



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	Unsubscribe request
Complainants:	Public
Complaint Number:	8330
Code Version:	7.4
Advertising Rules Version:	N/A

Complaint

The Complainant wrote:

“This is to inform you that my subscription on ALL must be CANCELLED with IMMEDIATE EFFECT. I have not subscribed to your network and after numerous phone calls it is still not cancelled. I want to know when this will be done and am I going to be refunded for the last month as I have sent through a request already on 15/10/2009. My cell phone numbers are 08xxxxx5 and 08xxxxxxx. STOP subscription immediately. Don't bill me EVER AGAIN for services I did not use.”

The Complainant provided the following reason for escalation:

“I received your unsubscribe request. I want to know, seeing that I was automatically subscribed and *not by choice*, when the money on this phone number 08xxxxx3 will be refunded to me. I am not satisfied with the answer. It was 2 songs that were downloaded but nothing was said about the R5 a day. It is not legally correct and I WILL go to the papers. People are tricked into these subscriptions.”

The Complainant refused resolution:

“See email previously sent to you and your response. I have unsubscribed but this month I again received an account which indicates that the subscription from you was not cancelled. I need to know when this will be done and also when I can expect a refund. The cell phone numbers I am referring to is 082 xxxxx5 and 082xxxxxx.
Your urgent response in this regard will be appreciated.”

Service provider's response

The SP wrote:

"Member has been unsubscribed and confirmation sms has been sent. We'll investigate to determine if a refund is due.
Attached is the proof of subscription. Member will be contacted to inform that no refund is due. Thanks.
Have tried to contact member but no answer."

The SP provided a further response:

"We thank you for brining this matter to our attention.
Our formal investigation in the subscription shows that the user had subscribed by sending in the keyword FUN to 30123, as can be seen in the Mobile traffic report window in the attached word document and further below.

Attached is the advertisement for your perusal, which is WASPA compliant.
The Traffic report below also shows the reminder messages sent to the user informing him or her of the subscription, as well as the call centre contact number in case of the any issues experienced.
The messages informs the user of the billing that would occur during the subscription and the stop command needed to be sent in to stop the service, which the complainant had made use of, as shown in the month of unsubscribing from the service, which was on the 26th November 2009 at 14:39:58. (Stop Command sent in).

In this regard we do not deem a refund forthcoming as the user had all intentions of joining the service, when he or she sent in the keyword FUN to 30123. i.e. (LOADIN)

We trust that this is sufficient proof of the user's mobile interaction with our LOADIN service and once again thank you for bringing this matter to our attention.

Please be advised that no further billing would occur on the mobile number 082xxxxxx, as the user had unsubscribed with the correct keyword as sent from the LOADIN service."

Sections of the Code considered

4.1.1 Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2 Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

11.1.1 Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.2 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.

11.1.3 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.

11.1.4 Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.5.5 Members must ensure that the termination mechanism is functional and accessible at all times.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent response.

The SP has provided proof of the fact that the Complainant in this matter has requested to stop its subscription services. It further provides proof of the subscription.

The Complainant however alleged that it was never his / her intention to be subscribed to a service and his / her purpose was only for the downloading of two songs.

These facts read together with the logs provided reflect contradictory evidence and boils down to the typical scenario of I said this you said that.

The Adjudicator perused the said advertisement in question.

Although the advertisement stipulates that it is a subscription service and displays associated costs as is requested by the WASPA Code of Conduct, the Adjudicator is not convinced that the display of “other examples” in the advertisement conform with section 11.1.3 of the Code of conduct.

Section 11.1.3 of the Code stipulates that 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**.

The “clearly displayed” aspect lacked from the advert.

The Adjudicator therefore finds the SP in breach of section 11.1.3.

Whether non-compliance with section 11.1.3 in itself would justify the annulment of the subscription is open to debate but the Adjudicator in this matter does not think that such absence of compliance would necessitate the abolishment of the subscription in itself.

Whether the Complainant has indeed unsubscribed on the 15th of October 2009 is open to argument since no real evidence has been obtained from the Complainant to verify such action.

The Adjudicator is therefore hesitant to find in favor of the Complainant.

However, the fact that the Complainant is still being billed (at the time of his latest response to WASPA (07 January 2010)) after the subscription has been terminated on the 26th of November 2009, is alarming. It is known that the Complainant has two numbers. If unsubscription of only one number took place then the Adjudicator has to ask him / herself why the Complainant's request *“My cell phone numbers are 08xxxxx5 and 08xxxxxxx. STOP subscription immediately”* on the 27th of November has not materialized?

This would imply a breach of section 11.5.5, but requires further investigation and the WASPA Secretariat is requested to gain reasons for such failure from the SP.

The Complaint is therefore partially upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;

The SP is instructed to refund the Complainant (both numbers billed) for the period stretching from 27 November 2009 until date of receipt of notice hereof.

In addition:

1. The SP is required to rectify the service until it complies with section 11.1.3.
2. The SP is fined R 10 000 for its breach of section 11.1.3 payable to the WASPA Secretariat within 5 (five) working days after receiving notice hereof.