



REPORT OF THE ADJUDICATOR

Complaint reference number:	18456
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:	2012-09-14
Date of the alleged offence:	2011-10-19
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 and 18082

Complaint

Complaint 18456 was logged by the public regarding a subscription service.

The complaint progressed as follows:

- Complaint 18456 is the escalation of unsubscribe request 3472099 regarding subscription service charges.
- The formal complaint was sent to the WASP on 2012-09-20 and they responded on 2012-09-27.
- Complainant responded on the 2012-09-28.
- WASP replied on the 2012-09-28.
- The WASP provided proof of refund on the 2012-10-04.
- The complainant refused refund resolution on 2012-10-12.
- The WASP provided additional information on 2012-10-18.

The Complainant alleges that he had been automatically subscribed to a service. He doesn't feel he should have to opt out of the service he never subscribed to in the first place and 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.
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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 in respect of the subscription process:

1. The Complainant subscribed to the Mobmatic subscription service through a double opt-in process. Logs were provided.
2. The terms and conditions of the service were clearly stated on the WAP landing page as well as the WAP confirmation page.
3. The initial request to join the Mobmatic subscription service was confirmed by the Complainant on the WAP Confirmation Page.
4. A Welcome message was sent to the Complainant, which contained all the required information.
5. A monthly Reminder Message was sent to the Complainant, which contained all the required information.
6. An unsubscribe request was received, which request was honoured and an unsubscribe Confirmation Message was sent to the Complainant.
7. The Complainant was charged the daily subscription fee of R 7.00 for the subscription period.
8. The daily subscription fee is for access to the Mobmatic service. It is irrelevant whether content is downloaded or not.
9. This number has been blocked on the database and will no longer receive any messages from Sprint Media S.L.

The IP then stated in respect of the complaint process:

1. On or about the 27th of September 2012 we offered the Complainant a goodwill refund in the amount of R 813.45, which amount reflects the amount of revenue we received in respect of this subscription. However, the Complainant demanded an amount of R 1960.00 plus interest.
2. On or about the 28th of September 2012 our Customer Support Manager once again contacted the Complainant telephonically to discuss the refund amount. We explained how we came to the amount and indicated to the Complainant that we were willing to offer a full refund in the amount of R 1309.00, which constitutes the full amount debited in respect of the subscription service.

3. We agreed to offer a full refund of all charges debited as a gesture of goodwill. This offer was made on the condition that the Complainant would consider this matter as successfully resolved. The offer was confirmed in writing via email. The Complainant then declined this offer and insisted that he required an amount of R 1850.00.
 4. Writer hereof thereafter responded to the Complainant's request and indicated that we could only offer R 1309.00, as that was the total amount deducted. The Complainant demanded interest on the sums deducted.
 5. However, the Complainant then did accept the offer of R1309.00 in full and final settlement.
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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. 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)

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.

Finally I do not believe that the Complainant is entitled to interest on this amount and that the goodwill refund offered was fair.

Sanctions

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