



REPORT OF THE ADJUDICATOR

Complaint reference number:	18261
WASPA member(s):	Buongiorno SA
Membership number(s):	0002
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	23 August 2012
Date of the alleged offence:	14 August 2012
Relevant version of the Code:	12.1
Clauses considered:	11.1 – 11.10
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	11863, 15183, 15477, 15664, 16313, 16479, 16559, 16659, 16832, and 17831

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 14 August 2012. The SP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant logs.

The complainant indicated that she was not satisfied with the SP's response and the complaint was escalated to formal adjudication.

The complainant denies that she subscribed to the service. She states that she lives outside South Africa and that her sim card for the number in question has been dormant since May 2012.

The complainant is requesting a refund.

SP's response

The SP enclosed its MT records with its response, and confirmed that the complainant's number was used to subscribe to its 305050 GOLD subscription service on 16 April 2012.

The SP also attached screenshots taken of the landing pages of the relevant campaign in question to its response.

The SP referred to its double opt-in process and described the relevant steps that had to be taken before the complainant was subscribed to the service. By virtue of these steps, the SP alleges that it is improbable, or impossible, that the complainant became subscribed to the service without knowledge and/or intent on her part or by someone with access to her phone.

The SP alleges that the complainant's mobile number was entered on the relevant landing page on 16 April 2012. However, the relevant pin code (3333) first sent to the complainant's number was not used.

The complainant's mobile number was entered for a second time on the same landing page and a second pin code (7821) was sent by the SP.

The pin code is alleged to have then been entered on the confirmation page and the "confirm" button was pushed. The complainant was then subscribed to the service.

The SP also provided proof in the form of its MT logs that the following Welcome message was sent to the complainant's number:

*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.*

The SP also states that the complainant remained subscribed to the service for the period 16 April 2012 to 14 August 2012, and the required monthly reminder messages were sent during this period as is evident from the MT logs.

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.

11.2.2. 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.

11.3. 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.

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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:

- The name of the subscription service;
- The cost of the subscription service and the frequency of the charges;
- Clear and concise instructions for unsubscribing from the service;
- The service provider's telephone number.

11.6 Reminder message

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.

11.9.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.9.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be "STOP". If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.3. The "STOP" request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.9.4. Where the words "END", "CANCEL", "UNSUBSCRIBE" or "QUIT" are used in place of "STOP" in a request, the service provider must honour the opt-out request as if the word "STOP" had been used.

11.9.5. Where a service is linked to a specific short code in advertisements for that service, then sending a "STOP" request to that short code should result in the termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.6. If a message sent by a customer cannot be parsed by a WASP, then the resulting response to the customer should contain sufficient information for the customer to be able to unsubscribe from that service, or to be able to contact the service provider's customer support.

11.9.8. Members must ensure that the termination mechanism is functional and accessible at all times.

11.9.10. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. You'll then be resubscribed at [cost of service and frequency of billing].

11.9.13. If a customer sends an unsubscribe request directly to a member, and the request cannot be acted on immediately, the customer must be informed (for example, via a notification of the form "This may take up to 24 hours"). In any case such a request must be acted upon with two working days (48 hours).

11.9.14. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

11.10.1. Members must register all subscription services with WASPA, by providing the following information:

- the name of the service;

- the short code or access method (e.g. WAP) the service uses; the price and frequency of billing for that service;
- the customer support number associated with the service; and unsubscribe instructions for the service.

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

Taking into account the complainant's denial that she subscribed to the service in question and her failure to download or access any content after the date of subscription; I am not satisfied that the complainant ever intended to be subscribed to this service.

The logs provided by the SP show that two separate pin codes were sent to the complainant's number on 16 April 2012, after she failed to use the first that was sent to her.

The SP alleges in its response that the complainant's number was entered for a second time on the landing page, whereafter a second pin code was sent which was then used by the complainant, or someone using her phone, to subscribe to the service.

The MT logs provided do not confirm the times when the two pin codes were sent and the delay between the two messages. The logs provided also do not serve as proof that the second pin code was entered on the SP's web confirmation page.

However, the logs provided do show that the requisite welcome and reminder messages were sent by the SP. If the complainant's intention to subscribe to the

service is placed in doubt, the follow up messages would have ordinarily alerted the complainant that she was subscribed to the service.

Based on the foregoing, I am unable to make a finding that the SP has breached any provisions of the Code, and the complaint is accordingly dismissed.