



REPORT OF THE ADJUDICATOR

Complaint reference number:	17149
WASPA member(s):	US Cellcom (IP); Mira Networks (SP)
Membership number(s):	1046; 0011
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	9 May 2012
Date of the alleged offence:	2 April 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:	17132; 17131; 15817

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 2 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 he had validly subscribed to the service in response to a promotional SMS.

The complainant states that she received a promotional SMS on 26 January 2012 for the subscription service in question. Subsequent to receiving the message, the complainant noticed that her account was debited with a number of unsolicited charges. Upon inquiring with the SP, she was advised that she had responded to the promotional SMS by texting the words “yes” and “go” to the relevant short code.

The complainant vehemently denies responding and alleges that the promotional SMS sent to her contained no reference to any charges and alleges that the message constitutes deceptive marketing.

The complainant also states that she did visit the site advertised in the promotional SMS she received to see what was entailed. However she denies ever doing anything to activate the subscription.

SP's response

The SP provided logs showing that the following SMS message was sent to the complainant's number on 26 January 2012:

Send YES to 39853 to complete your subscription and receive your Mobile Points. For help call 0861106472 R7/day.

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

The following messages were then sent to the complainant's number on the same day:

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

CONGRATS! Exchange now your Mobile Points for unlimited SMS. Visit www.thelobop.com to activate. Your username is: 834628172, password: 887486

The IP maintains that the complainant was validly subscribed to the service, but offered a refund on the basis that the complainant had not used the service.

Sections of the Code considered

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

1. 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".
 2. In terms of the IP's own activation rules as per its confirmation message, this subscription should never have been activated.
 3. 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 his account.
 4. The complaint is accordingly upheld.
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Sanction

1. I have noted the previous complaints upheld against the IP in respect of its breach of the provisions of clause 11 relating to its subscription services (complaints # 15817, 17131, 17132).
2. The IP has offered to refund the complainant. However there is no evidence that it has done so.
3. In light of the foregoing, the following sanctions are made:

3.1 The IP is ordered to refund all amounts charged to the complainant in respect of this subscription unless it has already done so.

3.2 The IP is fined an amount of R 25 000.00.