# REPORT OF THE ADJUDICATOR

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| **Complaint reference number:** | 18082 |
| **WASPA member(s):** | Opera Interactive (SP) (0068) <br> Sprint Media (IP) (1168) |
| **Membership number(s):** | See above |
| **Complainant:** | Public |
| **Type of complaint:** | Subscription Service |
| **Date complaint was lodged:** | 2012-08-03 |
| **Date of the alleged offence:** | 2011-07-04 |
| **Relevant version of the Code:** | 11.0 |
| **Clauses considered:** | 11.3, 11.5 and 11.6. |
| **Relevant version of the Ad. Rules:** | N/A |
| **Related cases considered:** | 18530 |

## Complaint

Complaint 18082 was logged by the public regarding a subscription service.

The complaint progressed as follows:

- Complaint 18082 is the escalation of unsubscribe request 288829 regarding subscription service charges.
- The formal complaint was sent to the WASP on 2012-08-08 and they responded on 2012-08-16.
- The complainant responded to resolution on 2012-08-17.
- The WASP provided proof of refund on 2012-09-04.
- The complainant responded to refund resolution on 2012-09-06.
- The WASP responded on 2012-09-11.
- The complainant refused resolution on 2012-09-12.
- The WASP provided additional information on 2012-09-21.

The Complainant alleges that he had been automatically subscribed to a service. He opted out of the service but and received a confirmation message as required by the Code but denies ever subscribing in the first place.

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

- Automatic subscription; and
- Subscription process not followed.

**Information provider's response**

The IP responded to the complaint. 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 also raised the issue of a refund having been paid in full and final settlement to the Complainant and as such that the matter should be determined as closed.

IP stated that:
1. On or about the 25th of June 2012 the Complainant or alternatively the person utilizing the mobile handset containing the MSISDN 082 569 8299, was browsing the mobile internet and clicked on a WAP banner advertisement promoting the Mobmatic Mobile Entertainment Subscription Service using a BlackBerry 8520 model handset.
2. This WAP banner advertisement is displayed in the public domain and therefore it is theComplainant that initiated the interaction with our service.
3. The Complainant was subsequently redirected to the Mobmatic WAP Landing Page.
4. The Mobmatic WAP landing page clearly states:
    - At the Top of the page: "SUBSCRIPTION SERVICE R7/day.""Get a new Wallpaper for your cell each day! Just click CONTINUE to startdownloading!" "Continue."
    - The terms and conditions on the page: "Mobmatic is a subscription service at R7/day that allows users to access quality mobile content through their mobile device. Mobmatic has requested that your mobile number be made available. Clicking on the action link you're declaring to be 16+ and are accepting both the terms and conditions and to receive free promotional SMS relating to this and other services operated by Sprint Media S.L. To opt-out from promotions contact support@mobmatic.co.za or call 0213002334 or send STOP to 39328."
5. The Complainant submitted his MSISDN in the space provided and clicked on the 'Continue' call to action button. Therefore, the Complainant provided his MSISDN (mobile number) to us.
6. Our system captures the IP address; the URL visited and the user-agent string.
7. On or about the 25th of June 2011 a Confirmation Message was sent to the MSISDN submitted, which message delivered successfully.
8. However, the Complainant did not click on the link (the call to action) in order to proceed in the subscription sign up process.
9. The terms and conditions however clearly states that by submitting your number and clicking on the 'Continue' call to action button you agree to receive free promotional SMS relating to this and other services operated by Sprint Media S.L.

Furthermore, the terms and conditions provide clear instructions on how to opt-out from receiving promotional messages.

10. In accordance with this, we marketed our services to the Complainant as set out below. The Complainant did not elect to use the options provided to opt-out from receiving promotional communications at the time that the information was collected or thereafter.

11. On or about the 4th of July 2011 a Push Marketing Message was sent to the mobile number 082 569 8299, in accordance with the accepted terms and conditions set out above, and the message delivered successfully.

12. On or about the 4th of July 2011 the Complainant clicked on the link provided (call to action) in the Push Marketing Message using a BlackBerry 8520 model handset and was then redirected to the Mobmatic Subscription Service WAP landing page – celebrity campaign.

