



REPORT OF THE ADJUDICATOR

Complaint reference number:	18771
WASPA member(s):	Buongiorno SA
Membership number(s):	0002
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	25 October 2012
Date of the alleged offence:	8 October 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 8 October 2012. The SP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant logs.

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

The complainant denies that he subscribed to the service/s in question and 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 and ZAP subscription services on 21 August 2012.

The SP attached screenshots taken of the landing pages of the relevant campaigns for both services.

The SP referred to the double opt-in mechanism used to activate a subscription to the services and described the relevant steps that had to be taken before the complainant is 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 his part or by someone with access to his phone.

The SP alleges that the complainant's mobile number was entered on the relevant landing page on 21 August 2012.

The following message was sent to the complainant's number:

>> ur CODE is 1189 << enter it in the web confirmation page. U'll b subscribed to 35050 from Buongiorno @ R5/day. WIN A POLO, iPads, iPhones+Unlimited Downloads

The unique pin code (1189) was entered on the SP's web confirmation page and the "confirm" button was pushed. The complainant was then subscribed to the service.

The SP then states that after the complainant was subscribed to the 35050 Gold service, he was then redirected to a further web page promoting another subscription service known as the "ZAP service".

The SP does not state that the complainant's number was entered onto this page.

However, the SP does infer that the complainant received the following message:

>> ur CODE is 1189 << verify it on the web confirmation page. U'll b subscribed to ZAP from Buongiorno @ R6/day. WIN DAILY AIRTIME & more + Unlimited Downloads

The SP states that the landing page design and product offering of the ZAP service is distinctly different from the offering for the 35050 Gold service, and that the new ZAP service information is clearly indicated in the pin code message.

The SP alleges that the complainant acted positively and clicked the "CONFIRM" button and was then sent the following welcome message:

Welcome to ZAP 4 UNLIMITED Cool Games PLUS WIN Daily Prizes go 2 wap.funfone.co.za 4 Just R6/day on UR mobile to unsub dial *120*5122# help 0214068686*

The SP also states that during the subscription period, the required reminder messages were sent to the complainant's number confirming subscription.

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.

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:

- 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

I have considered the SP's explanation in its response as to how the complainant's number was used to subscribe to the SP's 35050 Gold and ZAP subscription services and there are certain inconsistencies in the SP's version.

The SP alleges that after confirming subscription to the 35050 GOLD service, the complainant was transferred to another web promotional page for its ZAP service.

However, the SP does not state that the complainant's number was then re-entered on the ZAP landing page. The SP simply goes on to state, rather obtusely, that the complainant was notified in "the pin code message" of the ZAP service offering.

The message in question reads as follows:

>> ur CODE is 1189 << verify it on the web confirmation page. U'll b subscribed to ZAP from Buongiorno @ R6/day. WIN DAILY AIRTIME & more + Unlimited Downloads

It is noted that the same pin code (1189) that was used to subscribe the complainant to the 35050 Gold service was again sent to the complainant to be used to activate his subscription to the ZAP service.

Based on the foregoing, I do not accept the SP's evidence as being credible in this regard and therefore find, on a balance of probabilities, that no separate opt-in process was followed for the ZAP service.

This also casts doubt on the credibility of the SP's evidence that the complainant was even validly subscribed to the 35050 GOLD service. However, for the purposes of this decision, it is not necessary to make a finding in this regard.

I therefore find that the SP has contravened clause 11.2.1 of the WASPA Code in that the complainant has been subscribed to the SP's ZAP subscription service without specifically opting in to that service.

I also find that the SP has contravened clause 11.2.2 of the Code in that there is no evidence of any request from the complainant to join the SP's ZAP subscription

service, or if such a request was made, that it was an independent transaction, with the specific intention of subscribing to the ZAP service.

The complaint is accordingly upheld.

Sanction

I have taken note of the sanction of suspension already imposed on the SP in terms of complaint 16294 and others. Therefore, an appropriate sanction in this matter would be the payment of a fine.

Taking into account the fines previously imposed on the SP for the same or similar contraventions of the Code, a fine of R100 000.00 is imposed on the member, which is payable within 7 days of the date of publication of this report.