REPORT OF THE ADJUDICATOR

Complaint reference number:	19377
WASPA member(s):	Flexiba (IP) (1323) / Opera Telecom t/a Opera Interactive (SP) (0068)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Breach of Code of Conduct
Date complaint was lodged:	2013-01-22
Date of the alleged offence:	
Relevant version of the Code:	12.1
Clauses considered:	11.3, 11.5 and 11.6
Relevant version of the Ad. Rules:	N/A

Related cases considered:

Complaint

Complaint 19377 is the escalation of unsubscribe request 3982519 regarding subscription service charges. The formal complaint was sent to the WASP on 2013-01-29 and they responded on 2013-02-13. The complainant refused resolution on 2013-02-14. The WASP provided additional information on 2013-03-05.

The Complainant states that he was subscribed to the Cellspice service without his consent and that he did not subscribe. He claims that someone else using another phone subscribed to the service (using a cloned SIM by implication) and that he has been paying for the service unwittingly.

He also stated that the IP advised that the phone used to subscribe and access the service was a Samsung and he only has a Nokia and as such he can't have been the one who subscribed. Furthermore, he states that he has no internet connectivity on his phone and as such it would be impossible for him to have subscribed.

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

- Subscription process not followed.

WASP response

The SP referred it to the IP who responded. They stated that the Complainant did subscribe to and access the service and provided logs in substantiation therefore. The logs however state that the Complainant was using a Samsung phone and he claims he only has an old Nokia phone. The IP advised that the reason for this was that there was a technical error with their phone detection software and the phone used was in fact a Nokia.

The IP went further to state that:

"When we provide a POS we also detail the whole opt---in process which will include format in which subscription was made, either by MSISDN entry or via MSISDN Passthru, in this instance, the format was MSISDN Passthru, and that is where the Mobile Network Operator passes the MSISDN through the system without the requirement for the owner of the MSISDN to enter their cell phone number in an appropriate MSISDN entry field. MSISDN Passthru is a network operator controlled mechanism, and not controlled by us....
Our POS will also detail any IP address used. We note that the Complainant has not challenged the IP addresses provided.

With all initiated subscriptions, we send out a welcome message to the MSISDN, this was duly sent on the 19th November 2012, and a reminder message was sent on 19th December 2012.

Whoever initiated the subscription, accessed the service on 2 separate occasions. The 1st access was on the day of subscription, with the 2nd access being on December 31st 2012.

The service was stopped on 3rd January 2013, via STOP initiation.

In conclusion, the handset detection mechanism provided to us was at fault, and the handset was incorrectly recorded as a Samsung, when upon investigation, we found that it was in fact a Nokia, which was then verified by the network operator. "

Accordingly the IP feels that they have demonstrated compliance with the Code.

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 agree with the WASP in that there has not been a breach of this clause or the Code of Conduct.

I can find no basis upon which to dispute the validity of the logs. If the complainant continues to assert that he did not subscribe and that his phone is incapable of subscribing due to the lack of internet connectivity I suggest that the Complainant raise the issue of a cloned SIM with MTN so that they can investigate the matter further and ensure that this does not happen again.

Sanctions

I am going to dismiss the claim.