13. The Mobmatic WAP landing page clearly states:
    - At the Top of the page: "SUBSCRIPTION SERVICE R7/DAY." "JOIN AND PLAY."
    - The terms and conditions on the page: "This is a Subscription Service priced at R7/day that allows users to access fun interactive apps alerts and downloads along with many other services. Mobmatic Freemium users accrue points by interacting with the Mobmatic Platform. Premium subscribers will accumulate both Points & Coins when signing up to the service. Mobmatic has requested that your mobile number be made available. Clicking on the action link you're declaring to be 16+ and are accepting both the terms and conditions and to receive free promotional SMS relating to this and other services operated by Sprint Media S.L. To opt-out from promotions send STOP to 31908, contact support@mobmatic.co.za or call 0213002334."

14. The Complainant subsequently clicked on the 'JOIN AND PLAY' call to action button. This constitutes the first opt-in in the double opt-in procedure and reflects the Complainant's intention to join or subscribe to the service.

15. The MSISDN was detected by means of MSISDN pass through and subsequently the Complainant was redirected to the Mobmatic Subscription Service WAP Confirmation Page.

16. The Mobmatic WAP Confirmation Page clearly states:

17. At the top of the page: "SUBSCRIPTION SERVICE R7/DAY." "COMPLETE."
    - The terms and conditions on the page: "This is a Subscription Service priced at R7/day that allows users to access fun interactive apps alerts and downloads along with many other services. Mobmatic Freemium users accrue points by interacting with the Mobmatic Platform. Premium subscribers will accumulate both Points & Coins when signing up to the service. Mobmatic has requested that your mobile number be made available. Clicking on the action link you're declaring to be 16+ and are accepting both the terms and conditions and to receive free promotional SMS relating to this and other services operated by Sprint Media S.L. To opt-out from promotions send STOP to 31908, contact support@mobmatic.co.za or call 0213002334."

18. The Complainant subsequently clicked on the 'COMPLETE' call to action button. This constitutes the second opt-in request and completes the double opt-in procedure. Therefore the Complainant confirmed his initial request to join or subscribe to the subscription service.

19. On or about the 4th of July 2011 a Welcome Message was sent to the Complainant, which message confirmed that the Complainant had subscribed to the Mobmatic

subscription service; the cost of the service; the frequency of the billing; instructions on how to unsubscribe; a customer support number and a customer support email address.
20. Furthermore the message contained the unique password and link to access the service.
21. On or about the 18th of July 2012 an Unsubscribe request was received, which request was honoured. An Unsubscribe Confirmation Message was sent to the Complainant, confirming that the Complainant had been successfully unsubscribed from the service.
22. During the period of the 4th of July 2012 to the 18th of July 2012 the Complainant was subsequently charged the subscription fee of R 7.00 per day in accordance with the terms and conditions which were accepted during the double opt-in process. However, many billing attempts failed as the user was out of funds.

**Complainant's Further Reply**

The Complainant responded to the WASP's response to state that they never subscribed to any service. In addition, and notwithstanding any refund, they still believe the actions of the IP to be unlawful and thus wished to proceed to adjudication.

**Sections of the Code considered**

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.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.
11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:
(a) The name of the service and an indication that it is a subscription service
(b) The price and frequency of billing
(c) A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:
[Application name] has requested that your mobile number be made available.

11.3.5. The information listed in 11.3.3 and 11.3.4 above must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

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 identically11.3. Subscription initiated via a browser (web or WAP)

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**Decision**

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

I have a general issue with the practical problems of determining when logs are valid. All too often, the WASP alleges that the Complainant entered their cell phone number into the website to initiate the process and the Complainant denies doing any such thing. Due to the fact that it is possible for anyone to enter any cell phone number into a website, it is very hard to demonstrate whether or not the Complainant actually did the inputting themselves.

I cannot dispute the validity of the logs. The messages sent as part of the process to subscribe also comply with the Code.

Further, I am not going to decide on the point of whether or not a Complainant can in law escalate a complaint to formal adjudication subsequent to accepting a refund in full and final settlement due to the fact that I am not in this case sanctioning the IP.

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**Sanctions**

I am not going to sanction the IP or the SP.