



ADJUDICATOR'S REPORT

WASPA Member (SP):	Buongiorno SA
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainant:	Member of the public
Complaint Number:	10787
Code Version:	9.0
Advertising Rules Version:	2.3

Complaint

The Complainant has taken issue with his subscription to a mobile content subscription service the SP operated called "Fun Club" ("the service"). The subscription mechanism is not novel: a person browses to a website and clicks on an advertisement or promotional banner for a content item (in this case, a song). The user is prompted to supply a mobile phone number and indicate which network the mobile phone is on and the user then receives a message from the SP containing a PIN code which the user must enter in order to access the SP's service. On entering the requisite PIN, the user becomes a subscriber to the SP's service and is periodically charged a subscription fee. In this case the subscription fee was R6.00 per day. The complaint itself as conveyed in the case file is not very clear but it appears that the Complainant is taking issue with the SP's apparent failure to accept the PIN code submission as a condition for the service's activation. The complaint is as follows:

*Escalation reason: As regards iTouch, their proof of my subscription is questionable. The first message ,as encapsulated in the table below ,was totally ignored and deleted. **There was no confirmation of acceptance to code 1979 and Buongiorno had no right to assume that their offer was valid.** This is downright chicanery. Let them show tangible proof of my formal acceptance, I say. Let them play fair and refund their charges for July and Aug 2010. As I wrote earlier, this problem is not going to go away until it is satisfactorily addressed.
(**Emphasis added**)*

Either that or the Complainant has alleged that he did not submit the requisite code to confirm his subscription to the service and ought not to have been subscribed in the first

place.

Service provider's response

The SP furnished the WASPA Secretariat with logs indicating communications with the Complainant at the inception of the subscription as well as screenshots of the relevant pages the Complainant would have seen. According to the SP's logs, the Complainant subscribed for the service on 2010-06-08 at about 17h05 after receiving an PIN code by SMS which stated the following:

>> Your CODE is 1979 << You'll be subscribed to Fun Club from Buongiorno UK @ R6/day Subscription Service. Enjoy the fun.

The SP supplied a screenshot demonstrating the result if the PIN code is incorrectly entered. Feedback would be a message indicating that the "wrong pin" was entered. The SP stated as follows:

The pin is in fact needed to be entered correctly in order for the subscription to be initiated on the users msisdn. This was done without a doubt, thus the users was subscribed and under no circumstances would the subscription have been initiated on the users msisdn if not done so by entering the pin code on the pin confirmation page, as proven the user had done out of his or her own accord.

The Complainant was sent the following welcome message subsequent to the PIN code message and apparently after the correct PIN code was submitted to the SP:

Welcome 2 FUN CLUB. Go to Wap.funfone.co.za on ur mobile 4 Unlimited games, Mp3's & more! Help: 0214178001 Sms STOP FUN to 36060 2 unsub (R6/day subscription)

A further message was sent to the Complainant on 2010-07-13:

You are subscribed to Fun Club from Buongiorno. You get unlimited downloads. Cost R6/day. For help call 0214178001. To unsubscribe sms STOP FUN to 36060.

The SP described the process that apparently followed:

*After the user inserts the correct pin code as was *1979* as can be found in the complainants mt report attached, the user is sent the service welcome message ie: "Welcome 2 FUN CLUB. Go to Wap.funfone.co.za on ur mobile 4 Unlimited games, Mp3's & more! Help: 0214178001 Sms STOP FUN to 36060 2 unsub (R6/day subscription)"*

The messages sent to the user is informative of the subscription service and contact details.

No information was / is withheld during the entire subscription process. The user had complete visibility of the service intentions.

During the users subscription period the user was sent a reminder message in the following mobile content industry format:

You are subscribed to Fun Club from Buongiorno. You get unlimited downloads. Cost R6/day. For help call 0214178001. To unsubscribe sms STOP FUN to 36060.

The Complainant then appears to have been unsubscribed from the service on 2010-07-22. The following message was sent to him at the time:

Fun Club: Ur membership has been cancelled. U've put an end to the fun & UNLIMITED downloads. Remember, to join again, sms MORE to 36060. [R6/day service]

The SP has declined to offer the Complainant of the charges incurred by the Complainant on the basis that he did appear to have subscribed to the service of his own volition.

