



REPORT OF THE ADJUDICATOR

Complaint reference number:	19001
WASPA member(s):	Netsmart SA (SP) (026) SD&P Mobile B.V. (IP)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Subscription Service
Date complaint was lodged:	2012-10-27
Date of the alleged offence:	2012-05-15
Relevant version of the Code:	11.6
Clauses considered:	11.3, 11.5 and 11.6.
Relevant version of the Ad. Rules:	N/A

Related cases considered:

Complaint

Complaint 19001 was logged by the public regarding a subscription service.

The complaint progressed as follows:

- Complaint 19001 is the escalation of unsubscribe request 3677620 regarding subscription service charges.
- The formal complaint was sent to the WASP on 2012-11-28 and they responded on 2012-12-03.
- The complainant refused resolution on 2012-12-12.

The Complainant alleges that she had been automatically subscribed to a service. She denies ever subscribing and demands a full refund.

In summary the complaint sets out the following having been breached:

- Automatic subscription;

- Subscription process not followed; and
 - No refund offered.
-

Service provider's response

The SP responded to the complaint. Due to the fact that all parties involved are privy to the SP's formal response I am not going to repeat every element thereof here.

SP stated that in respect of the subscription process:

1. The customer with phone number 27731875232 requested to join the service MT50 All-in Club on 15/05/2012 11:06:20 local South Africa time, after visiting the service's page <http://c.mt-50.mobi/sa/ipad/2752/1/> (see attachment 1) through a banner on the Internet.
 2. The service MT50 All-in Club is operated by our Information Provider SD&P Mobile B.V., registered with WASPA.
 3. Upon receiving the customer's request, the service initiated a double optin confirmation by sending him the following SMS via MTN's Bulk (free to the user): "SMS YES to 43006 to confirm your request for MT50 at R5/day (1 SMS per day) for great content. You also stand a chance to win! Free SMS."
 4. The customer replied "YES" and thus his subscription was confirmed. He immediately got the necessary confirmation message, again free to the user: "Welcome! Login with: 9120 and your mobile number on: za.mt50credits.com Send STOP MT50 to 43006 to cancel. Help 0860737333 (R5/day subscription) MT50"
 5. Every day he received credits to download ringtones from <http://za.mt50credits.com> by logging in at any time. Every week he got a free informational reminder message about this: "Your MT50 credits are upgraded! You now have 840 credits. Log in with: 9120 and mobile number on: za.mt50credits.com"
 6. On every 30 day anniversary of his subscription he got the following free reminder: "Reminder: You are subscribed to MT50 All-In Club for great content, cost R5/day. For help call 0860737333. To unsub, sms STOP MT50 to 43006"
 7. The customer unsubscribed on 29/10/2012 09:20:42 by contacting our customer care through WASPA's complaints system, which was confirmed by sending him the following free message: "You have been unsubscribed from MT50"
 8. As every interaction with the customer was performed properly and in compliance with all regulations, a refund was not offered.
-

Complainant's Further Reply

The Complainant responded to the WASP's response to state that they never subscribed to any service and they wish to be refunded.

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 SP 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. However the welcome message sent as part of the process to subscribe do not comply with the Code in that the order of the information as required by 11.5.2 is not correct.

Sanctions

I order the SP to refund the Complainant in full and fine the SP R5000 to be held in abeyance pending confirmation being sent to WASPA within 7 (seven) days of this ruling that the welcome messages have been corrected.