



REPORT OF THE ADJUDICATOR

Complaint reference number:	16333
WASPA member(s):	Sprint Media (IP) / Opera Interactive (SP)
Membership number(s):	1168 / 0068
Complainant:	Public
Type of complaint:	Subscription Service
Date complaint was lodged:	26/2/2012
Date of the alleged offence:	31/10/2011
Relevant version of the Code:	11.0
Clauses considered:	4.1.2; 5.1.3; 5.2.1; 5.3.1; 11.1.1; 11.2.1; 11.3; 11.6.2
Relevant version of the Ad. Rules:	Not Applicable
Clauses considered:	None
Related cases considered:	See report in complaint 16735

Complaint and Response

1. This complaint revolves around contested subscription to a subscription service.
2. The Information Provider (IP) in this matter is Sprint Media, which provided the service complained of using the systems of Opera Interactive, which accordingly takes the role of the Service Provider (SP) here. As the IP is an affiliate member of WASPA, it is responsible for its infringements of the Code of Conduct.

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3. On the 22nd of January 2012, the Complainant, who is a member of the public, entered an unsubscribe request using WASPA's online unsubscribe facility. The request was initially directed to the SP, but subsequently directed to the IP which was providing the service complained of. The relevant WASPA record shows that on the 1st of February 2012 the Complainant was unsubscribed from the service in question. The IP also provided proof of the Complainant's subscription to the service.
 4. However, the Complainant was not satisfied, and elected to escalate the complaint:

I still do not know what this subscription is for. And as they can see I have never been into there site or received any service for whatever from them.

I feel I have been deceived and tricked into something for which I have never received anything. They sent a mms pic. Stating you have been sent a pic. I presumed a friend may be sending me something and tried to open, that was it, they then took my number and started dedicating.

This is surely illegal. I have never googled they site or anything like that.

They are taking millions of people for a ride.

I advertised this on FaceBook and found two more friends tricked into this too who did not know till I got word out.

I do feel it is your obligation and mine to stop this kind of corruption. I feel they need to refund my money as they should not have sent me a trick mms.

I never contacted them or received any service from them at all.

Our would appreciate talking to you and getting your assistance to find out what this service is and how it works, so I can take it to the press and perhaps even press charges in order to get the message out to the public and save others from the same situation.

5. The matter was escalated to a formal complaint, of which notice was sent to the IP on the 14th of February. Notice was also sent to the SP on the same date.
6. On the 20th of February, the IP emailed the Complainant with an offer of re-imbursement of all amounts charged, being an amount of R 560.00. This refund was duly paid.
7. The Complainant was not satisfied by the refund, asserting that she had not subscribed to the service in question (in fact she did not know what the service was).
8. The IP responded to the complaint on the 22nd of March 2012 with a written explanation supported by logs of interactions between it and the Complainant:
 - 8.1. The Complainant interacted with the IP's system twice, first on the 26th of June 2011 and then again on the 31st of October 2011.

8.2. The IP's logs show that on the 26th of June 2011 someone accessed the IP's WAP site using a Samsung SGH-J750 handset, entered the Complainant's MSISDN and by doing so consented to receipt of commercial messages.

8.3. On the 31st of October 2011 the IP sent a message to the Complainant in the following terms:

2011-10-31 10:38:13	265954708 Delivered On	1/1	31923 Mobmatic	You have been sent a a picture. Click to open: http://ems.cx/w/?m=[MSISDN REMOVED]/ 2optout/click/r7/Day/subscr/
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8.4. Note that the Complainant's MSISDN appears in this message.

8.5. In the IP's words:

In this occasion the user responded to the promotional message sent on 31 October 2011 and signed up to the subscription service by completing the double opt in process.

8.6. The corresponding log entries for the 31st read as follows:

2011-10-31 16:47:47	Web Registratio n	1/1	WebSite Mobmatic	Website Registration IP Address: 93.186.23.81 (GB) URL: http://m.mobmatic.com/lps/picture/wpsaz30/ Phone: User-Agent: Mozilla/5.0 (BlackBerry; U; BlackBerry 9300; en) AppleWebKit/534.8 (KHTML, like Gecko) Version/6.0.0.546 Mobile Safari/534.8
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and:

2011-10-31 16:47:59	Optin	1/1	31923 Mobmatic	TESTM Code:9874IP Address: 93.186.23.81Page: http://m.mobmatic.com/lps/picture/wpsaz30/ User Agent: Mozilla/5.0 (BlackBerry; U; BlackBerry 9300; en) AppleWebKit/534.8 (KHTML, like Gecko) Version/6.0.0.546 Mobile Safari/534.8
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8.7. The log also shows a welcome message sent to the Complainant on the 31st:

