



## ADJUDICATOR'S REPORT

<b>WASPA Member (SP):</b>	Buongiorno
<b>Information Provider (IP):</b>	Not applicable
<b>Service Type:</b>	Subscription
<b>Complainant:</b>	Public
<b>Complaint Number:</b>	10896
<b>Code Version:</b>	10.0
<b>Advertising Rules Version:</b>	2.3

### Complaint

The Complainant is a member of the public who was subscribed to one of the SP's subscription services, an adult content subscription service which was promoted on TV and was activated through a SMS to the short code 31191. The Complainant contends that she did not subscribe to the service and was not satisfied with the SP's refusal to refund amounts she was charged once she was unsubscribed. The Complainant also appears to have experienced several lengthy delays in having the matter resolved due to poor communications with Nashua Mobile and WASPA which only frustrated her further. I have annexed a series of emails, marked "A", which shed light on some of the issues the Complainant contended with in her attempt to resolve this matter. I have redacted the Complainant's name and email address.

### Service provider's response

The SP furnished WASPA with logs which indicate the following:

The word "sex" was sent to the SP's shortcode, 31191, from a number which appears to belong to the Complainant on 2010-07-24 at approximately 00:19. A welcome message was sent by reply almost immediately with the following content:

*Welcome to Sexy Cherry Straight. Go to wap.sexys.co.za on ur mobile 4 Unlimited hardcore*

*porn vids! Help: 0214178001. Sms STOP S to 31191. Subscription R6/day*

The Complainant appears to have attempted to unsubscribe approximately 8 minutes later by sending “stop” to 31191. The correct instruction to unsubscribe was “STOP S” and the Complainant’s “stop” message appears to have resulted in an error on the SP’s system and the Complainant was not removed as a subscriber.

The Complainant received two further reminder messages on 2010-08-23 and 2010-08-25 with the following content:

*You are subscribed 2 Sexy Cherry Straight from Buongiorno. Cost R6/day subscription service. For help call 0214178001. To unsubscribe sms STOP S to 31191.*

The Complainant again sent “stop” to 31191, resulting in the same error as before and, as before, the Complainant was not removed as a subscriber. The Complainant received a further reminder message on 2010-09-23. WASPA appears to have referred the matter to the SP by 2010-10-01 and the SP removed the Complainant as a subscriber on 2010-10-04 and the Complainant received the following confirmation:

*Hey sexy, u have decided 2 end ur VIP membership! To make me cum over & over again, sms GO to 31191 4 just R6/day ull get UNLIMITED HARDCORE UNCENSORED PORN.*

Leaving aside the desirability of the service, the central issue here appears to be the SP’s unsubscription mechanism. Assuming the SP’s logs are correct (and I have no reason to doubt their accuracy and authenticity), the Complainant was subscribed to the service using her mobile phone but her efforts to have herself removed as a subscriber failed due to her failure to send the complete “STOP S” instruction instead of her “stop” instruction (the instruction format does not appear to be case sensitive - I have simply used the same sentence case as was used in the documentation before me).

## **Sections of the Code considered**

In considering this matter, I considered version 10.0 of the Code and found the following sections of the Code to be relevant:

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

- *11.9.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.*
- *11.9.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).*
- *11.9.4. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in a request, the service provider must honour the opt-out request as if the word 'STOP' had been used.*
- *11.9.5. Where a service is linked to a specific short code in advertisements for that service, then sending a 'STOP' request to that short code should result in the termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.*

These sections of the Code correspond with sections 11.8.1 to 11.8.5 of version 9.0 of the Code, respectively.

**Sections of the Advertising Rules considered** [if applicable]

I did not consider the Advertising Rules for the purposes of this complaint.

**Decision**

The Complainant clearly wished to be removed as a subscriber. A “stop” instruction was sent minutes after receiving the welcome message and was sent after receiving two further reminder messages 2 days apart. The Complainant was not removed as a subscriber because her instruction generated an error on the SP’s system. Instead, what should have occurred is that the Complainant’s “stop” instruction should either have removed her as a subscriber to all services serviced by the 31191 shortcode or she should have been presented with a choice as to which specific service from which she wished to be removed as a subscriber to.

The SP's representative highlighted this mechanism in its response to WASPA, albeit in its reference to section 12.3.2 of the Code instead of the correct section. Unfortunately the SP's system did not respond as it was required to and the Complainant did not appear to realise this until a month later when she received reminder messages and incurred further charges at the R6.00/day subscription rate. She once again attempted to have herself removed as a subscriber by sending the same "stop" instruction which similarly failed to elicit the requisite response. In both cases the Complainant did not receive any feedback which would have indicated that her attempt to terminate her subscription had failed.

