



REPORT OF THE ADJUDICATOR

Complaint reference number:	20632
WASPA member(s):	Double MT (IP) (1329) / Opera Telecom (SP) (0068)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Automatic subscription
Date complaint was lodged:	2013-05-23
Date of the alleged offence:	2013-01-30
Relevant version of the Code:	12.4
Clauses considered:	11.3, 11.5 and 11.6
Relevant version of the Ad. Rules:	N/A
Related cases considered:	19377

Complaint

Complaint 20632 is the escalation of unsubscribe request 4348341 regarding subscription service charges.

The formal complaint was sent to the WASP on 2013-06-04 and they responded on 2013-06-11.

WASPA secretariat sends email on the 2013-06-13, informing resolution to complainant and requests more information.

The complainant responds on the 2013-06-13.

The Complainant wrote at length setting out her issue with Double MT and their Kulaville service. Extracts of the complaint are set out below. The remainder is available for all parties and as such I have not set out the complaint verbatim below:

“· Firstly, my cellphone handset is a Samsung Pusha FM (GT-E1205T) and is not

capable of handling Internet Connections of any kind.

- WASPA suggest that someone else might have got hold of my cellphone and subscribed me to Kulaville without my knowledge. This is physically impossible as my cellphone handset cannot manage such advanced applications anyway.

- Secondly, putting the above information aside for now, Kulaville can verify that I never made use of any of their applications on offer for the subscribed daily availability. Why would I subscribe for services, let alone pay a daily rate, for applications I have never downloaded or used? What did I gain by subscribing, as they say, I did? The answer is NOTHING – my money was taken for no service whatsoever.

- Yes, I concede that I may have received a couple of sms's giving me an option to "opt out" of Kulaville which I ignored as I had never heard of Kulaville before, and like most other people, I ignore the barrage of advertising information asking me to reply "yes" or "no" to various services on offer via cellphone advertising. Most people ignore and just delete this type of advertising. Why should we have to pay to send a sms replying "no" to a service we didn't ask for in the first place! What right do these companies have to send advertising to our private cellphones anyway?...

... I want my money from Kulaville refunded to me and a stop put to this type of business."

WASP response

The WASP disputed the Complainant's view of events and stated that:

The Complainant was subscribed validly and provided proof of subscription in this regard. They further pointed out inconsistencies of fact in the version of events presented by the Complainant to:

1. WASPA;
2. The police to whom they reported their phone stolen; and
3. The WASP.

These inconsistencies related to the type of phone utilised by the Complainant and the fact that the phone had in fact been stolen.

However the WASP states further that these inconsistencies while perhaps casting doubt as to the credibility of the Complainant have no bearing on the validity of the subscription due to the fact that all phones mentioned are capable of connecting to the internet and subscription was initiated prior to the phone being stolen.

Accordingly they do not feel that the Complainant was due a refund or that they had breached the WASPA Code inter se subscription.

Complainant's Further Response

The Complainant refused resolution on the basis that it disputes the validity of the logs. The Complainant also provided details of the theft to WASPA on request.

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

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.

I have a general issue with the practical problems of determining when logs are valid. All too often, the WASP alleges that the Complainant subscribed and provides logs to substantiate this allegation.

I cannot dispute the validity of the logs. Further, the irregularities, however minor, in the Complainant's version of events means that I cannot rely on her say so without considering the possibility that her version of events is flawed.

As such, and without alleging fraud on the part of the WASP, I have no option but to dismiss the complaint.

Sanctions

No sanction.