



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	18530
<b>WASPA member(s):</b>	Opera Interactive (SP) (0068) Sprint Media (IP) (1168)
<b>Membership number(s):</b>	See above
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription Service
<b>Date complaint was lodged:</b>	2012-09-26
<b>Date of the alleged offence:</b>	2012-07-08
<b>Relevant version of the Code:</b>	12.0
<b>Clauses considered:</b>	8, 11.3, 11.5 and 11.6.
<b>Relevant version of the Ad. Rules:</b>	N/A
<b>Related cases considered:</b>	18082

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### Complaint

Complaint 18530 was logged by the public regarding a subscription service.

The complaint progressed as follows:

- Complaint 18530 is the escalation of unsubscribe request 3429948 regarding subscription service charges.
- The formal complaint was sent to the IP on 2012-09-28.
- The SP was also informed of this complaint on 2012-09-28.
- The SP responded on 2012-09-28.
- The IP responded on 2012-10-05.
- The complainant responded on 2012-10-08 and 2012-10-22.
- The IP provided additional information on 2012-10-24.

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.
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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.

IP stated that:

1. On or about the 8th of July 2012 Mr. C. A. Scott or alternatively the person utilizing the Vodacom 3G Modem that contains the MSISDN 079 516 1421, hereinafter referred to as the "Complainant", was browsing the internet using a computer/laptop and clicked on a Web banner advertisement promoting the Hotmob Subscription Service.
2. The Web banner advertisement is displayed in the public domain where various adult media and content is provided, advertised and promoted by numerous providers. Therefore, the only way for an end user to come across our Web banner advertisement will be when the end user searches for adult media or content on the internet. Consequently, the Complainant initiated the interaction with our service.
3. The Complainant was subsequently redirected to the Hotmob Subscription Service
4. Web landing page. The Web landing page clearly states:
  - "Subscription Service R7/Day"
  - "Unlock"
  - "18+"
5. The terms and conditions on the page:
  - "hotmob.tv is a subscription service at R7/day that allows users to access adult mobile content through their mobile device. hotmob.tv has requested that your mobile number be made available. Clicking on the action link you're declaring to be 18+ 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. compatible handsets only. Network charges may apply. Seek bill payers permission before using. To opt-out from promotions contact help@hotmob.tv or call 0213002334 or send STOP to 39327."
6. On or about the 8th of July 2012 the Complainant subsequently clicked on the 'Unlock' call to action button. This constitutes the first opt-in in the double opt-in procedure. The MSISDN was detected by means of MSISDN forwarding/pass through. Our system captures every interaction between a specific MSISDN and our service, including the IP address, URL visited and the User-Agent string.
7. The Complainant was redirected to the Vodacom Double Opt-in Confirmation Page, where the Complainant was requested to confirm or decline the request to join the Hotmob Subscription Service at R 7.00 per day.
8. Our company does not host the Vodacom Double Opt-in Confirmation Page and is not the responsible party for this step of the subscription process. The Mobile Network Operator, Vodacom (Pty) Ltd in its capacity as the end user's (Complainant)

- service provider, redirects the user to the Confirmation Page after the specific MSISDN has requested to join a premium mobile content service.
9. The purpose of the Confirmation Page is for the user to confirm or verify that the user indeed wants to subscribe to the specific service, displaying the price of the service and the frequency of the billing. The user has the option to either confirm his or her initial request (first opt-in) or decline the request.
  10. In the event that the user selects the decline option or fails to make any selection at all, the Mobile Network Operator will inform the company thereof and the procedure is completed. Hence no subscription takes place.
  11. In the event that the user selects the 'Confirm' option, the user completes the double opt-in process. The Mobile Network Operator will then inform us that we have authorization to bill the specific MSISDN until we receive an unsubscribe request.
  12. On or about the 8th of July 2012 the Complainant subsequently clicked on the 'Confirm' call to action button, which is hosted on the Vodacom Double Opt-in Confirmation Page. This constitutes the second opt-in request and completes the double opt-in procedure.
  13. On or about the 8th of July 2012 a Welcome Message was sent to the Complainant, which message confirmed that the Complainant had subscribed to the Hotmob subscription service; the cost of the service; the frequency of the billing; instructions on how to unsubscribe and a customer care number. Furthermore the message contained the unique password to access the service.
  14. On or about the 7th of August 2012 a Reminder Message was sent to the Complainant, which message confirmed the subscription to the Hotmob subscription service; the cost of the service; the frequency of the billing; instructions on how to unsubscribe and a customer care number.
  15. On or about the 23rd of August 2012 we received an unsubscribe request, which request was honoured. An Unsubscribe Confirmation Message was sent to confirm that the subscription had been cancelled.
  16. During the period of the 8th of July 2012 to the 23rd of August 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.
  17. We recreated (simulated) this subscription to illustrate how a data SIM card can subscribe to a subscription service.
  18. From the information captured by our system in the subscription above, the following can be established that a Firefox browser was used. The Vodacom 3G modem with the data SIM card with the corresponding MSISDN 079 516 1421 was used to access the internet. The user clicked on a Web banner advertisement promoting the Hotmob Subscription Service whilst browsing the internet for adult media and content. The user was redirected to the Hotmob Web Landing Page.
  19. The user clicked on the 'Unlock' call to action button (first opt-in) that is hosted on the Web landing page and was redirected to the Vodacom Double Opt-in Confirmation Page. The user was not requested to enter the MSISDN, as the browser detected this. The browser detected the MSISDN associated with the data SIM card, which was contained in the Vodacom 3G modem that provided the access to the internet.
  20. The user subsequently clicked on the 'Confirm' call to action button contained on the Vodacom Double Opt-in Confirmation Page (second opt-in) and completed the double opt-in process.