2011-10-31 16:49:07	266331691 Sent	1/1	31923 Mobmatic	Strea ming	WELCOME:COLLECT COINS 4 PRODUCTS 24/7 Visit mobmatic.com Password:
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					2090609. help@mobmatic.com subscriptionR7/day 16plus 2 unsub sms stop 1923. 0213002334
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8.8. Monthly reminders were duly sent to the Complainant on the 30th of November and the 30th of December which read as follows:

Reminder: Redeem ur coins 4 products or they'll expire. u r subscribed to Sprint Media MOBATIC.Help 0213002334 cost R7/day to unsub, dial stop 31923 free msg

9. I noted that the subscription logs provided to the WASPA Secretariat as part of the unsubscribe process read as follows:

<<	2011-10-31 16:46:39	Web Registration	WebSite Mobmatic	Website Registration IP Address: 93.186.23.80 (GB) URL: http://m.mobmatic.com/lps/test/wpsa9/ User-Agent: Mozilla/5.0 (BlackBerry; U; BlackBerry 9300; en) AppleWebKit/534.8(KHTML, like Gecko) Version/6.0.0.546 Mobile Safari/534.8
>>	2011-10-31 16:46:52	Delivered On	31923 Mobmatic	CLICK http://ems.cx/r/EE1E80F7 TO CONTINUE
<<	2011-10-31 16:47:59	Optin	31923 Mobmatic	TESTM Code:9874IP Address: 93.186.23.81 Page:http://m.mobmatic.com/lps/test/wpsa9/User Agent: Mozilla/5.0 (BlackBerry; U;BlackBerry 9300; en) AppleWebKit/534.8 (KHTML, like Gecko) Version/6.0.0.546Mobile Safari/534.8
>>	2011-10-31 17:43:07	Delivered On	31923 Mobmatic	WELCOME:COLLECT COINS 4 PRODUCTS 24/7 Visit mobmatic.com Password:82090609. help@ mobmatic.com subscriptionR7/day 16plus 2 unsub sms stop 31923. 0213002334

10. Note that items 1, 2 and 4 of the above log do not appear in the logs set out under paragraph 8. The IP was requested to explain why this was so. In the event the IP was unsure at to what logs I was referring to due to the fact that I referred to the documents in the WASPA case file, to which the IP did not have access. The IP's reply was not on point, but this did not prejudice its case as is apparent from my decision.

11. Finally, I asked the WASPA Secretariat to address certain questions to the Complainant to obtain clarity on several points:

11.1. The Complainant did own a Samsung SGH-J750 on or about the 26th of June 2011.

- 11.2. The Complainant subsequently obtained a Blackberry 9300, but did not specify when she obtained it.
- 11.3. The Complainant did not request that the IP send her commercial messages, and had no prior relationship with the IP.
- 11.4. The Complainant clicked on the picture that the IP sent to her, thinking that it had been sent by a friend, and then deleted it when she saw that it was not.
- 11.5. The Complainant thought that the messages sent to her by the IP were junk mail, and deleted them.

Sections of the Code considered

12. The conduct complained of took place on or about 31 October 2011, and consequently version 11.0 of the WASPA Code of Conduct is applicable. The following clauses have relevance:

4.1. Provision of information to 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.

5.1. Sending of commercial communications

5.1.3. For SMS and MMS commercial communications, a recipient should be able to stop receiving messages from any service by replying with the word '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. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

5.2. Identification of spam

5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless:

(a) the recipient has requested the message;

(b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications

(i) at the time when the information was collected; and

(ii) on the occasion of each communication with the recipient; or

(c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.2.2. Any commercial message is considered unsolicited after a valid opt-out request.

5.2.3. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

5.3. Prevention of spam

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

11.1. Promotion of subscription services

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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

11.3.4. 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.

11.6. Reminder messages

11.6.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter. The customer may not be charged for these reminder messages.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. SMS HELP [optional keyword] to [short code]/call [call centre number + "(VAS)" if applicable]. To unsubs, sms STOP [service keyword] to [short code].

or

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubs, sms STOP [service keyword] to [short code].

Sections of the Advertising Rules considered

13. Not Applicable

Decision

14. The complaint raises several potential infringements of the Code of Conduct by the IP, which I will deal with separately below.

Subscription without Consent (clause 11.2.1)

15. As is often the case where a subscription is disputed, the Complainant is not clear what occurred. This is understandable given that her interaction with the IP, if any occurred, would have been fleeting. The IP on the other

hand has produced comprehensive logs indicating how the Complainant allegedly subscribed to its service.

