REPORT OF THE ADJUDICATOR

Complaint reference number:	23230
WASPA member(s):	Why Play Interactiva SL (IP) (1387) / 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:	12.4
Clauses considered:	11.2-11.8
Relevant version of the Ad. Rules:	11.1 and 11.2 relating to reminder messages and SMS and MMS
Related cases considered:	N/A

Complaint 23230 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 23230 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://hellopeter.com/mira-networks/compliments-and-complaints?pg=1."

WASP Response

The user browsed the mobile internet and came across our banner advertisement promoting the Bempix Mobile Entertainment Subscription Service. The user clicked on a banner advertisement promoting our "Online messaging", which is offered as part of the Bempix Subscription Service. Upon clicking the banner, the user was directed to our Bempix landing page were the user was required to complete specific Calls To Action to proceed. The user completed all stages and subscribed to the service. Subscription is not possible without user interaction.
With every service we operate, users have the opportunity to read the Terms & Conditions of service prior to accepting the service. These are displayed throughout the process.

The WASP also provided full logs and a full refund. 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

11.2. Subscription process

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.

11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, all marketing and promotional material must make it reasonably clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

11.2.4. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

11.2.6. The confirmation message sent in response to a subscription request (such as that described in 11.2.5, or triggered by entering a mobile number on a web site) must include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].
11.2.7. If the network is already undertaking any of the verification steps required in this chapter of the Code, then it is not necessary for members to repeat those particular steps again.

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:
contain a PIN which is then confirmed or validated on the web page, or
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:

The name of the service and an indication that it is a subscription service
The price and frequency of billing
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 11.3.3 and 11.3.4 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.

11.4. Subscription initiated via USSD

11.4.1. After selecting the required service, the customer must be presented with a confirmation step. The subscription service may not begin until the customer follows the confirmation instructions. The following information must be presented as part of the confirmation step:

The name of the subscription service;
The cost of the subscription service and the frequency of the charges;
Instructions to follow to confirm the subscription (e.g. "1 - Confirm, 2 - Cancel")
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:

The name of the subscription service;
The cost of the subscription service and the frequency of the charges;
Clear and concise instructions for unsubscribing from the service;
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.

11.7. Reminder message for USSD services

11.7.1. For services where the primary means of interacting with the service is via USSD, either the format set out in 11.6.2 or the the following format must be used:

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, dial [USSD code1 + "(VAS)" if applicable] or call [call centre number + "(VAS)" if applicable]. To unsub, dial [USSD code2].
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, dial [USSD code2].
11.7.2. Accessing the USSD unsubscribe facility specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.7.3. All of the other requirements set out in section 11.6 of the Code continue to apply to services where the primary means of interacting with the service us via USSD.

11.8. Reminder message for WAP services

11.8.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.6.2 or the the following format must be used:

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, click here [WAP link].
11.8.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.8.3. The WAP link in the reminder message must begin with "www" to ensure that all phones recognise this as a clickable link.

11.8.4. All of the other requirements set out in section 11.6 of the Code continue to apply to services where the primary means of interacting with the service us via WAP.

Decision

11.2.1 and 11.2.2 require that any subscription must be separate to any other transaction. In my view, clicking on an advert for an anti-virus scan is not a separate transaction.

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:

The name of the subscription service;
The cost of the subscription service and the frequency of the charges;
Clear and concise instructions for unsubscribing from the service;
The service provider's telephone number.

Welcome:Bempix Click to start http://bzm.tv/s/2DBFEB612B
Pass17391361 help@bempix.com subscription service R7/Day unsub
sms stop to 43035 help0105002341.

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.

Reminder ur subscribed to Bempix. 1 New updates waiting. Click http://bzm.tv/s/2DBFEB612B to read cost R7/day help?0105002341. To unsub sms stop to 43035

In my view, and due to the exacting requirements of 11.6.3 the reminder message does not comply with the Code in that it has this text between the name of the service and the cost: 1 New updates waiting. Click http://bzm.tv/s/2DBFEB612B to read.

It also breaches 11.1 of the Advertising Rules which sets out this as the template for the reminder messages and states that no other characters may be included:

You'r<space>subscribed<space>to<space><SERVICE NAME><space><inclusive cost of service & the frequency of billing><space>from<name of content provider><period>To<space>stop<space>service,sms<space>STOP<space><insert service name><space> to<space><insert number><space><open bracket><cost of MO><close bracket><period>Help?Call <space>0xy1234567<open bracket>VAS<close bracket>

The Advertising Rules relating to SMS and MMS services have also been breached in that it is not clear that the advert for a virus scan is actually a subscription service. The terms of the subscription service are not clearly displayed.

Sanctions

I find the IP in breach of the Code and Rules and request them to refund all monies deducted (if not done so already).

A fine of R5000 must be paid immediately on receipt of this ruling.

A further R5000 is held in abeyance until such time as the reminder message is corrected and a corrected version provide to the WASPA Secretariat. This needs to be done within 7 (seven) days of this ruling.