21. The user then received a Welcome message sent to the MSISDN associated with our data SIM connected to the Vodacom 3G modem used to connect to the internet. This message was displayed on the user's laptop/computer screen.
  22. The Welcome message, monthly Reminder messages and Unsubscribe confirmation message were sent to the MSISDN (079 516 1421) that subscribed to the Hotmob Subscription Service through the double opt-in process for the subscription that is in dispute.
  23. These messages are displayed on the laptop/computer screen when they are delivered and are then stored in the Vodacom 3G modem inbox.
  24. As set out above in detail and confirmed by Vodacom, this was a legitimate subscription and all rules and regulations have been complied with. Therefore, no refund is due.
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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:

1. I did not use a Vodacom 3G modem in July 2012, as stated in this and subsequent paragraphs. I used one from one of the other service providers.
  2. I deny that I ever subscribed to any such subscription service @ R7,00 per day. I also declare that I have never received "free promotional SMS relating to this and other services operated by Sprint Media S.L."
  3. Today at 15h48 I spent 20 minutes on the phone to Vodacom enquiring about my internet usage on 2012-07-08. According to a supervisor at Vodacom I never logged onto the internet during the day of 2012-07-08, so therefore I could not have done a "Web Registration" at 16.20.33 on 2012-07-08.
  4. I deny being redirected to the "Vodacom Double Opt-in Confirmation Page".
  5. I deny clicking on the "Confirm" call to action button. At 16.21.32 and 16.21.34 on 2012-07-08 I did not "OPTIN" or "Web Registration" (see 4 above) due to the fact that my computer was not linked to the internet during the day of 2012-07-08.
  6. The message that was sent to me says "Get it Now". It does not say that I have subscribed to something, so there was no need for me to respond to this SMS, as I hadn't subscribed to anything.
  7. On the last page of their letter above "Refund Request" they stated that I confirmed delivery of a welcome message on 2012-07-08 at 16.21.41. I have never confirmed receipt of such message. How did I send it ?
  8. Seeing that my computer was off for the whole day, they must please inform me how I sent this message.
  9. In the penultimate paragraph of their letter, I confirm that a lady from Sprint Media telephoned me at 11h23 on 2012-10-05, however the comments stated therein are a blatant lie ! We spoke for some time and just as I was busy asking her some questions, all of a sudden she disconnected the call ! I expected her to call me again, but she didn't.
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### **Information provider's Further Reply**

"We refer to the abovementioned matter as well as your email dated 9 October 2012, the

content of which has been noted.

