



REPORT OF THE ADJUDICATOR

Complaint reference number:	18376
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:	2012-09-13
Date of the alleged offence:	2012-07-16
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:	18082

Complaint

- Complaint 18376 is the escalation of unsubscribe request 3408715 regarding subscription service charges.
- The formal complaint was sent to the WASP on 2012-09-13 and they responded on 2013-09-19.
- Complainant responded to resolution on the 20-10-15, requesting for the complaint to remain open.
- SP responded on behalf of the IP with proof of refund.
- Complainant responded to refund resolution.
- Complainant responded asking for advice concerning adjudication.
- The complainant refused resolution on 2012-12-19.
- The WASP provided additional information on 2013-03-13.

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.

The Complainant set out in great detail is issue with the process as follows:

“[A]

I received an sms from +27820048640908 on 16.07.2012 at 08:36:58 stating exactly, incl punctuation and spacing:

\"You have received a video. Click to open<http://ems.cx/w/?m=27843054630> Received today at 09:12 (16 plus only) /4optput?stop.to 31908/\"

I clicked on the link, but did not get to a video, but to some kind of homepage with log-in details. I dismissed this \"video\" and closed my browser. I did not take any further action, such as replying \"stop\" etc. as i do not wish to waste an sms on this.

[B]

Then I received the following sms from +27820048640908 on the same day - 16.07.2012 - at 09:13:15, stating exactly and including spacing and punctuation:

\"Welcome Celeb Video & Wallpapers<http://ems.cx/s/51BF54AD38> pass 76423969 0213002334/support@mobmatic.co.za 2unsubscribe sms stop 31908 R7/day/subscription\"

I did not respond to this sms, e.g. unsubscribe, as I did not subscribe to any service. I did not reply \"stop\" to spare cost.

[C]

Thirdly I received the following sms from +27820048640908 one month later on 15.08.2012 at 06:09:34, stating exactly and including spacing and punctuation:

\"Reminder: You are subscribed to Mobmatic.com Mobile Entertainment and Downloads cost R7/day. For help call 0213002334. To unsubscribe, sms stop to 31908\"

...

(v. a)

The first sms [A] did not identify the service provider or that one may be billed without any further confirmation etc. when clicking the link provided.

(v. b)

The second sms [B] did not identify the service provider - but stated a \"false\" name called \"Celeb Videos & Wallpapaers\", not clearly \"Mobmatic\" or the real name \"Sprint Media\".

The sms did NOT clearly state that the user is now being billed as from henceforth and did not clearly identify contact number.

.... (vi.)

I furthermore conclude, based on my actions nr [1] and [3], that the number listed for Sprint Media is a spoof and that they are avoiding the customer...”

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 goodwill payment in refund of any monies deducted has been paid.

IP stated that:

1. The complainant was furnished with a Proof of Subscription (POS).
 2. The complainant disputes subscribing to the service, however as the POS shows, the subscription was initiated via MSISDN Passthru and the complainant completed all 'call to actions' otherwise known as the double opt-in before being subscribed. Logs were provided.
 3. The complainant in his correspondence states that he clicked on the link within the marketing message, but as the offer wasn't immediately available the complainant didn't continue the process.
 4. As the POS shows, the complainant in fact completed the process and knowingly subscribed to the service.
 5. In fact, the complainant started the process at 08:57:41 on 16th July 2012, and completed the 'opt-in' by clicking on the confirmation call to action button at 08:58:07.
 6. The complainant in his response states that he received the welcome message at 09:13:10.
 7. Upon receiving the welcome message the complainant argues to WASPA after receiving the POS that he had not subscribed and therefore didn't follow any of the opt-out instructions included in the message.
 8. The complainant received a reminder message on 15th August 2012.
 9. The complainant in his correspondence to WASPA is faulting everyone for the sign-up but not themselves.
 10. The complainant was refunded in full for the charges to his Cell C as a gesture of good will, as the logs as provided in the POS clearly show a willing subscriber and genuine subscription.
 11. The refund was not deemed acceptable, especially as it was a gesture of good will, as the complainant preferred the refund to be an acknowledgement of liability.
 12. The complainant also wanted compensation for this matter.
 13. In conclusion, from reading all the correspondence, it appears that the complainant is hoping that by going to adjudication they will receive compensation in addition to the refund, despite being advised by WASPA that adjudicators aren't allowed to sanction compensation.
 14. Should WASPA require any further information, please do not hesitate to contact me directly.
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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 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.

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 cannot as adjudicator either find the IP liable for any wrongdoing without evidence of such. Further, I am not entitled to authorise any additional compensation to the Complainant other than a full refund of monies deducted which has already been paid.

Sanctions

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