



REPORT OF THE ADJUDICATOR

Complaint reference number:	23334
WASPA member(s):	US Cellcom (IP); Mira Networks (SP)
Membership number(s):	1046; 0011
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	31 January 2014
Date of the alleged offence:	31 January 2014
Relevant version of the Code:	12.4
Clauses considered:	11.1 – 11.10
Relevant version of the Ad. Rules:	n/a
Clauses considered:	n/a
Related cases considered:	17131; 17132; 15817;

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 20 January 2014.

The IP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant logs. The IP did not offer a refund to the complainant as it alleged that he had validly subscribed to the service.

The complainant persisted in his claim for a refund and requested that the complaint be escalated to the formal adjudication process. The complainant alleges that an unsolicited message was sent stating that "*someone you know sent you a photo, click here to view the photo*". When the link is used, a WAP page is opened but the complainant alleges that there was no clear indication that the service was a subscription service.

The complainant also states that he asked for proof of subscription on 7 November 2013, but no proof had been forthcoming. He also alleges that he made telephone calls to the number provided but there was no answer or he was directed to an automated answering service that never directed his call to an operator.

IP's response

The IP alleges that this MSISDN was used in what appears to be illegal activity involving the manipulation of the relevant URL whereby the user modified the relevant URL, inserted another MSISDN into the URL and clicked on the activation button.

The IP's logs indicate that this took place on 12 September 2013 and again on 13 November 2013.

The IP confirmed that they were contacted for details and tried to respond but the user did not reply to any of their calls.

The IP states further that it reported the illegal activity to the SP, who had in turn deployed a "Direct Marketing" API to try to eliminate such fraudulent behaviour.

The IP maintains that the subscription to the service was valid and that the welcome message requirements of the Code were complied with.

The IP apologised for the delay in responding to the complainant and indicated that the reason was because it was no longer running these SMS campaigns.

Sections of the Code considered

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.

11.2.5. 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 described in 11.2.5 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].

11.6.1. 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.

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information: proof that the customer has opted in to a service or services; proof that all required reminder messages have been sent to that customer; a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and any record of successful or unsuccessful unsubscribe requests.

Decision

1. On the IP's own version, it appears that the complainant's MSIDSN may have been subscribed illegally by a third party manipulating the subscription process.
 2. While it may be so that from the IP's point of view, there was still a valid subscription, it is the IP or the SP's responsibility to take steps to ensure that such fraudulent activity cannot take place on its systems.
 3. It also does not appear as though the support numbers used for this service were functioning correctly and there was a delay before the complainant's concerns were addressed.
 4. Based on the foregoing, the complaint is accordingly upheld.
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Sanction

1. Insofar as the IP has complied with the requirements of the Code in all other respects, I am satisfied that this complaint can be addressed by the IP refunding the complainant for all amounts incurred on his account in respect of the subscription service in question.
2. The IP is ordered to refund all amounts charged to the complainant in respect of this subscription within 7 days of being notified of the outcome of the complaint.