



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	19509
<b>WASPA member(s):</b>	Sprint Media SL (IP) (1168) / Opera Telecom t/a Opera Interactive (SP) (0068)
<b>Membership number(s):</b>	See above
<b>Complainant:</b>	Competitor
<b>Type of complaint:</b>	Breach of Code of Conduct
<b>Date complaint was lodged:</b>	2013-02-13
<b>Date of the alleged offence:</b>	2012-12-21
<b>Relevant version of the Code:</b>	12.1
<b>Clauses considered:</b>	11.3, 11.5 and 11.6
<b>Relevant version of the Ad. Rules:</b>	N/A

### Related cases considered:

---

### Complaint

Complaint 19509 is the escalation of unsubscribe request 4022426 regarding subscription service charges.

The formal complaint was sent to the WASP on 2013-02-13 and they responded on 2013-02-20.

The complainant refused resolution on 2013-02-20.

The WASP provided additional information on 2013-03-08.

The Complainant wrote:

“There was no double opt in on the service, the service auto-subscribed me on simply opening the WAP push link. The WAP Push itself had no pricing information. I should never have been on their database - where did they get my number ? The WAP Push was basically SPAM.”

He goes further to state that he did not click on any link sent to his handset but instead entered the URL into his web browser via his pc. At this point he alleges that no landing page for the double opt-in was presented:

“The only page displayed was the page the page on which to enter my cell number. There was no landing page that led to a confirmation page as per 11.3.2 – the whole point of Double Opt in is to let the subscriber know that they are about to be subscribed to a service by clicking a second link as confirmation. The SP is in breach of 11.3.4 as this text was not displayed at all.

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

- Spam
  - Automatic subscription; and
  - Subscription process not followed.
- 

### **WASP response**

The WASP disputed the Complainant's view of events and stated that there was a clear double opt in process in play:

“We dispute the complainant's view that there was no double opt-in. Within the WAP Push message there was a link, this link upon clicking it (part 1 of the double opt-in process), takes the user to a confirmation landing page, there is then a Call-to-Action button within this confirmation-landing page clearly states the word 'Subscribe' (part 2 of the double opt-in process). It is clear that there is a double opt-in process in place for this service.

As we have stated in point 1, the process goes through a double opt-in process and the confirmation page has a call-to-action button using the word subscribe. A user must click on this button in order to be subscribed to the service. It is not possible for the user to be subscribed prior to clicking on the call-to-action button within the confirmation page.”

A screen shot of the confirmation-page was displayed.

In response to the Complainant's allegation that there was no landing page when one input the URL directly into the browser the WASP stated that this was not possible and provided the logs for the double opt in as well as the screenshot of the landing page again.

In addition the WASP states that the message was not spam as the wap push message was sent in response to the Complainant clicking on a banner advert.

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

---

---

## Sections of the Code considered

### 5.2. Identification of spam

5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless:

- the recipient has requested the message;
- the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications;
- at the time when the information was collected; and
- on the occasion of each communication with the recipient; or
- the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.2.2. Any commercial message is considered unsolicited after a valid opt-out request.

5.2.3. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

### 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

Once again this case finds me in a he said she said situation. And once again without alleging fraud on the part of the WASP in generating logs I can find no basis upon which to dispute the validity of the logs or the landing page.

However, in reading the welcome messages I feel that the welcome message provided did not follow the strict format and pattern mandated by the Code. When it comes to confirmation messages the Code is more lenient as to the precise layout of the message but it very clearly and strictly mandates the format of the welcome messages. The welcome message is meant to follow the format:

It **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.

The Wurup welcome message reads as follows:

Welcome: Videos at <http://bzm.tv/s/319E31607D> Pass80413149  
Wurup help(a)wurup.com subscription service R7/Day unsub sms  
stop to 31923 help0105008148.

In my view this does not accord strictly with the requirement of the Code.

---

**Sanctions**

The IP is fined R5000 to be suspended pending their demonstration to the WASPA Secretariat that all of their Welcome message conform strictly with the format set out in the Code.