What is concerning about the service is the manner in which the service was marketed to prospective subscribers. It is ostensibly an offer to download a song from four choices. The screenshot does include a reference to the service being a subscription service at a cost of R6.00 per day at the top of the screen and in the terms and conditions below the main screen. That said, the dominant impression a visitor to the page has is likely of the service being a single content item download service rather than a subscription service. A user's action on the service's site is to request a download, one of the four songs offered, without sufficient notice that such a download is the commencement of a subscription service. The result of requesting the download is that the user becomes one of the service's subscribers. This is problematic.

Sections of the Code considered

The following sections of the Code are particularly relevant to the service and to this complaint:

- *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.*

- *11.2.4. 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 number which is then confirmed or validated on the web page, or*

 - *(b) contain a URL with a unique identifier, which, when clicked, validates the handset number.*

- *11.2.5. 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]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].*

Sections of the Advertising Rules considered

It was not necessary to consider the Advertising Rules.

Decision

While the SP appears to have complied with the Code's requirements for messages sent to prospective and new subscribers to its service, its initial offering as depicted in the SP's response to the complaint remains problematic in that it is ostensibly an offer for a single

content item which disguises the service's true nature: a subscription service. In this particular case, the enticement to subscribe is, itself, in violation of the Code (sections 11.2.1 and 11.2.2 in particular), even as the process followed after the Complainant became a subscriber appears to be compliant.

The Complainant was faced with an offer to download a song and he likely supplied his phone number and responded to the subsequent message in order to obtain the song. The messages the Complainant received from the SP as part of his subscription process indicated the subscription nature of the service and afforded the Complainant an opportunity to unsubscribe. He only did so approximately a month and a half after subscribing to the service despite receiving at least two messages with instructions on how to unsubscribe on 2010-06-08 (the day he became a subscriber) and on 2010-07-13.

That said, the manner in which the SP enticed the Complainant is in violation of the Code for the reasons I stated above. This form of violation is becoming a cliché and is unfortunately not uncommon.

Sanctions

Given my finding that the Complainant was reasonably made aware of the service's subscription nature, notwithstanding the service's violation of the Code, and the Complainant's failure to take reasonable steps to unsubscribe from the service on more than one occasion, I dismiss the complaint.

On the other hand, the service is in violation of the Code and the SP is ordered to immediately cease all instances of the service as well as variations of the service ***which entice prospective subscribers through offers of single content items which are not clearly and explicitly identified as being part of a subscription service.*** It is not sufficient to mention that a subscription service exists without explicitly linking the subscription nature of the service to the content items on offer through the service. Prospective subscribers must be reasonably aware that, furnishing their phone number and requesting a content item download, they are opting into a subscription service.

Subject: Re: [WASPA.complaints] [formal] Complaint Ref:#10787 Escalation of unsubscribe #310171
From: "Sharief Holt" <sharief.holt@buongiorno.com>
Date: Mon, 18 Oct 2010 11:44:13 +0200
To: <complaints@waspa.org.za>
CC: 'Hans Mol' <hans.mol@buongiorno.com>, 'Rosalinda van Rooyen' <rosalinda.vanrooyen@buongiorno.com>

Dear Waspa,

Further investigation into this matter shows that the user had indeed subscribed via the prescribed manner, as provided herein. The user had subscribed to our Fun Club mobile content service at R6/day. Attached you will find delivered messages as also supplied in the mobile traffic report screenshots further below, as well as billing that had occurred on the complainants msisdn.

In the detail options window it is verified that the user had subscribed via internet web campaign.

DETAIL OPTIONS	
key	value
code	TT1330000152
dateSub	2010-06-08 17:05:40
daysFT	1
mk	fca_tek5910_12775
operator	vodacom
rebills	90

The reporting information window is informative of the user start and end dates of the subscription service.

