



REPORT OF THE ADJUDICATOR

Complaint reference number: 16026

WASPA member(s): Buongiorno South Africa

Membership number(s): 0002

Complainant: Public

Type of complaint: Subscription Services

Date complaint was lodged: 2012-01-05

Date of the alleged offence: 1 November 2011

Relevant version of the Code: 11.0

Clauses considered: Clause 11.2.1, 11.3.1, 11.6.2, 11.6.3, 11.6.4, 11.6.5.

Relevant version of the Ad. Rules: Not applicable

Clauses considered:

Related cases considered: 15578

Complaint

The Complainant complains that monies were deducted from her cell phone account fraudulently for a subscription service to which she alleges she never subscribed. The WASP was Buongiorno and the services in question were their 35050 Gold & ZAP subscription services.

On receiving the Service Provider's response, the Complainant denied ever having accessed or entered their number on the webpage in question and provided a different IP address to the one given by the Service Provider.

The Complainant also stated that monies had been deducted from her account for far longer than the days in November as stated by the Service Provider.

Service provider's response

The Service provider provided a somewhat formulaic but thorough response setting out exactly when and how the subscription process had happened and worked:

"Due to our double-opt in system, which is even more stringent than that prescribed by the Code, it is highly improbable – if not impossible – to become subscribed to our service without being aware that one was subscribing to a Subscription service. In addition to the requisite subscription text being visible on the landing page of the campaign, the fact that the service is a subscription service is recorded in the pin code message, the welcome message, as well as the reminder messages sent to the subscriber.

In consideration of this 35050 Gold campaign as a whole, it is clear that before subscribing the complainant was made fully aware, on both the landing pages of the services, that what is being offered was a subscription service at a daily charge of R5/day. The top left hand side of both pages ("B1" & "B2") – "Subscription service R5/day"; and beneath the "Confirm" button ("B2") it also states that, "By clicking confirm, I agree to subscribe to 35050 GOLD subscription service R5/ day...".

On 1st November 2011 the complainant entered her mobile number on the landing page ("B1") and must have clicked "Send", where after she was sent, from ourselves, a text message containing the required pin code (7705) (the "pin code") from Buongiorno. As already stated above, this text message also confirms that the service offered is a subscription service, charged at R5 per day >> ur CODE is 7705 << enter it in the web confirmation page & you will be subscribed to 35050 GOLD from Buongiorno at R5/day 4 Top Apps, MP3 hits & tons more!

The pin code is unique and directed only to the phone of the complainant, as the subscriber.

At the point of receiving the pin code the complainant was still not subscribed to the service. Once she received the pin code the complainant still had a choice, before becoming subscribed, to enter the pin code on the landing page ("B2"). Only on entering the pin code correctly on the second landing page and pressing the "confirm" button would she have become a subscriber of the service and received the requisite "welcome" message – which she did (see MT logs).

Only after the user has subscribed to the 35050 Gold service is the user then transferred to a new product offering, which is the ZAP service as illustrated through the ZAP landing page marked ("B3"), in this case.

The complainant was notified in the pin code message of the ZAP service offering.

The message also contained the pin code (7705) for the subscription service. The message read as follows:

>> ur CODE is 7705 << enter it in the web confirmation page & you'll be subscribed to ZAP from Buongiorno at R6/day 4 unlimited games, mp3s & great Rewards!

Not only is the Landing page design and product offering of the ZAP service distinctly different from the offering for the 35050 Gold service, but the new service information is also clearly indicated in the pin code message. The service in turn after the complainant had acted positively and clicked the "CONFIRM" button was the complainant sent the ZAP service welcome message: See ("B4") confirm page...

*After which the ZAP service sent the complainant the service welcome message: See log attached... Welcome 2 ZAP. Go to Wap.funfone.co.za on ur mobile 4 Unlimited games,Mp3's & more! Help: 0214178001 Dial *120*5122# to unsub(R6/day subscription) – See log attached."*

No reminder messages were sent because the service was unsubscribed before 1 month had passed.

Regarding the unsubscribe process the Service Provider stated that:

"Once subscribed the complainant was at all times – through the welcome messages - provided with detailed instructions on how to unsubscribe, as well as our help line number if he/she experienced any problems. The complainant obviously understood this unsubscribe procedure as it was this procedure which the complainant utilised to unsubscribe from our 35050 service, having been it via our 24x7 contact number or, utilizing the instruction within the welcome message. See attached logs."

Sections of the Code considered

11.2. Subscription process

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.

11.3. Subscription initiated via a browser (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 the name of the service, an explanation of the confirmation process, and 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

11.3.6. 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.

Decision

These complaints are the hardest to adjudicate due to the very nature of them being factual disputes backed up by averments given by the parties involved. They often amount to a “he said/she said” dispute where the lack of factual proof guides the decision.

In this case the Complainant alleges that she never subscribed to the services. The Service Provider states that she did subscribe to the services and furthermore, that the subscription process for such services was in line with the Code of Conduct. The Service Provider was able to substantiate these claims with valid logs and screenshots and as such, whilst sympathetic to the Complainant, as I cannot disprove the validity of the logs and have no basis on which to doubt the veracity thereof after careful scrutiny, I cannot find the Service Provider to have been in breach of the following sections of the Code:

In re 11.2. Subscription process

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.

- No automatic subscription occurred.

11.3. Subscription initiated via a browser (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 the name of the service, an explanation of the confirmation process, and a URL with a unique identifier, which, when clicked, validates the handset number.

- Message was sent to the MSISDN which then needed to be entered into the webpage.

The message complied with the provisions of the Code.

- See logs and screenshots attached.

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- **This was provided. See logs and screenshots attached.**

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- **This was provided. See logs and screenshots attached.**

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.

- **This was provided. See logs and screenshots attached.**

I requested additional screenshots of the system utilised to generate the logs from the Service Provider and they provided these to me in verification of the logs.

I also requested the Complainant to provide me with details of the monies being deducted and the period therefore as the duration that the Service Provider was alleged to have been deducting the monies did not tie in with the logs or the version of events presented by the Service Provider. The Complainant however failed to respond.

One of the issues which really bothered me was the fact that the IP addresses did not match which one would have expected. However, due to the fact that there are valid reasons why this could happen, for example, if a proxy server is used to access the web (this could be controlled by either the ISP or the complainant) or a mechanism used which may cause this discrepancy is a function known as "nattering" or NAT (network address translation) and this is typically used by firewall software. I requested further information about whether these mechanisms were used by the Complainant's ISP but received no response.

In this instance and based on the facts before me I cannot find the Service Provider in breach of the Code.

Sanctions

I am not sanctioning the Service Provider.