upheld.

Sanction

I have noted the previous complaint that was upheld against the IP in respect of its subscription services (complaint # 15817).

However, taking into account the low level of severity of the IP's breach of the Code in this complaint, and the contributory conduct of the complainant, I am satisfied that a suitable sanction is that the IP provide the complainant with a full refund of all charges made against her account for the period in question.

The IP is requested to provide the WASPA Secretariat with proof, within 7 days of receipt of notice of this report, that the refund has been paid to the complainant.