GENERAL SETTING

Email or Sms: Select all lists
 Select all channels

BLACKLIST

REPORTING INFORMATION

This user isn't member of control panel

History subscriptions								
nr. sub/ unsub	list	channel	date	source	options	failures	tracking	code
1	sub	35050_site	2010-06-08 17:04:47	za_35050_web	club.pin=.7X%25	0	0	280485
2	sub	fun_club_site	2010-06-08 17:04:47	za_blinko_web	club.pin=.7X%25	0	0	1469308
3	sub	fun_club_freertrial	2010-06-08 17:05:40	za_blinko_web	code=TT13300001	0	0	237995
4	sub	fun_club_standard	2010-06-08 17:05:40	za_blinko_web	code=TT13300001	0	0	818232
5	sub	fun_club_stim	2010-07-13 15:15:38	JMAILER_LOAD	operator=vodaco	0	0	498762
6	unsub	35050_site	2010-07-22 13:23:07	SUB_HISTORY	n.a.	n.a.	n.a.	n.a.
7	unsub	fun_club_freertrial	2010-07-22 13:23:07	SUB_HISTORY	n.a.	n.a.	n.a.	n.a.
8	unsub	fun_club_site	2010-07-22 13:23:07	SUB_HISTORY	n.a.	n.a.	n.a.	n.a.
9	unsub	fun_club_standard	2010-07-22 13:23:07	SUB_HISTORY	n.a.	n.a.	n.a.	n.a.
10	unsub	fun_club_stim	2010-07-22 13:23:07	SUB_HISTORY	n.a.	n.a.	n.a.	n.a.

MOBILE TRAFFIC REPORT

CREATED	MO/MT	RESPONSE	FROM	TO	TEXT	MORE
2010-06-08 17:04:47 +0200	MT	2010-06-08 17:04:48 +0200 acked	27820048560	██████████	>> Your CODE is 1979 << You'll be subscribed to Fu...	
	TransID	2010-06-08 17:04:56 +0200 delivered				
2010-06-08 17:05:40 +0200	MT	2010-06-08 17:05:41 +0200 acked	27820048560	██████████	Click here to download your content	object
	TransID	2010-06-08 17:05:57 +0200 delivered				
2010-06-08 17:05:40 +0200	MT	2010-06-08 17:05:40 +0200 acked	27820048560	██████████	Welcome 2 FUN CLUB. Go to Wap.funfone.co.za on ur ...	
	TransID	2010-06-08 17:05:47 +0200 delivered				

[Download file XLS](#)

Welcome 2 FUN CLUB. Go to Wap.funfone.co.za on ur mobile 4 Unlimited games,Mp3's & more! Help: 0214178001 Sms STOP FUN to 36060 2 unsub (R6/day subscription)

MOBILE TRAFFIC REPORT						
CREATED	MO/MT	RESPONSE	FROM	TO	TEXT	MORE
2010-07-13 17:09:00 +0200	MT	2010-07-13 17:53:31 +0200 acked	27820048351	[REDACTED]	You are subscribed to Fun Club from Buongiorno. Yo...	template
	TransID	2010-07-13 17:53:37 +0200 delivered				

[Download file XLS](#)

You are subscribed to Fun Club from Buongiorno. You get unlimited downloads. Cost R6/day. For help call 0214178001. To unsubscribe sms STOP FUN to 36060.

Herewith the web creative the user had subscribed via.

As shown on the top of the page it is in fact a subscription service at R6/day.


The user has to agree to the terms and conditions and select the user operator as well as enter a valid msisdn, which in the users case was [REDACTED].

Once the user has entered all these details the user is sent a 4 digit pin in the form of the following message:

>> **Your CODE is 1979 << You'll be subscribed to Fun Club from Buongiorno UK @ R6/day Subscription Service. Enjoy the fun.** - This was the actual message sent to the users msisdn.

SUBSCRIPTION SERVICE R6/DAY

NOW YOU CAN ALSO CHOOSE YOUR FAVOURITE SONG



Baby Tjokits



Vince in SO NG




Orlando Pirates



Young Gifted and Black

GET YOUR SONG



Your mobile:

Your carrier: Select

SEND

I agree to the [Terms and Conditions](#). ZAP: get music, games and more tons.





