



ADJUDICATOR'S REPORT

Complaint reference number:	21659
WASPA member(s):	Wap Network Group Ltd (1062) (IP) / Smartcall Technology Solutions (0090) (SP)
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	2013-09-11
Date of the alleged offence:	2013-06-25
Relevant version of the Code:	12.1
Clauses considered:	4.1.1, 11.2.2, 11.10.2
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not considered.
Related cases considered:	18238

Complaint

The complaint appears to comprise two parts. The first was the initial complaint which stated the following:

An incremental amount totalling R1180 was charged to my cellphone bill by mobthumbs/ smartcall. At no point did i subscribe to or visit their website. Upon querying this and requesting proof of the transaction, i received a reply that the funds would be credited to my bank account and requesting my banking information which i supplied. My account was to be credited within 10 working days which has now passed, yet no payment has been received. These are fraudulent transactions that have resulted in the aforementioned company benefitting financially but failing to deliver any service and without the bill payer's consent.

The second part was a motivation for the complaint's escalation to a formal complaint:

The initial request I sent/loaded for WASPA is directly linked to fraud committed by a WASPA member and in contravention of WASPA's code of conduct. My query related to the repercussions this company/s face as a result of non compliance. I already directly contacted these companies personally and ensured that I would be unsubscribed. The reason I turned to WASPA was because of the dishonest business practice of the affiliated member and the role of WASPA. Should I rather proceed to open a criminal case against the relevant company I would gladly go that route. My previous correspondence with regards to this is attached. Kindly advise me of steps to follow going forward. Thank you

The complainant clarified his complaint on 18 September when he wrote to WASPA in response to a notice that the complaint had been escalated to a formal complaint:

Is this still being handled as an unsubscribe request complaint?

Please refer back to my previous communications as to the breach of the WASPA code of conduct of the aforementioned service provider. This complaint has nothing to do with cancelling a subscription, but the fact that it existed in the first place.

Service provider's response and further developments

Wapbill's response was to unsubscribe the complainant, block him on the network to prevent him being subscribed again and to offer a full refund. The refund was eventually paid in full and is not in dispute.

Smartcall's response to the formal complaint notice on 26 September 2013 was the following:

Hi

Please note that we have been in contact with the below client and the refund was paid in full. The service details was sent to the client and explained to him.

Trust you find the above in order and please contact me should you have any further queries.

Best Regards

Lorinda Wepener

Smartcall Technology Solutions

Smartcall submitted a further document purporting to be the logs of the complainant's subscription which I annex to this report as Annexure "A". These logs don't give any meaningful detail aside from the complainant's name and contact details. They also quote a welcome message, a reminder message and the complainant's opt-out request on 24 August 2013 which does not appear to have been processed until 11 September 2013.

Clause 11.10.2 of the Code requires members to supply "clear logs":

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;*
- (b) proof that all required reminder messages have been sent to that customer;*
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and*
- (d) any record of successful or unsuccessful unsubscribe requests.*

This has not been done. The logs supplied to the Secretariat have very little useful detail which would inform a determination of whether the complainant subscribed to the service and the extent to which Smartcall and/or Wapbill complied with the Code's requirements for such services. The Secretariat was, furthermore, not supplied with information about the subscription service's subscription mechanism.

Sections of the Code considered

Given the complainant's description of his complaint, it appears to relate to clauses 4.1.1 and 11.2.2.

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

...

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.

While not part of the complaint itself, clause 11.10.2 is also relevant:

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
- (b) proof that all required reminder messages have been sent to that customer;
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (d) any record of successful or unsuccessful unsubscribe requests.

Sections of the Advertising Rules considered [if applicable]

Not considered

Decision

In the adjudicator's report on complaint 18328, the adjudicator commented on a similar failure to supply adequate logs to the Secretariat:

As referred to in Adjudication 18262, it is NOT merely sufficient for the member to provide a so-called "log" showcasing only the alleged opt-in.

An allegation by a complainant of non-subscription goes far wider than merely the act of subscription. It goes beyond such act to an earlier episode where it must be asked as to WHY the complainant allegedly subscribed. In other words, what motivated him / her?

Was he / she misled into subscribing, was confirmation or subscription done via a webpage, sms, or any other means and, having had sight thereof, have all the correct processes been followed?

For this precise reason the WASPA Secretariat, during complaints, issues the following notice in its initial request to members, as was done in this instance:

It is recommended that your response should include as much as possible of the following information that is relevant to this complaint:

- Logs as stipulated in clause 11.10.2. of the Code of Conduct
- Information on how this service was or is advertised e.g.: TV, WAP, Internet, SMS, radio
- A copy of the advertisement/marketing material
- In the case of a TV advert please provide flight times and codes
- Statistics on the number of entries/users of this service

Section 11.10.2 states that when requested to do so by WASPA, a member must provide clear

logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;*
- (b) proof that all required reminder messages have been sent to that customer;*
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and*
- (d) any record of successful or unsuccessful unsubscribe requests.*

This was clearly NOT adhered to by the IP in this matter which places the Adjudicator in a position where it cannot draw inference from the submitted log that a VALID subscription actually took place.

