



REPORT OF THE ADJUDICATOR

WASPA Member	Buongiorno UK
Service Type	Subscription service
Source of Complaints	Public
Complaint Number	7709
Date lodged	29 September 2009
Code of Conduct version	7.4

Complaint

This complaint relates to the Fun Club subscription service offered by the member. The complainant denied having subscribed to the service and stated that the member had advised, in response to his queries, that he should submit a claim for a refund given that he had not made use of the service.

The member unsubscribed the complainant but did not offer a refund. The member provided proof of subscription and logs of its interaction with the complainant.

The member provided detailed motivation for its position in refusing a refund, summarised as follows:

- The complainant was subscribed via wap mobile browser. The supporting ad-tracking documentation provided indicates that the complainant clicked through a wap banner advertisement, as can be seen in the Reporting Information Window below and subscribed to the service on 5 April 2009.
- The complainant was clearly informed that the service offered was a subscription service at specified pricing and the contact details of the member were available.
- Content was made available to the complainant.
- The complainant was sent message notifications "as well as terms and conditions describing the service and billing details".

The member submitted various screenshots in support of the above.

The above was duly conveyed to the complainant, who responded as follows:

"I believe the origin of this problem stems back to early April when my phone was repaired. At the time I was offered a loan phone which was tested for no longer than 5 minutes but decided not to use it. Quite possibly all the communications referred to were locked in the loan phone memory.

Their records show link was via WAP, I do not use WAP, my Nokia E71 phone is on 3G.

On May 6 I sent an SMS request to "stop" but this was ignored. I did not access the window banner referred to, in fact I have never received any communication or contract regarding the "service" (which is unknown to me) from this company, also no product was ever downloaded. Their records will confirm this.

In view of the fact that I never entered into a contract, had my request for termination ignored, and received no service, a full refund is justified. Bank a/c details can be provided."

Sections of the Code considered

The following sections of version 7.4 of the WASPA Code of Conduct were considered:

11.1.3. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.

11.1.10. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing].

11.2.2. The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

or

U r 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 unsubscribe, sms STOP [service keyword] to [short code].

Decision

1. After reviewing the various materials provided by the member the Adjudicator is satisfied that proof of subscription exists and that the subscription service and its promotion were substantially in compliance with the sections of the Code relating to the identification of subscription services and the display of pricing and terms and conditions.
 2. The reminder message sent by the member (FUN CLUB Reminder:U have unlimited games,music & more 2 d/load PLUS the chance to win a Wii! Help:0214178001(R10/day Subscription. Sms stop fun to 31194 to end)) is not compliant with the explicit requirements of section 11.2.1 read with section 11.2.2 of the Code and chapter 12 of the WASPA Advertising Rules. This breach has been more fully considered under Adjudication 7631 also involving the member's Fun Club subscription service.
 3. The member has not had the opportunity to make any representations in this regard but the Adjudicator, on the evidence presented by the member, is of the view that there is strong evidence of a breach of section 11.1.3 of the Code in that a single content item is being used to promote a content subscription service. No finding, however, can be made in this regard absent the affording of an opportunity to the member to make specific representations.
 4. Subject to paragraph 5 below, the sanction in respect of section 11.2.1 read with section 11.2.2 of the Code and chapter 12 of the WASPA Advertising Rules is subsumed within that imposed in respect of the same breaches in Adjudication 7631.
 5. Although making no findings in respect of the credibility of either version the Adjudicator, considering the breaches detailed above and the fact that the complainant did not use the service, believes that it would be equitable for the member to provide a refund and accordingly orders that this be done.
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