It was only once the matter was referred to Nashua Mobile and to WASPA (Nashua Mobile inexplicably advised the Complainant that WASPA was responsible for refunding her rather than the SP and this led to the Complainant chasing WASPA for a refund for some time before being corrected), that the matter was addressed and the Complainant removed as a subscriber.

The Complainant would most likely have been removed as a subscriber minutes after first subscribing had the SP's termination mechanism operated as the Code requires. Its failure to do so and the absence of any feedback in this regard led to the Complainant's continued subscription to the SP's benefit. In the circumstances, the SP's refusal to refund the Complainant's is unreasonable. At the same time, some time has elapsed since the Complainant's subscription was terminated and a refund may not be practical. In considering this matter I must also take into account the likelihood that other subscribers are being charged for a service they no longer wish to subscribe to and where they remain subscribers due to non-compliant termination mechanisms.

In summary, I uphold the complaint.

### **Sanctions**

With respect to the Complainant, I order the SP to refund all charges levied against the Complainant's account for the period of her subscription to the extent such an order is feasible in the WASPA Secretariat's opinion.

Going further I order the SP to -

- send a reminder message to all current subscribers of the service that forms the

subject matter of this complaint in the format specified in section 11.6 of the current version of the Code no later than 48 hours after being notified of my findings;

- immediately take steps to ensure that the SP's termination mechanism returns the requisite response/s described in sections 11.9.2 and 11.9.5 of the Code (the SP must implement the most appropriate response given the nature of its services); and
- pay a fine in the amount of R50 000 to WASPA on demand by the WASPA Secretariat for its non-compliance with the Code as described in this report.

**Subject:** Re: [WASPA.complaints] Resolution of complaint Ref:#10896

**From:** [REDACTED] <[REDACTED]@gmail.com>

**Date:** Fri, 5 Nov 2010 13:48:56 +0200

**To:** complaints@waspa.org.za

Dear Lorraine

I have read all the responses sent and I disagree with their comments. Firstly I did not subscribe for rubbish. I did receive only one message on the 24.07.2010. about sexy cherry( I did not know what that was and replied the same day with STOP exactly as it was requested on the sms ). I have been laising with my service provider Nashua Mobile regarding these charges from July 2010. They then forwarded me to Wasp and requested that I contact them directly and find out what the charges were relating to.

The number I was given is 011 476 7710. So I started contacting WASPA and spoke to Evan Staley he then said that he will check if I had subscribed for the charges ( which at that stage nobody could tell me what the charges were for ) and to call him in a weeks time, which I did with still no help. He then said to call him again (this continued for about a month and half )

Eventually on the 11/09/2010 I spoke to Michelle Louw at Nashua Mobile who said the only way to stop all charge was to Hard Block my Line. At this stage I agreed that maybe that will help, She said she will phone Evan Staley at WASPA. I also called him again and he promised that the charges will be refunded. He said that a request for rrefund will be submitted and it will take 3-5 working days ( this went on for a couple of weeks) by the middle of October 2010. I was really very upset. Because Evan was continually making promises and nothing happening.

On the 18 Oct 2010, I then again contacted Nashua Mobile ( numerous calls ) and spoke to Gaynor De Waal, this time I was promised the Nashua Mobile will credit me from the 11 Sept 2010 to 04 Oct 2010 ( because I had requested a Block on my line ) She also mentioned that Michelle Louw also tried to Stop these charges from continuing. She then advised me to also call Evan again. I called Evan again and at this stage I got told that the company that is supposed to pass the credit is Buongiorno ( please note that the company name is only mentioned on the 18 Oct 2010) and nobody knows what the charges are relating to.

Evan said it will escalate this issue and take it farther, I then asked for a Reference number which he gave to me. The reference number that I was told by Evan to use prior to this was my Cell number. Gaynor also called Evan the same day. Please see email below between Gaynor and myself.

EMAIL ONE

Gaynor De Waal  
<[GaynorV@nashuamobile.com](mailto:GaynorV@nashuamobile.com)> Mon, Oct 18, 2010 at 4:06 PM  
To: [REDACTED]@gmail.com  
Reply | Reply to all | Forward | Print | Delete | Show original

Good day Mrs. [REDACTED],

This email serves as confirmation that an email was send to Alwyn Rautenbach manager of Michelle Louw regarding the credit for Wasp charges from the 11th of September 2010 to the 4th of October 2010. I spoke to Evan and was advised that the company responsible for the refund is Buongiorno. The refund will take 3 - 5 working days and you will be contacted by someone from Buongiorno as per Evan. He said you could call him to confirm this and if you would like to follow up on your refund after 3 - 5 working days.

Evan's contact number: 011 476 7710

Hope all in order.  
Kind regards  
Nashua Mobile (Pty) LTD

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GAYNOR DE WAAL

Call Centre Agent  
Customer Service  
[GaynorV@NashuaMobile.com](mailto:GaynorV@NashuaMobile.com)  
Tel +27 861 412 412  
Fax +27 866 759 520

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Saving you time. Saving you money. Putting you first.

