



REPORT OF THE ADJUDICATOR

Complaint reference number:	17377
WASPA member(s):	Buongiorno South Africa
Membership number(s):	0002
Complainant:	Public
Type of complaint:	Subscription Services
Date complaint was lodged:	2012-06-06
Date of the alleged offence:	9 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, 17376

Complaint

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

"The subscription occurred via the use of a PC, however content download could only have occurred through WAP – i.e. via the subscribers' mobile phone.

SUBSCRIPTION PROCESS:

In the instance that the Complainant still denies subscribing to our subscription service, we would like to place on record that, in order to subscribe, a customer has to actively be involved in our double opt-in process and it is therefore impossible to have become subscribed to the service in question without knowledge and/or intent on behalf of the Complainant, or someone with access to their phone.

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 Buongiorno 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 pin code message, 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 the campaign as a whole, it is clear that before subscribing the complainant was made fully aware, on both landing pages of the service, that what is being offered was a subscription service at a daily charge of R5/per day. See:

- *The top of left hand side of all three pages ("B1", "B2" & "B3") – "Subscription service R5/per day"; and*
- *Beneath the "Confirm" button ("B2") it also states that, "By clicking confirm, I agree to subscribe to 35050 GOLD subscription service R5/per day..."*
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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 9th April 2012 the complainant entered his mobile number on the landing page and must have clicked "Send", where after she was sent, from ourselves, a text message containing the required pin code (7208) (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 7208 << enter it in the web confirmation page & you will be subscribed to 35050 GOLD from Buongiorno at R5/day 4 Top Apps, MP3 hits & tons more!

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 he received the pin code the complainant still had a choice, before becoming subscribed, to enter the pin code on the landing page.

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

The complainant was in addition to the welcome message presented with a welcome to the service page. (see attached B3)

The above process is in line with the Code and the Rules.

The logs confirm that the complainant received all the required welcome and reminder messages - which messages again confirmed the subscription element of the service, the cost thereof, as well as instructions on the unsubscribe process. The respective message 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 See attached logs.*

On the 9th May 2012 the complainant was through the reminder message reminded of the service as is a standard industry requirement. The message read:

Reminder: You are subscribed to Buongiorno SA 35050 Gold. Cost R5/day. For help call 0214068686. To unsub, sms STOP gold to 35050.

See attached logs

Once subscribed the complainant was at all times – through the welcome message – provided with detailed instructions on how to unsubscribe, as well as our help line number in the event he experienced any problems.

The complainant obviously understood this unsubscribe procedure as it was this procedure which the complainant utilised to unsubscribe from our 35050 service, either via our 24x7 contact number or, utilizing the instruction within the welcome and reminder message for sms and or USSD unsubscribe. 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 decisions of a very similar nature, with the same Service Provider, 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 does not utilise incorrect abbreviations in its welcome or confirmation messages within 30 (thirty) days of this ruling, case 17376 excepted.