



REPORT OF THE ADJUDICATOR

Complaint reference number:	17394
WASPA member(s):	Opera Interactive (SP) (0068) Sprint Media (IP) (1168)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Subscription Service
Date complaint was lodged:	6 June 2012
Date of the alleged offence:	3 April 2012
Relevant version of the Code:	11.6
Clauses considered:	5.2, 5.3, 11.2, 11.5 and 11.6.
Relevant version of the Ad. Rules:	N/A

Related cases considered: 17264, 17481 and 17495

Complaint

Complaint 17394 was logged by a competitor regarding a subscription service.

The complaint progressed as follows:

Complaint 17394 is the escalation of unsubscribe request 2964708 regarding subscription service charges.

- The formal complaint was sent to the IP on 2012-06-11 and they responded on 2012-07-04.
- The SP was notified on 2012-06-11.
- The complainant refused resolution on 2012-07-06.
- The SP advised on 2012-07-10 that they wish to submit further information, but to date no information was supplied.

The Complainant alleges that he had been automatically subscribed to a service and that monies were being deducted without his consent. He also disputes the veracity of the IP's logs proving subscription.

In summary the complaint sets out the following having been breached:

- Automatic subscription; and
 - Subscription process not followed.
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Service provider's response

The SP referred the complaint to the IP. Due to the fact that all parties involved are privy to the IP's formal response I am not going to repeat every element thereof here.

The IP alleges that they complied fully with the Code of Conduct and the requirements that it exacts. In particular, the IP states that:

1. The complainant relates to the Mob Matic service. Subscribers are subscribed via a an sms;
 2. The subscription process complies with the Code of Conduct in 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 R7/per day. Screenshots were attached.
 3. On 3 April 2012 the complainant accessed the landing page.
 4. Due to the fact that the Complainant was allegedly already on the database and as such and already being verified, the IP alleges that the 6 step verification process is not required but merely the double opt-in as provided for in 11.2.7 of the Code.
 5. The IP provided logs to in proof of the above.
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Complainant's Further Reply

The Complainant responded to the WASP's response to state that they never subscribed to any service and disputed the veracity of the proof of subscription.

They also on request provided detailed logs from MTN demonstrating that at no point did they send any SMS.

Sections of the Code considered

5.2. Identification of spam

5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
 - (b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications
- (i) at the time when the information was collected; and

- (ii) on the occasion of each communication with the recipient; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.2.2. Any commercial message is considered unsolicited after a valid opt-out request.

5.2.3. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

5.3. Prevention of spam

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

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.

11.2.2. 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.

11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, it must be reasonably clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

11.2.4. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian to do so.

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].

11.2.7. If the network is already undertaking any of the verification steps required in this chapter of the Code, then it is not necessary for members to repeat those particular steps again.

11.5. Welcome message

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.

11.6. Reminder messages

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 11.3. Subscription initiated via a browser (web or WAP)

Decision

I will now deal with each section of the Code that the Complainant alleged the IP infringed.

Similarly to the response letters from and IP's in these subscription disputes I feel like I am generating rote responses. Unfortunately this is due to the fact that the details of the cases are so similar.

Again, I have a general issue with the practical problems of determining when logs are valid.

The IP has complied fully with the requirements of the Code. Once again, as an adjudicator all I am authorised to do is to make a decision based on the facts presented and the requirements of the Code of Conduct.

In this instance the IP's version of events kept changing slightly which in itself not evidence of any wrong doing, it does lead me to question the veracity of their responses, especially when one considers the number of similar complaints.

But without my alleging dishonesty on the part of the IP and a full forensic audit I must take the evidence presented at face value, trusting that both parties will provide a correct and accurate version of events.

I feel there has been some confusion around the sending of an SMS, however the IP states that the Complainant accessed the landing page using their phone and I am not certain whether an SMS was required.

However, it is quite clear that the welcome message sent to the consumer does not comply with the requirements of sections 11.5.2 of the Code in that they did not comply fully with the required format for such messages as explicitly stated and required by the Code.

On the evidence presented and on an assessment of same against the requirements of the Code I find that the IP has breached the Code of Conduct.

Sanctions

I am not going to sanction the SP in this case. But I am going to ask WASPA to monitor complaints against this IP using the SP's facilities and should the breaches of the Code continue that the SP be ordered to suspend the IP's use of their facilities.

Due to the number of complaints against the IP which are of the same nature I am going to order the IP to:

1. Refund the Complainant any monies deducted; and
2. Impose a fine of R10 000, R5000 payable immediately and R5000 to be held in abeyance pending the IP demonstrating to WASPA that they have corrected their welcome messages within 7 (seven) days of this ruling being published.