It can also not ascertain whether less than R200-00 was charged during any particular month since section 11.10.2 (c) was not complied with.

However, the Adjudicator can also not establish whether there were in fact other breaches, since the content of the log does not render enough context to the type of subscription service.

No information was received as to how the complainant's number was obtained, how the service was advertised etc.

The Adjudicator is also of the opinion that the IP did not provide him / her with a formal response indicating the chain of events. It merely provided the Adjudicator with an ill-detailed log, alleging opt-in.

*Section 14.3.14 states that on the basis of the evidence **presented**, the Adjudicator will decide whether there has been a breach of the Code. **Each case will be considered and decided on its own merits.***

Due to its non-conformance with section 11.10.2 and more specifically due to the sparsely compiled and / or unclear log, the Adjudicator does not feel that the IP in this matter has rendered sufficient proof of a VALID subscription, especially insofar as it relates to the context of the subscription and allowed processes which could have been clarified by a detailed response.

In this particular case it is unclear whether the complainant did, in fact, subscribe to a compliant subscription service. There simply isn't enough information before me largely because between them, Wapbill and Smartcall failed to furnish the Secretariat with sufficiently clear logs pertaining to the subscription. Certainly the complainant has been refunded the amounts he was charged but this doesn't detract from the members' failure to comply adequately with the Secretariat's request for logs.

In the circumstances I am unable to make a finding regarding compliance with clauses 4.1.1 and 11.2.2. I do, however, find the members in breach of 11.10.2. Both appear to have played

a role in the subscription process and I regard both as responsible for compliance with clause 11.10.2 in respect of information they hold about the transactions concerned.

Sanctions

I direct that Smartcall and Wapbill each pay a fine of R15 000 to the Secretariat on demand by the Secretariat for their respective breaches of clause 11.10.2.



Additional Information: Complaint Ref#21659 Escalation of unsubscribe #5076484

WASPA Member (SP):	Smartcall Technology Solutions
Information Provider (IP):	Wapbill
Service Type:	Subscription Service

On 11 September 2013 a complaint was logged on the WASPA Unsub system for the below client:

Mobile number: [REDACTED]

Customer name: [REDACTED]

Customer email: [REDACTED]

Customer alternate phone: [REDACTED]

The client requested logs of the subscription and a refund.

The detailed logs of the subscription were supplied and a full refund offered. The complainant accepted the offer to refund and provided account details for the refund.

The refund was processed and paid into the account on 11 September 2013. The client confirmed payment.

Please find below the logs of subscription:

WAP Login confirmation and Double opt in confirmation:

Optin Details						
Site	Number	Handset	Page	Date	Time	Ip Address
NSFWmob.com	[REDACTED]	Mozilla/5.0 (Linux; U; Android 4.0.3; en-gb; GT-I9100 Build/IML74K) AppleWebKit/534.30 (KHTML, like Gecko) Version/4.0 Mobile Safari/534.30	/za/sub/members.jsp	2013/06/25	18:50:12	41.48.16.45
Subscription Confirmation	[REDACTED]	Mozilla/5.0 (Linux; U; Android 4.0.3; en-gb; GT-I9100 Build/IML74K) AppleWebKit/534.30 (KHTML, like Gecko) Version/4.0 Mobile Safari/534.30	/za/sub/confirm.jsp	2013/06/25	18:50:57	-
NSFWmob.com	[REDACTED]	Mozilla/5.0 (Linux; U; Android 4.0.3; en-gb; GT-I9100 Build/IML74K) AppleWebKit/534.30 (KHTML, like Gecko) Version/4.0 Mobile Safari/534.30	/za/sub/video.jsp?cid=793&aff=3923&sid=34&m=27844038786&version=g&msisdn=27844038786	2013/06/25	18:51:02	41.48.16.45

As per the above logs the user logged into the WAP page on 25/06/2013. The subscription was confirmed and the user proceeded to download content.

Welcome message sent to the user:

2013/06/25 07:51:01 PM	ProfitSol	██████████	DELIVRD	2013/06/25 07:51:07 PM	2013/06/25 07:51:09 PM	Welcome: Mobthumbs.com This subscription service is charged at R20 per day. To unsubscribe send THUMBS STOP to 37445. Support at www.wapbill.net or call 0213009895
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Thereafter the user received the monthly reminder messages as per below example:

2013/08/24 08:48:25 PM	ProfitSol	██████████	DELIVRD	2013/08/24 08:48:38 PM	2013/08/24 08:48:38 PM	You are subscribed to MOBthumbs Hot Videos. Cost R20 per 1 day(s). Help: 0213009895. To unsubscribe, sms THUMBS STOP to 37445.
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The user responded to the last reminder message requesting to stop the service.

2013/08/24 08:55:32 PM	██████████	37445	THUMBS STOP
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The user was successfully unsubscribed and a confirmation message was sent.