



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	20684
<b>WASPA member(s):</b>	Flexiba Services Interactiva S.L. (IP) (1323)/ Opera Telecom (SP) (0068)
<b>Membership number(s):</b>	See above
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Automatic subscription
<b>Date complaint was lodged:</b>	2013-05-28
<b>Date of the alleged offence:</b>	2013-01-18
<b>Relevant version of the Code:</b>	12.1
<b>Clauses considered:</b>	8, 11.3, 11.5 and 11.6
<b>Relevant version of the Ad. Rules:</b>	N/A

### Related cases considered:

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### Complaint

Complaint 20684 is the escalation of unsubscribe request regarding subscription service charges.

The formal complaint was sent to the WASP on 2013-06-04 and they responded on 2013-06-10.

The complainant refused resolution on 2013-06-26.

The WASP provided additional information on 2013-07-18.

The Complainant denies ever registering or subscribing to the service. He disputed the logs and refused a refund.

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### 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.

1. The Customer, following the Web Registration Process, opted-in on the 18th of January of 2013 to our Service;
2. The Subscription process was totally compliant as reflected in the POS provided to you on the 23rd of April 2013 (see attachment);
3. The Service in which the customer subscribed to was our Adult Entertainment service, where users can watch and download Adult related content;
4. The Customer was sent upon completion of the subscription process, the required Welcome message and during the period in which the complainant was subscribed to the service, was sent 3 Reminder messages;
5. The customer made use of the service during the period of subscription, this is reflected within the POS supplied on April 23rd 2013, and attached again for your reference;
6. The Customer was unsubscribed from the service on the 16th of April of 2013 and an unsubscribe confirmation message was sent;
7. The Number 0834506799 has been "blacklisted" and is now unable to interact with any service offered by our organisation.

In conclusion, the complainant has stated to WASPA that they never interacted with the service. The POS supplied, disputes that claim based on the fact that the complainant is required to interact with the service when processing their subscription prior to completion, as we are obliged to operate a 'Double Opt-In' mechanism.

Additionally referring the reader back to point 5 above, the POS supplied shows the Complainant accessing and utilising this adult service, which can only be done upon completion of the subscription process.

### **Complainant's Further Response**

The Complainant refused resolution on the basis that it disputes the validity of the logs and on the basis that he does not want other consumers similarly automatically subscribed to services.

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### **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

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## 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.

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

**Sanctions**

No sanction.