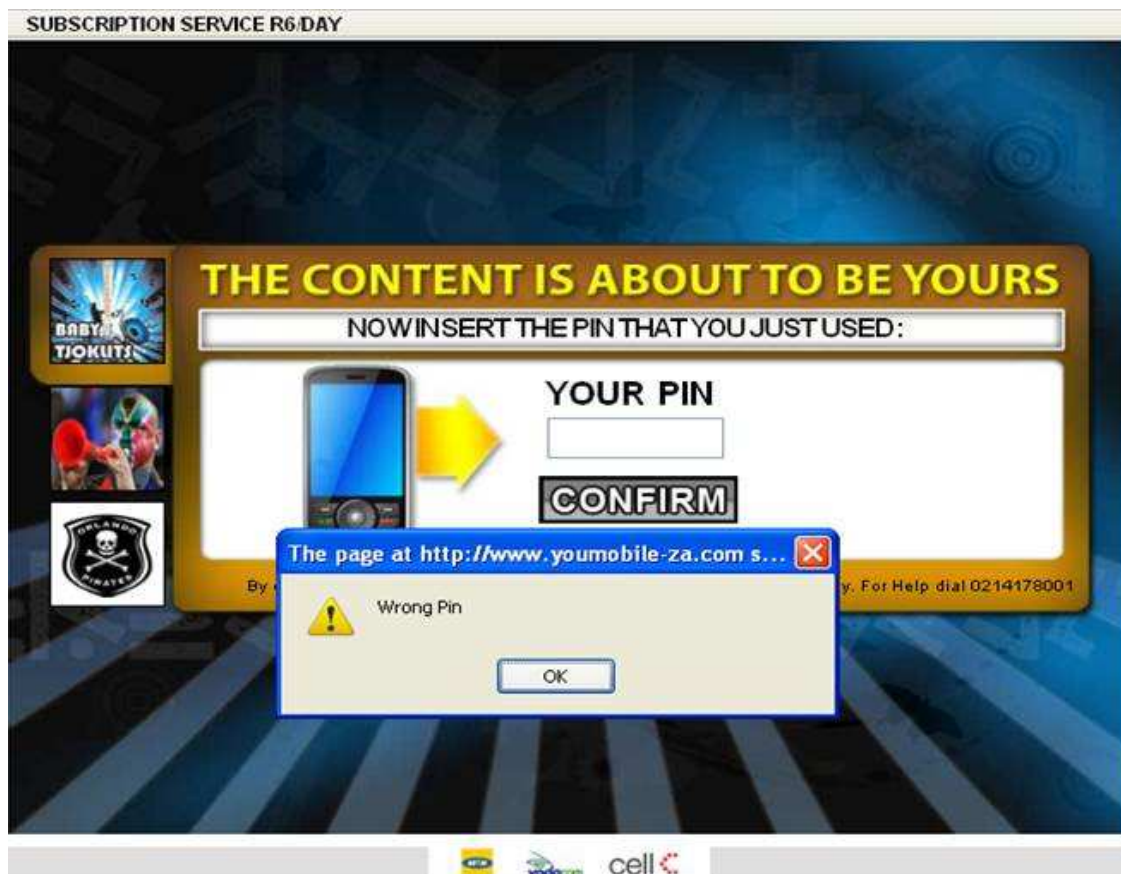
Subscription service, ZAP. By entering the PIN that was sent to your cellphone you will be entered into ZAP subscription service, and you acknowledge that you are subscribing to the service. This subscription service is available to MTN, Vodacom and Cell C users. You will be billed R6 every day. You will receive a WAP link in your welcome messages. By clicking on the WAP link you will be able to download unlimited items for your phone. These items are not charged for separately from your daily subscription fee. Download charges apply and standard text messaging rates may apply. The shown item(s) form(s) part of the subscription service and is/are indicative of the content items that will be received. You may stop this subscription service at any time by sending a text message with the words STOP FUN to 36060. You must be the owner of the device or you need to acquire the bill payers permission to join this subscription service. For help call 0214178001. Your cellphone handset must be WAP enabled to download the products. You will have the option to download as many items as you like from the user preferences menu etc. This service is not limited to electronic content only. You will have the option to download as many items as you like from the user preferences menu etc. This service is not limited to electronic content only. You will have the option to download as many items as you like from the user preferences menu etc. This service is not limited to electronic content only.

On the Pin code page it can be seen that by not entering the 4 digit pin code not subscription could/would take place.

Should the user had not entered the pin code correct or not at all the user would have received the following error on the page ie.

wrong pin as seen on the page directly below.

The pin is in fact needed to be entered correctly in order for the subscription to be initiated on the users msisdn. This was done without a doubt, thus the users was subscribed and under no circumstances would the subscription have been initiated on the users msisdn if not done so by entering the pin code on the pin confirmation page, as proven the user had done out of his or her own accord.



Subscription service, ZAP. By entering the PIN that was sent to your cellphone you will be entered into ZAP subscription service, and you acknowledge that you are subscribing to the service. This subscription service is available to MTN, Vodacom and Cell C users. You will be billed R6 every day. You will receive a WAP link in your welcome messages. By clicking on the WAP link you will be able to download unlimited items for your phone. These items are not charged for separately from your daily subscription fee. Download charges apply and standard text messaging rates may apply. The shown item(s) form(s) part of the subscription service and is/are indicative of the content items that will be received. You may stop this subscription service at any time by sending a text message with the words STOP FUN to 36060. You must be the owner of the device or you need to acquire the bill payer's permission to join this subscription service. For help call 0214178001. Your cellphone handset must be WAP enabled to download the products. You will have the option to download as many items as you like from the user's website, but is not limited to ringtones, wallpapers, etc.