EMAIL TWO

DEE RULE

[REDACTED]@gmail.com Fri, Oct 29, 2010 at 2:34 PM  
To: Gaynor De Waal <[GaynorV@nashuamobile.com](mailto:GaynorV@nashuamobile.com)>  
Reply | Reply to all | Forward | Print | Delete | Show original

Hi Gaynor

As per your email below

1. Credit to be passed by Alwyn Rautenbach - which is still not done. After my conversation to Juan today, the follow up from him is that the credit will be done toady. Please forward me the credit note urgently.
2. According to the email below I am to verify with Evan the refund from Buongiorno within the next few days. I have been speaking to Evan since August 2010 and he keeps promising me that the refund will be done within 3-5 working days. It is now the end of October 2010 and still waiting. I did call him on the 18 October 2010 as per your request to confirm the refund. He even gave a Ref no. 555450 for the refund.

Everybody I speak to at Nashua Mobile and Wasp all they say is that the refund and credit will take place within 3 - 5 working days. I wonder if anyone does understand what 3 - 5 working days mean. This is the worst Call Centre I have come across. The service from Nashua Mobile is pathetic.

If this issue is not resolved within the next week, I will escalate it and forward everything to Nashua Mobiles Head Office.

Please see the attached email from Evan regarding the refund; it is not what he said to you or me.

I await your urgent reply.

Mrs [REDACTED]

----- Forwarded message -----

From: WASPA Complaints (Lorraine Hartzer) <[complaints@waspa.org.za](mailto:complaints@waspa.org.za)>  
Date: Tue, Oct 26, 2010 at 8:43 AM  
Subject: Complaint Ref:#10896 Escalation of unsubscribe #555450  
To: [REDACTED]@gmail.com

Dear [REDACTED]

Since your unsubscribe request was not resolved using the informal process, it has now been escalated to a formal complaint against Buongiorno and will now be handled using the formal complaint procedure in section 14.3 of the WASPA Code of Conduct.

Accordingly:

- The WASPA member against whom this complaint has been lodged will be informed of the complaint, and given five working days to respond.
- After five working days, notwithstanding any response from the WASPA member concerned, the complaint will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- Once the adjudicator has determined whether there has been a breach of the Code, and any sanctions, you will be provided with a copy of the adjudicator's report.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to [complaints@waspa.org.za](mailto:complaints@waspa.org.za).

Warm regards,  
WASPA Secretariat  
- Show quoted text -

EMAIL THREE

Gaynor De Waal  
<[GaynorV@nashuamobile.com](mailto:GaynorV@nashuamobile.com)> Fri, Oct 29, 2010 at 3:04 PM  
To: DEE RULE <[REDACTED]@gmail.com>  
Reply | Reply to all | Forward | Print | Delete | Show original

Good day Mrs. [REDACTED],

I have emailed you the credit note. The credit was passed today by Alwyn.

With regards to the refund from WASPA, you would need to take it up with Evan who promised you and myself that the refund will be processed in 3 - 5 working days.

Hope all in order.

Regards

Nashua Mobile (Pty) LTD

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GAYNOR DE WAAL  
Call Centre Agent  
Customer Service  
[GaynorV@NashuaMobile.com](mailto:GaynorV@NashuaMobile.com)  
Tel +27 861 412 412  
Fax +27 866 759 520

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Saving you time. Saving you money. Putting you first.

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From: [REDACTED] [[mailto:\[REDACTED\]@gmail.com](mailto:[REDACTED]@gmail.com)]  
Sent: Friday, October 29, 2010 2:34 PM  
To: Gaynor De Waal  
Subject: Re: Nashua Mobile  
- Show quoted text -

I will request that I am refunded from the 25 July 2010 to 10 September 2010.

Something that worries me is that Sharief Holt from Buongiorno SA says that an incorrect sms to unsubscribe was send. Then why did they not send another sms saying that the first message was incorrect. He also said it was the same day, but looking at the time of his comment it is the next day.

Please advise how this issue will be resolved. As you can see it is very difficult to get any help elsewhere.

Kind Regards

Mrs [REDACTED]

On 11/2/10, WASPA Complaints (Lorraine Hartzer) <[complaints@waspa.org.za](mailto:complaints@waspa.org.za)> wrote:

Dear [REDACTED],

Regarding your complaint against Buongiorno, we have received the following correspondence from the service provider:

[see attached email response]

We would like to check that the service provider has resolved this complaint to your satisfaction. If so, we will close the complaint and notify the service provider that we have done so.

If you have any questions regarding the Code of Conduct or the



complaints procedure, please address your queries to  
[complaints@waspa.org.za](mailto:complaints@waspa.org.za).

Warm regards,  
WASPA Secretariat