



REPORT OF THE ADJUDICATOR

Complaint reference number:	23979
WASPA member(s):	Buongiorno SA
Membership number(s):	0002
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	12 May 2014
Date of the alleged offence:	18 March 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:	11863, 15183, 15477, 15664, 16313, 16479, 16559, 16659, 16832, 17831, 20817, 20858

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 18 March 2014. The SP responded by unsubscribing the complainant and providing proof of subscription in the form of the relevant logs.

The SP also provided the complainant with an *ex gratia* refund of all monies that were billed to his account.

The complainant remained unsatisfied with the SP's response and raised the following queries:

1. How did the SP obtain his mobile phone number?
2. How did the SP trace his service provider?
3. Who gave the SP authority to debit monies from his account with his service provider?

The complainant also denied that he ever received any confirmatory or reminder SMS's to his mobile number.

The complaint was escalated to formal adjudication.

SP's response

The SP responded to the complaint by providing copies of its billing and MT logs as well as an explanation of its double opt-in process for subscriptions.

The SP referred to its promotional / splash web page where potential subscribers may, if they choose to do so, enter their phone number (MSISDN). They are then sent a PIN number to their phone. Once the PIN number is received, the person may then choose to enter the PIN number on a confirmation web page.

The text message containing the unique PIN number confirms that the potential subscriber is dealing with a subscription service and the cost thereof.

Once the potential subscriber has entered that unique PIN number on the confirmation page, they are asked to click on the CONFIRM button before they are subscribed to the service.

The SP also states that all its advertising pages for the campaign include their terms and conditions, which again highlight that the service being advertised is a subscription service and the cost thereof.

In response to the complainant's further queries, the SP responded as follows:

1. The complainant or someone with access to the complainant's mobile phone actively engaged with one of the SP's promotional banners/ads, which

caused their browser to redirect to a landing page that contains specific and clear information about the Genio and the 35050 Gold Service. Thereafter, the complainant's mobile number was entered into a field provided when prompted to do so. This is how the SP ended up with the complainant's mobile phone number. (Reference was made to the web log).

2. After the complainant's mobile number had been inserted on the landing page, the SP carried out a lookup process in the back-end (server-side) of the campaign flow, which when available, confirms the name of the network provider to which the mobile number is registered.
3. Due to the double opt-in process followed, the complainant had to actively confirm the request to become a member of the subscription service by completing both steps of the double opt-in confirmation. The specific method of double opt-in confirmation is determined by the network operator in question. The customer is registered with the Cell C network operator and as such confirmed his request for the subscription by entering the required PIN number as was sent to his mobile number by SMS. After the SP received the final confirmation from the complainant, the complainant's network operator was notified of the initiation of the subscription service. Once the subscription service is activated, the subscription is again confirmed by the SP through means of a welcome message and throughout the period of subscription on a monthly basis in the form of reminder messages.
4. If the complainant was able to enter the correct PIN into the web page, which is a second confirmation step in the double opt-in process, the complainant must have received the SMS that contains the PIN number in order to know which PIN number to enter. If the complainant is able to receive a message with a PIN number to subscribe to the SP's service, it is difficult to comprehend why the complainant did not receive the other messages from the SP. There are only a few exceptional reasons why these messages would fail to be delivered to the complainant. The SP is not notified by the network operator should the delivery of its messages fail at the network operator's end, nor would the SP be notified if there are issues with respect to complainant's handset. The SP's records show that all required messages were sent to the complainant in the required time frame during the period of subscription.

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.

11.3. 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:

- (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

I have perused the SP's logs and confirmation that the double opt-in process was followed for this particular subscription.

In the absence of any further contradictory proof, I am satisfied that the SP has complied with its obligations under the WASPA Code of Conduct.

The complaint is accordingly dismissed.