



REPORT OF THE ADJUDICATOR

Complaint reference number:	18615
WASPA member(s):	Buongiorno SA
Membership number(s):	0002
Complainant:	H Sheppard
Type of complaint:	Subscription service
Date complaint was lodged:	18 October 2012
Date of the alleged offence:	17 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

1. The complainant logged an unsubscribe request on the WASPA unsubscribe system on 17 August 2012 wherein he/she also requested proof of subscription and a refund.
2. The SP unsubscribed the complainant and provided MO/MT logs as proof of subscription.
3. The SP refused to offer any refund to the complainant.

4. The complainant denied that she had subscribed to the service and was not satisfied with the SP's response. The complaint was therefore escalated to the formal complaint procedure.
 5. The complainant states that she received a message but it did not refer to any subscription service and she believed it to be an entry into a competition.
 6. The message also made no reference to the fee of R5 per day.
 7. The complainant believes this to be misleading advertising
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SP's response

8. In its response to the complaint, the SP outlined the double opt-in mechanism used by customers to subscribe to the service.
 9. In the case of Vodacom subscribers, an opt-in confirmation message is sent to the customer by Vodacom and not by the SP.
 10. If the customer responds positively to this message by replying "YES" then Vodacom sent confirmation to the member which entitles the latter to bill the customer.
 11. In this particular case, the complainant, or someone using her handset, replied "YES" to the opt-in confirmation message. This has been verified by Vodacom from its own records.
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Sections of the Code considered

12. The following clauses of the Code were considered:

Clause 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.

Clause 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.

Decision

13. I am satisfied, on the basis of the evidence before me, that the complainant, or someone using her handset, replied "yes" to the opt-in confirmation message sent by Vodacom. Vodacom's records support the SP's own logs in this regard.
14. However, I am not satisfied that the "yes" response sent from the complainant's handset was made with the specific intention of subscribing to the SP's advertised subscription service.
15. I refer to the findings of the adjudicator in complaint 17831 in relation to the wording (or absence thereof) and format of the promotional web pages and confirmation message used in a similar campaign.
16. Although the respective campaigns are not identical, the elements of the campaign that the adjudicator found fault with in complaint 17831 are the same as those used in the campaign for the subscription service which is the subject of this complaint.
17. The complainant has actually stated in her complaint that she interpreted the wording of the confirmation message, which makes no reference to "subscription service", to mean an entry into a competition.
18. The campaign was therefore not only potentially misleading, but in this case, actually misleading.
19. I therefore find that the SP has breached clause 11.2.1 and 11.2.2 of the Code. The complaint is accordingly upheld.

Sanction

20. In determining an appropriate sanction, the sanctions imposed by the adjudicator in complaint 16559 have been taken into account. The matter is currently before the appeal panel and I will therefore refrain from imposing any further sanction of suspension, which I believe to be appropriate in the circumstances, and I will defer to the eventual findings of the appeal panel in regard to complaint 16559.
21. Taking into account the fines previously imposed on the SP for the same or similar contraventions of the Code, a fine of R50 000.00 is imposed on the member, which is payable within 7 days of the date of publication of this report.
22. The member is also ordered to refund all amounts debited to the complainant's account in respect of this subscription service within 7 days of the date that this report is published.