



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Viamedia (Pty) Ltd
Information Provider (IP):	Opportune Trading 117 CC
Service Type:	Subscription
Complainant:	Public
Complaint Number:	21396
Code Version:	12.4
Advertising Rules Version:	Not applicable

Complaint

The complainant alleges, in essence, that he never subscribed to the subscription service in question. He was not satisfied with being unsubscribed, and took issue with certain aspects of the business practices.

Service provider's response

The SP responded, attaching feedback from the IP.

The SP provided subscription logs, and at the request of the adjudicator, copies of the banner advertisement and landing pages that led to this subscription.

The SP also addressed the concerns raised by the complainant in specific.

Sections of the Code considered

The sections of the Code that are relevant to the matter at hand are:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

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.

14.3.13. Providing incorrect or fraudulent information in response to a complaint, or in response to any other request to provide information is itself a breach of this Code.

Decision

A matter such as this one is always difficult – on one hand, one is sympathetic to a complainant who is adamant that they have not subscribed to a service. On the other

hand, there are subscription logs and claims of a secure subscription process that involves a pin. As an adjudicator, I therefore have to question whether at some point of the subscription process the consumer was confused by the material, or could have been subscribed without his knowledge.

In this regard, the description of the process bothered me – it claimed that a unique pin was required to subscribe to this service but I could not understand from the papers how this pin was generated, as there seemed to be no indication that it was sent to the customer's mobile in order to verify the mobile number entered is correct.

I therefore – and for the first time in the many WASPA adjudications that I have made – went through the process myself and was horrified. I went to the landing page, entered my cell phone number, and was IMMEDIATELY subscribed. The “pin” was completely non-existent.

Clause 11.3.1 states: 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.

This double opt-in process clearly does not occur and it is possible for anybody to sign up any cell number to this service. This is a clear and overt breach of Clause 11.3.1.

In addition, in its response, the SP has clearly and I can only presume deliberately, misled WASPA as to its process.

Clause 14.3.13. Providing incorrect or fraudulent information in response to a complaint, or in response to any other request to provide information is itself a breach of this Code.

The SP asserted that a pin was required to subscribe in this matter. It also, through ambiguous wording, tried to imply that this pin was correctly supplied to the consumer in terms of Clause 11.3.1. Not only is the pin not sent to the consumer as required, there was no appearance of any pin of any sort when I went through the process myself.

The SP has therefore provided WASPA with incorrect information in breach of Clause 14.3.13.

Sanctions

I impose the following sanctions against the SP:

1. A full refund must be made to the customer within 7 days of receipt of this adjudication.
2. In respect of the breach of Clause 11.1.3, a fine of R100 000,00 is imposed.
3. In respect of the breach of Clause 14.3.13, which is a breach that goes to the heart of the SP's membership of WASPA and the professionalism of this industry, a 6 month suspension from WASPA and a R100 000,00 fine is imposed.
4. In addition, I request that the Media Monitor conduct a thorough investigation in respect of the services offered by this particular IP and in particular, the subscription processes and messages, including the unsubscribe mechanisms.