



REPORT OF THE ADJUDICATOR

Complaint reference number:	21216
WASPA member(s):	US Cellcom LLC (IP) (1046) / Mira Networks (Pty) Ltd (SP) (0011)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Automatic subscription
Date complaint was lodged:	2014-01-20
Date of the alleged offence:	2013-11-26
Relevant version of the Code:	
Clauses considered:	
Relevant version of the Ad. Rules:	N/A

Related cases considered:

Complaint 21216 is the escalation of unsubscribe request 5644670 regarding subscription service charges.

The formal complaint was sent to the WASP on 2014-01-20.

Complainant replied to escalation email on the 2014-01-20, with additional comments concerning his complaint.

WASPA secretariat sends reminder email to WASP on 2014-02-06.

WASP replies advising no email was received for escalation 21216 on the 2014-02-06.

The WASP replies on 2014-02-06.

The complainant refused resolution on 2014-02-07.

The WASP provided additional information on 2014-02-12.

Complaint

The complainant complained that he had been automatically subscribed to a subscription service.

He stated:

“Terms of subscription not visible on the same page as the subscription. Completely misleading info eg virus detected on your phone do you want to scan (& this is your subscription??). Completely misleading sms's which suggest you have been 'invited' so you don't cotton on they have illegitimately subscribed you till they have stolen a month or more's income.

These chaps should be in jail, & nif they are members of waspa then your organisation is a worthless front for fraudsters. “

He stated further that:

“Thank you. As additional backup that this is a fraudulent operation. Below is a link to photographic reproduction of the process of basically the same scam system that 'supposedly' subscribed me. As I was busy browsing, I believed the virus threat message to have emanated from my cellphone's virus protection, & thus clicked on the request to run the scan, Quite clearly nothing at all to do with the photograph browsing services supposedly offered by Bempix. Also details of terms & costs not at all visible on the same page as the button clicked to run the "test" as required by the WASPA code.

<http://mybroadband.co.za/vb/showthread.php/576823-Hidden-method-of-stealingyour-airtime?p=11601125&viewfull=1#post11601125>.

I am quite happy to provide any additional information that may be required. I also wish to lay a fraud charge against them, but wait your recommendation in this regard, and to whether I should charge the CEO, the Company or both. As a matter of interest my Wife was scammed in the same way. If you have time take a read of the following links to see the tip of the iceberg with this problem.

<http://helloworld.com/mira-networks/compliments-and-complaints?pg=1>.

WASP Response

The WASP stated that : “Subscription to our service was valid (attached you can find logs from our system as well as from our provider MIRA Network). Free reminders are sent accordingly (attached you can find logs from our system as well as from our provider MIRA Network). User is deactivated accordingly (attached you can find logs from our system as well from our provider MIRA Network). After receiving your complaint email, user (Mr. Izak Johannes Schoombee) is contacted on his email: ijschoombee@gmail.com and we have provided him all required information about his subscription starting our will to contact him again for clarifying any other details.”

The WASP also provided full logs and a full refund which was duly paid over. I won't provide further copies of the logs or a verbatim description of the response as all parties are in possession of such logs and documents.

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.

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

Due to the fact that a full refund has been offered but not provided I will sanction the WASP in this regard.

Sanctions

Full refund to Complainant must be made within 5 (five) working days of the publication of this report.