After the user inserts the correct pin code as was *1979* as can be found in the complainants mt report attached, the user is sent the service welcome message ie:

**"Welcome 2 FUN CLUB. Go to Wap.funfone.co.za on ur mobile 4 Unlimited games, Mp3's & more! Help: 0214178001
Sms STOP FUN to 36060 2 unsub (R6/day subscription)"**

The messages sent to the user is informative of the subscription service and contact details.

No information was / is withheld during the entire subscription process. The user had complete visibility of the service intentions.

During the users subscription period the user was sent a reminder message in the following mobile content industry format:
You are subscribed to Fun Club from Buongiorno. You get unlimited downloads. Cost R6/day. For help call 0214178001. To unsubscribe sms STOP FUN to 36060.

In this regard we see no reason to award the user a refund as the user had subscribed due to his or her own interaction with our Fun Club service.

Please be advised that the complainant had been removed from all Buongiorno service as requested.

Kind Regards
Sharief Holt
Buongiorno SA

-----Original Message-----

From: WASPA Complaints (Lorraine Hartzler) [mailto:complaints@waspa.org.za]
Sent: 14 October 2010 09:09 AM
To: Sharief Holt
Cc: Hans Mol; 'Rosalinda van Rooyen'
Subject: [formal] Complaint Ref:#10787 Escalation of unsubscribe #310171

Dear WASPA member,

The appended unsubscribe request was logged on the WASPA unsubscribe system on 2010-07-21, but the complainant has indicated that they are not satisfied with your response.

Therefore, the WASPA Secretariat has no choice but to escalate this query to a formal complaint against Buongiorno.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to <complaints@waspa.org.za>. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

It is recommended that your response should include as much as possible of the following information that is relevant to this complaint:

- Logs as stipulated in clause 11.9.2. of the Code of Conduct
- Information on how this service was or is advertised e.g.: TV, WAP, Internet, SMS, radio
- A copy of the advertisement/marketing material
- In the case of a TV advert please provide flight times and codes
- Statistics on the number of entries/users of this service

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the unsubscribe request follows below ---

The user who escalated this request has provided the following reason for escalation: As regards iTouch, their proof of my subscription is questionable. The first message ,as encapsulated in the table below ,was totally ignored and deleted. There was no confirmation of acceptance to code 1979 and Buongiorno had no right to assume that their offer was valid. This is downright chicanery. Let them show tangible proof of my formal acceptance, I say. Let them play fair and refund their charges for July and Aug 2010.

As I wrote earlier, this problem is not going to go away until it is satisfactorily addressed.

Regards

██████████.

WASP members

Buongiorno

Details of the complaint

Mobile number: ██████████
Customer name: ██████████.
Customer email: ██████████
Customer alternate phone: ██████████

Actions requested:

- SP requested to unsubscribe customer
- SP requested to send an SMS confirming this unsubscribe
- SP requested to provide proof of subscription
- SP requested to contact customer regarding a refund

WASPA member response: Buongiorno

Response to unsubscribe request: Unsubscribed
Confirmation SMS sent to the customer: Sent
SP has been in contact with the customer: Yes
Response to the request for a refund: No refund offered
Upload proof of subscription: Uploaded by WASP
Proof of subscription available from
<http://secure.ff.co.za/unsubscribe/proof.php?action=view&id=310171&wasp=9>

Comments

vodacom on 2010-07-21 13:23:32 said:
erasmcha_vodacom: sub says that he does not request to subscribe to these services.

vodacom on 2010-07-21 13:24:53 said:
erasmcha_vodacom: sub says that he wants these services to be blocked as he is a pensioner and does not want anything to do with pornography. please assist

Buongiorno on 2010-07-22 13:28:13 said:
Member has been unsubscribed and confirmation sms has been sent. No refund offered Thanks

Buongiorno on 2010-10-05 09:38:27 said:
Please find the attached proof of subscription. we'll notify the memeber that no refund is due. Thanks

MT.XLS	Content-Type: application/vnd.ms-excel Content-Encoding: quoted-printable
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—Billing.xls

Billing.xls	Content-Type: application/vnd.ms-excel Content-Encoding: quoted-printable
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