



REPORT OF THE ADJUDICATOR

Complaint reference number: 13191

WASPA member(s): Buongiorno SA

Membership number(s): 0002

Complainant: Public

Type of complaint: Subscription Service

Date complaint was lodged: 2011-05-25

Date of the alleged offence: 2011-04-11 and 2011-03-11

Relevant version of the Code: 10.0

Clauses considered: Clause 11

Relevant version of the Ad.

Rules:

Related cases considered:

11863

Complaint

Complainant lodged an unsubscribe request number 1283329. He alleges that monies were deducted from his account with MTN on the dates set out above without his consent. He further alleges that he at no point subscribed to the service. Accordingly he requested WASPA to ask the SP to do the following:

- 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.

The SP did the above but did not offer a full refund only a cost contribution of R10. Following the SP failing to offer a full refund the complainant referred the matter to adjudication as the complainant refused resolution of the matter without a refund.

In further correspondence with the WASPA Secretariat wherein he requested various pieces of information he also requested the billing logs relating to the content charges.

Service provider's response

Due to the fact that all parties involved are privy to the SP's formal response I am not going to repeat every element thereof here.

The SP alleges that they complied fully with the Code of Conduct and the requirements that it exacts all SP's to follow. In particular, the SP states that:

1. The complainant subscribed via a weblink which was provided to us;
2. The subscription process complies with the Code of Conduct in that before subscribing the complainant was made fully aware, on both landing pages of the service, that what is being offered was a subscription service at a daily charge of R3/per day. The SP attached screenshots of the landing pages.
3. On 11 February 2011 the complainant entered their mobile number on the first landing page and clicked send. A pin code was sent to his mobile number. At this point the complainant was not subscribed to anything.
4. On receipt of the pin code the complainant entered the pin code in the relevant space on the second landing page. Only by entering the pin code sent on this second landing page was the complainant subscribed to anything.
5. The subscriber was also sent welcome and reminder messages in line with the Code of Conduct.
6. The SP provided logs to in proof of the above.

Sections of the Code considered

11.3. Subscription initiated via web or WAP

11.3.1. 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 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.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:

- (a) The name of the service and an indication that it is a subscription service
- (b) The price and frequency of billing
- (c) A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording

on the WAP confirmation page: [Application name] has requested that your mobile number be made available.

11.3.5. The information listed in 11.3.3 and 11.3.4 above must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

Decision

The SP has complied fully with the requirements of the Code. As an adjudicator all I am authorised to do is to make a decision based on the facts presented and the requirements of the Code of Conduct.

In this instance the process was followed and logs were provided as well as example screenshots. The complainant alleges that the MSISDN in the screenshot example is not their number but the SP merely attaches these as an example and does not allege that these are in fact the particular screenshots of the complainant's subscription. The logs however do reflect the correct MSISDN.

The complainant alleges that the pin code sent is not the pin code for his phone. To clarify for the complainant, this is the pin for the service and not for the phone or specific SIM card and as such would not match. This point has therefore not been considered.

I do however find it hard not to make a ruling in favour of the complainant being refunded their money due to the fact that there are numerous cases against this SP alleging fraudulent deduction of monies and I understand the public's frustration in this regard. But without my alleging dishonesty on the part of the SP and a full forensic audit of the logs to ascertain whether or not anything has been tampered with I must take the evidence presented at face value, trusting that both parties will provide a correct and accurate version of events.

On the evidence presented and on an assessment of same against the requirements of the Code I cannot find that the SP has breached the Code of Conduct.

Finally, I ask the WASPA monitor to monitor the SP and if there is a proliferation of allegations of fraud that the possibility of a forensic audit into logs being provided is investigated further.

Sanctions

None.