16. The parties agree that on the 31st of October 2011 the IP sent the Complainant an MMS message containing a link to what was purportedly a picture. The Complainant admits to clicking on the link to the picture on the assumption that it had been sent by a friend. On the Complainant's version her interaction with the IP ended there.
17. The IP on the other hand maintains that the Complainant was directed to a WAP site and then followed a double opt-in process for its service. According to the IP this involved clicking a button on its WAP page indicating consent to receipt of the service. This in turn triggered the IP's system to send a confirmation message to the Complainant containing a link that she clicked to confirm her subscription. All this is supported by logs supplied by the IP.
18. This scenario is one that often faces adjudicators dealing with such complaints. The complainant is adamant that he or she did not subscribe to a particular service, while the member provides logs to support its version that the complainant did indeed subscribe. The adjudicator must then take into account that consumers often click on links or buttons without realising they have done so, and without reading the text of the message or WAP page containing that link or button.
19. While logs can certainly be fabricated, the adjudicator is forced to take the logs at face value unless he or she has good reason to believe that the member has indeed fabricated them. As the evidence of logs usually trumps the complainant's version of events, a complaint against a member that can support its version with believable logs usually does not succeed.
20. This matter is very similar to that found in complaint 16668, which I am adjudicating at the same time as this one. In that matter the Complainant was able to show convincingly that his version of events was correct, and accordingly I was forced to conclude that the IP had fabricated its logs.
21. In light of the facts in complaint 16668 I am naturally very dubious of the IP's version of events. In this matter however, the evidence is not compelling enough for me to find against the IP. Consequently I must find that the Complainant followed the double opt-in process described by the IP.
22. Accordingly I find that the Complainant subscribed to the IP's "Mobmatic" subscription service and the IP has not infringed clause 11.2.1 of the Code of Conduct.

Promotion of Subscription Services

23. If we assume that the subscription process took place as set out in the IP's logs, and that the messages sent to the Complainant took the form set out in the logs, then the IP has several apparent infringements to answer for.
24. The marketing message sent to the Complainant on the 31st of October 2011 was supposed to "prominently and explicitly identify the services as 'subscription services'" as set out in in clause 11.1.1 of the Code of

Conduct. The identifier "subscr" at the end of an MMS message is neither prominent nor explicit. Consequently the IP has infringed clause 11.1.1 of the Code of Conduct.

Confirmation Message

25. The confirmation message sent by the IP to the Complainant on the 31st of October 2011 was flawed. Clause 11.3.1 sets out the requirements for such messages. The IP failed to include the name of the subscription service or provide an explanation of the confirmation process. The IP has hence infringed clause 11.3.1 of the Code of Conduct.

Reminder Message

26. The reminder messages sent to the Complainant were also defective.
27. Clause 11.6.2 is explicit as to the content of reminder messages which "...must adhere exactly to the following format, flow, wording and spacing..."
28. The form followed by the IP in the reminder messages described above does not follow the prescribed form.
29. The IP has infringed clause 11.6.2.

Misleading Conduct

30. The IP admits in its first response to my request for further information, which was sent to the WASPA Secretariat on the 15th of June 2012, that:

In the subscription record point 2 refers to the Complainant clicking on the URL link contained in the marketing message and being diverted to the WAP landing page;

and later:

However, in order to have clicked on the call to action button 'NEXT>' (point 4) which is hosted on the WAP landing page, the Complainant would have had to click on the URL link in the marketing message in order to be diverted to the WAP landing page...

31. It is clear that the link sent to the Complainant was not to a photograph at all, but to the IP's WAP site. The Complainant states in her initial submission that:

I feel I have been deceived and tricked into something for which I have never received anything. They sent a mms pic. Stating you have been sent a pic. I presumed a friend may be sending me something and tried to open, that was it, they then took my number and started dedicating.(sic)

32. While I do not have grounds to find that the IP subscribed the Complainant without following a double opt-in process, I certainly agree with the Complainant that this practice is misleading and deceptive.
33. The IP has infringed clause 4.1.2 of the Code of Conduct.

Spam

34. The IP maintains that the Complainant established a relationship with it by visiting its WAP page on the 26th of June 2011. By agreeing to the terms set out on the WAP site, the Complainant would have agreed to receive marketing messages.
35. In complaint 16668 the IP advanced the same argument, but I was able to establish that the Complainant had in fact not visited the IP's site prior to receiving a marketing message. In this case I am unable to draw such a conclusion. Accordingly I must accept that IP's version.
36. Accordingly the IP can avail itself of the exceptions set out in clause 5.2.1 of the Code of Conduct and has not infringed clause 5.3.1.
37. Clause 5.1.3 requires members who send commercial communications to provide clear "opt-out" instructions to recipients. The relevant part of the IP's marketing message of the 31st of October reads:
- 2optout/click/r7/Day/subscr/*
38. I have no idea what this means, and neither would a recipient. The IP has hence infringed clause 5.1.3 of the Code of Conduct.
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Sanctions

39. I have adjudicated complaints 16319, 16333, 16668 and 16735 together. For the sake of convenience I have dealt with sanctions for all these complaints in my report for complaint 16735.