



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	Unsubscribe request
Complainants:	Mr. Aucamp
Complaint Number:	8413
Code Version:	6.2
Advertising Rules Version:	N/A

Complaint

The unsubscribe request was logged on the WASPA unsubscribe system, but the Complainant indicated that he was not satisfied with the SP's response and the complaint was escalated to formal.

The Complainant provided the following feedback to the SP's response:

"I am not happy with the results received. I have not downloaded any of these so called club Movilisto mails. Why should I then be liable for any cost? This sms was send to my phone. As far as I can remember this was a once off subscription on Television. I would like you to reconsider your decision."

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."

The SP provided the following response to the formal complaint:

"We thank you for granting an extension in this matter, due to us not having had the logs on our local server. After investigating the matter it has been found that the user had subscribed via SMS."

The subscription start and end dates can be viewed in the reporting information screenshot below, for your perusal, as well as the initial welcome messages in the Mobile Traffic Report Window, showing the user the correct stop command and assistance contact number, as well as the billing amount that would occur on the mobile number.

The user had sent in the keyword FUN to 36060 on 2009-02-22 14:54:15 and thus received the welcome message into the Movilisto club, as well as our call centre contact details should the user had experienced any problems with the service. The messages also inform the user of the correct stop command and instruction on how to end 36060 Subscription Service.

The user's mobile interaction can be verified in the message log attached for messages (MO) sent in by the user, and messages (MT) sent to the user on the initial subscription start date.

In this regard we do not deem a refund forth coming, as all intentions to subscribe to the service were done at the complainant's discretion."

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".

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.

11.1.3. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

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.

11.2.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.2.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.2.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.2.4. 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 has subscribed to its services.

The SP provided the Adjudicator with logs, indicating correspondence with the Complainant in this matter through monthly reminders and therefore ample time to unsubscribe from the service.

The Adjudicator does however not have access to the said advertisement and can therefore not make a decision as to whether the compilation of the said advertisement was in line with the Code, which in the absence thereof could have misled the Complainant into believing that the service was once off.

The Complainant does however not deny that he was indeed aware of the fact that it was a subscription service: "As far as I can remember this was a once off **subscription** on Television".

While the Complainant might be bereaved by the subsequent deductions after his subscription, the Adjudicator does not deem a refund necessary, since no breach of the WASPA Code of Conduct could be determined.

The Complaint is dismissed.