



REPORT OF THE ADJUDICATOR

Complaint reference number:	17376
WASPA member(s):	Buongiorno South Africa
Membership number(s):	0002
Complainant:	Public
Type of complaint:	Subscription Services
Date complaint was lodged:	2012-06-05
Date of the alleged offence:	25 April 2012
Relevant version of the Code:	11.6
Clauses considered:	Clause 11.2.1, 11.3.1, 11.5.2, 11.6.2, 11.6.3, 11.6.4, 11.6.5.
Relevant version of the Ad. Rules:	2.3
Clauses considered:	1.4.1
Related cases considered:	16026

Complaint

The Complainant complains that monies were deducted from her cell phone account fraudulently for a subscription service to which she alleges she never subscribed. The WASP was Buongiorno and the services in question were their 35050 Gold & VIP subscription services.

On receiving the Service Provider's response, the Complainant denied ever having accessed or entered their number on the webpage in question and provided a different IP address to the one given by the Service Provider.

The Complainant requested that the monies deducted be refunded by the Service Provider.

Service provider's response

The Service provider provided a somewhat formulaic but thorough response setting out exactly when and how the subscription process had happened and worked:

"Due to our double-opt in system, which is even more stringent than that prescribed by the Code, it is highly improbable – if not impossible – to become subscribed to our service without being aware that one was subscribing to a Subscription service.

In addition to the requisite subscription text being visible on the landing page of the campaign, the fact that the service is a subscription service is recorded in the welcome message, as well as the reminder messages sent to the subscriber. This will be referred to in more detail below.

In consideration of this 35050 Gold campaign as a whole, it is clear that before subscribing the complainant was made fully aware, on both the landing pages of the services, that what is being offered was a subscription service at a daily charge of R5/day. See: The top left hand side of pages ("B1", "B2" & "B3") – "Subscription service R5/ day"; and beneath the "Confirm" button ("B2 & B5") it also states that, "By clicking confirm, I agree to subscribe to 35050 GOLD subscription service R5/ day...".

The complainant was presented with Service Welcome landing pages after having successfully subscribed via the subscription process. (see "B3" & "B6")

In addition the complainant is on all pages ("B1", "B2" & "B3") referred to our terms and conditions before subscribing - this is not a requirement of either the Code and/or the Advertising Rules (the "Rules").

On 1st November 2011 the complainant entered her mobile number on the landing page ("B1") and must have clicked "Send", whereafter she was sent, from ourselves, a text message containing the required pin code (8507) (the "pin code") from Buongiorno. As already stated above, this text message also confirms that the service offered is a subscription service, charged at R5 per day"
>> ur CODE is 8507 << enter it on the web confirmation page & Get UR Chance to WIN!!*

The pin code is unique and directed only to the phone of the complainant, as the subscriber.

At the point of receiving the pin code the complainant was still not subscribed to the service. Once she received the pin code the complainant still had a choice, before becoming subscribed, to enter the pin code on the landing page ("B2")

Only on entering the pin code correctly on the second landing page and pressing the "confirm" button would she have become a subscriber of the service and received the requisite "welcome" message – which she did (see MT logs).

Only after the user has subscribed to the 35050 Gold service is the user then transferred to a new product offering, which is the Vip service as illustrated through the VIP landing page marked ("B4"), in this case.

The complainant was notified in the pin code message of the VIP service offering. The message also contained the pin code (7705) for the subscription service. The message read as follows:

>> ur CODE is 8507 << verify it on the web confirmation page & Get UR Chance to WIN!!*

Not only is the Landing page design and product offering of the VIP service distinctly different from the offering for the 35050 Gold service, but the new service information is also clearly indicated in the pin code message. See Log attached.

The service in turn after the complainant had acted positively and clicked the "CONFIRM" button was the complainant sent the VIP service welcome message: See ("B5") confirm page...

After which the VIP service sent the complainant the service welcome message: See log attached.

The logs confirm that the complainant received all the required welcome and pin messages - which messages again confirmed the subscription element of the services, the cost thereof, as well as instructions on the unsubscribe process. The respective messages read:

*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*

Welcome 2 35050 VIP 4 UNLIMITED Cool Games, Mp3s &daily PRIZES on UR Mobile 4 Just R3/day go 2 Wap.35050.35050 help 0214068686.

See attached logs.

Please note the complainants subscription period was a calendar month in both instances, thus the prerequisite reminder messages are evident as having been received, as also informed the complainant of the unsubscribe instruction. This unsubscribe instructions were made abundantly clear to the complainant as advised the complainant had all the required information in order to successfully unsubscribe from the services. See attached logs".

The Service Provider also went to lengths to indicate that WASPA through their Code requirements and a specific adjudication had in some manner vetted the subscription process as being compliant with the Code.

The Service Provider unsubscribed the Complainant as requested but did not offer a refund due to their assertion of valid and compliant subscription.

Sections of the Code considered

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.

11.3. 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.

11.5.2 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.

11.6.1. 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.

Advertising rules clause 1.4.1 relating to abbreviations.

Decision

As I have stated and found in many decision of a very similar nature, so similar in fact that the Service Provider is able to utilise a template response, with dates amended (when they remember to do so), these complaints are the hardest to adjudicate due to the very nature of them being factual disputes backed up by averments given by the parties involved. They often amount to a "he said/she said" dispute where the lack of factual proof guides the decision.

In this case the Complainant alleges that she never subscribed to the services. The Service Provider states that she did subscribe to the services and furthermore, that the subscription process for such services was in line with the Code of Conduct. The Service Provider was able to substantiate these claims with valid logs and screenshots and as such, whilst sympathetic to the Complainant, as I cannot disprove the validity of the logs and have no basis on which to doubt the veracity thereof after careful scrutiny, I cannot find the Service Provider to have been in breach of the following sections of the Code:

In re 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.

- No automatic subscription occurred.

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.

- Message was sent to the MSISDN which then needed to be entered into the webpage. The message complied with the provisions of the Code.

- See logs and screenshots attached.

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.

**-Welcome message sent
See logs provided**

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.

-Reminder messages sent as required.

-Logs provided

Advertising rules clause 1.4.1 relating to abbreviations.

-Welcome messages used incorrect abbreviation "unsub".

In this instance and based on the facts before me I find the Service Provider in breach of the Advertising Rules of the Code.

Sanctions

The Service Provider must amend all of its messages to remove unapproved abbreviations.

The Service Provider is fined R2000 to be suspended provided the messages are amended within 5(five) days hereof and provided the Service Provider is does not utilise incorrect

abbreviations in its welcome or confirmation messages within 30 (thirty) days of this ruling, case 17377 excepted.