



REPORT OF THE ADJUDICATOR

Complaint reference number:	24357
WASPA member(s):	FROGGIE S.L. (IP) (1194) / Mira Networks (Pty) Ltd (SP) (0011)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Automatic subscription
Date complaint was lodged:	2014-08-07
Date of the alleged offence:	
Relevant version of the Code:	12.4
Clauses considered:	5.2.1, 5.2.2, 5.2.3, 11.2.5, 11.2.6, 11.2.7-11.3 and 11.6
Relevant version of the Ad. Rules:	
Related cases considered:	n/a

Complaint 24357 is the escalation of unsubscribe request 5923732 regarding subscription service charges.

The formal complaint was sent to the WASP on 2014-08-11 and they responded on 2014-08-11.

The complainant acknowledges complaint on the 2014-08-11.

The complainant refused resolution on 2014-09-10.

The WASP provided additional information on 2014-09-11.

The complainant acknowledges complaint going to adjudication on the 2014-09-14.

Initial Complaint

DOUBLE-MT & FROGGIE. My defrauding process was described below in my previous e-mail. I do not accept that by clicking an whats-app update that I am simultaneously subscribed to

three services. This is a SCAM and there must be some outside authority that can make a ruling in this regard. I am not going to let this just pass. They are tricking people out of millions of Rand and this scam is making BIG MONEY FOR THEM. If I subscribed knowingly to their service why did I not download their offering? Surely this must become an indicator to the industry that they have fooled somebody into thinking that they are up-dating whats-app. Why are they allowed to use the whats-app up-date as a lure to sign up.

They must be seen as a porn site and only as a porn site on the web, their front end to the unsuspecting customer must be seen as a porn site, and not posing as a whats-app update. There must then be a verification message that says that you have now signed onto a porn site do you want to continue.

Another indicator must be, that if somebody has not downloaded content he must automatically be taken off the site after 24 hours and refunded.

Is there a regulating authority that hears cases like this or must I take the legal route? Why does Vodacom not step into stopping this scam??? Does Vodacom make money out of these scammers? The people must be informed about this scam and these thieves exposed. Please convey my message to these scammers and let me know what Vodacom's position is on this theft. I will wait for your response before I take steps to bring awareness of this shady business through talk shows etc.

WASP Response

First and foremost it seems from the complainant's correspondence that he has confused us with another WASP (DOUBLE MT) and their service that he is also subscribed to. He mentions a 'porn service' and a 'Whatsapp promotion', neither of which are related to our services or promotions on shortcode 43476. Let's clarify this point before to continue; WE DON'T HAVE ANY PORN SERVICES OR WHATSAPP PROMOTIONS FOR SHORTCODE 43476.

In the first mail we advised that the "Whatsapp promotion" belonged to DOUBLE MT, not to us. And we explained in detail the way that costumer subscribed to our service, Lekker mobile, including double opt-in. As you can see in DOCUMENT 2, our landing is not PORN, rather mobile content downloads, and take note that we clearly show the price of subscription. Once he clicks to confirm, we send the costumer to the second opt in site. You can see as DOCUMENT 3, where we once again clearly indicate the pricing of the service and subscription. When costumer clicks in SUBSCRIBE is the moment when he really is subscribed, not before. So, when he accuses our company of using traps subscribing users to porn services we have categorically deny.

Finally, as you can see in DOCUMENT 1, we have sent the costumer three different SMS with service and pricing information:

a. 2014-04-16 19:32:50 Welcome, your subscription is set up to SMS7.R4.99/day. To unsubscribe send STOP SMS7 to 43476. support: 0861106472: Here is perfectly explained the service, the price, subscription and the unsubscription. He receives this SMS as soon as accepts the service.

b. 2014-04-16 19:32:50 Visit <http://www.lekkermobile.com> to download contents: In this SMS we inform the site where costumer can access to our content.

c. 2014-05-16 18:09:46 Reminder. You are subscribed to SMS7 alerts. This is a subscription service.R4.99/day.To unsubscribe text 'STOP SMS7' to 43476.
support: 0861106472.

The last SMS reminds costumer, as waspa regulations demand, that he is subscribed, the price and how to unsubscribe.

In virtue of the aforesaid, we have informed the costumer about the service, about the price, the way to unsubscribe and reminded them about their subscription. We never offered porn content and we never offered anything related to Whatsapp. We have followed all regulations and codes from WASPA and have replied to all the claims from the costumer. The subscription is legitimate, therefore we cannot offer a refund.

Further Complaint

At this point the Complainant continued to assert his claims about porn and the whatsapp cloaking device and refused resolution.

Wasp Further Response

The WASP in turn continued to clarify for the consumer that they were not the SP providing the services upon which his claim was based.

Sections of the Code considered

11.2. Subscription process

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.

11.6. 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.

Decision

I find no breach of the code.

In particular I agree with the WASP that the behaviour and service upon which the Complainant is basing their claim is a service associated with Double MT, a distinct and separate WASP and not with Froggie.

I further suggest that the Complainant addresses his complaint to the correct WASP and that any queries relating to Vodacom and their billing practices be referred to Vodacom itself, as WASPA adjudicators are not authorised or qualified to speak on Vodacom's behalf.

Sanctions

No sanctions.