We have reviewed the Complainant's comments and would like to respond thereto as follows:

1. As stated in the proof of subscription already provided, our system captures every
2. interaction between a specific MSISDN and our services. In this case our system captured the details of the MSISDN 079 516 1421 which interacted with the Hotmob Adult Subscription Service.
3. We provided an excerpt of our logs as documentary proof to substantiate our allegations that the Complainant interacted and eventually subscribed to our service after completing a double opt-in process. The Complainant subscribed on the 8th of July 2012.
4. Further to this, the Mobile Network Operator Vodacom (Pty) Ltd also provided the Complainant with confirmation that the MSISDN subscribed to the service after confirming the initial request to join the service on the Vodacom Double Opt-in page.
5. We therefore specifically deny the Complainant's submission that he used a modem from another operator as both our records and that of Vodacom confirm the subscription on 079 516 1421.
6. Both our records and the records supplied by Vodacom confirm that the Complainant subscribed to the service.
7. Our terms and conditions state: "Clicking on the action link you're ... 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 help@hotmob.tv or call 0213002334 or send STOP to 39327."
8. Therefore, it is clearly stated that we reserve the right to market to the MSISDN if the user clicks on the action link, unless the user specifically elects to opt-out from receiving marketing messages.
9. Irrespectively, we specifically state that we did not market to this MSISDN. As stated in paragraph 1 and 2 of the proof of subscription the Complainant initiated the interaction with our service. We did not market to the Complainant directly. Therefore the Complainant is correct in stating that he did not receive any promotional SMS from our company, as we did not market to the MSISDN in question.
10. We specifically place the following statement into contention and request the Complainant to furnish us with written proof thereof: " Today at 15h48 I spent 20 minutes on the phone to Vodacom enquiring about my internet usage on 2012-07-08. According to a supervisor at Vodacom I never logged onto the internet during the day of 2012-07-08, so therefore I could not have done a "Web Registration" at 16.20.33 on 2012-07-08." We refer to the email from Vodacom to the Complainant that contradicts the above information:  
"From: srm@vodacom.co.za [<mailto:srm@vodacom.co.za>] Sent: 18 September 2012 09:51 AM To: chatt@vodamail.co.za  
Subject: S3-LBT31-10HCJ - WASP complaint 0795161421  
Dear Mr Scott, As per our conversation earlier, please find the process that needs to be followed. Should you wish to lay a formal complaint, please contact the regulatory, WASPA, on 0114767710 (charged) or [complaints@waspa.org.za](mailto:complaints@waspa.org.za).  
Vodacom cannot lodge an official complaint on your behalf. As previously stated, this WASP service was activated via the Vodacom Double Opt-in service. This means the subscription was confirmed and then accepted before billing commenced.  
Attached is an extract from your data number 0795161421, showing the date and

- time of the Opt-in. Kindly note as the subscription was initiated from your device, Vodacom cannot refund you for the costs incurred. Kind regards, Bradley Williams”
11. The Complainant completed the double opt-in procedure by selecting the Confirm option on the Vodacom Double Opt-in Confirmation Page. Vodacom confirmed this.
  12. Our system captured the interaction between the MSISDN and our service as set out in the proof of subscription. Vodacom also confirmed that the Complainant subscribed to the service. The only way for our company to bill a Vodacom end user for a premium rated service is if the user confirms this with Vodacom whereafter Vodacom authorizes us to bill the user until the user unsubscribes from the service. Therefore, we would not have been able to bill this MSISDN if we did not get permission from Vodacom.
  13. The Welcome Message contains all the required information. The “Get it Now” precedes the password that is needed to access the premium content and media.
  14. The Complainant stated in his email dated 19 September 2012 that: “The following 2 message were received in my dongle text message box ...” The Complainant therefore admitted that he received the messages in the dongle inbox, and therefore the Complainant confirmed that the Welcome and Reminder messages that were sent by us, delivered successfully.
  15. The Complainant provided the messages as well as the date and time that the messages were received. We highlighted the fact that the information provided by the Complainant corresponds with the information as captured by our system. Therefore the Complainant clearly misunderstood what we stated in the proof of subscription. We did not state that the Complainant sent those messages; we stated that Sprint Media S.L sent those messages and that the Complainant confirmed receipt thereof in his complaint.
  16. We specifically deny that the Complainant did not use his 3g Modem and computer as both our records and Vodacom’s letter contradict his submissions. Furthermore, the Welcome Message delivered successfully on the 8th of July 2012. If the 3g Modem was not active the delivery time would have reflected a different day and time.
  17. In conclusion, we contacted Vodacom to query the matter. We were provided with the logs to confirm that the MSISDN 079 516 1421 confirmed the subscription on the Vodacom Double Opt-in page.
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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)

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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. The versions of Vodacom and the IP tally and accordingly I do not find that the IP breached the Code as their version of events is credible and substantiated in this instance. The Complainant's version does not tally with Vodacom's and I therefore feel that the version of the IP must hold.



**Sanctions**

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