



REPORT OF THE ADJUDICATOR

Complaint reference number:	17189
WASPA member(s):	Viamedia
Membership number(s):	0043
Complainant:	Public
Type of complaint:	Subscription service
Date complaint was lodged:	2012-05-14
Date of the alleged offence:	2011-05-09
Relevant version of the Code:	11.6
Clauses considered:	11.2; 11.3; 11.5; 11.6; 11.8; 11.9; 11.10
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	Not applicable

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 09/05/2012. The complainant was unsubscribed and proof of subscription in the form of the IP's logs was uploaded.

The IP did not grant the complainant's request for a refund as it maintained that the complainant had been validly subscribed to the service. The complainant was not satisfied with the response and the matter was escalated to the formal complaint procedure for adjudication.

The complainant denies that she ever subscribed to the service or that she ever made use of the services offered.

Service provider's response

The SP provided a response from the IP. The IP states that the subscription service was web-based. A user would click through from a banner advert and arrive at the applicable landing page.

The user would then enter his or her cell phone number into the designated area and the check box would have to be ticked to acknowledge they have read the terms and conditions.

The user would then receive a confirmation SMS containing a unique pin code. This pin code would then be inserted into the designated area (were the cell phone number was placed) and a "confirm" button would have to be clicked.

The user would then receive a welcome message followed by another SMS containing a link to their first item of content.

Within the terms and conditions, the landing page and the welcome message the user is informed that it is a subscription service.

The IP states that the complainant subscribed to the service by following the aforementioned process. In fact, the complainant's number was entered into the prescribed click box a total of four times and each time the exact same unique pin number was generated. This confirms that the PIN number generated was attached to the MSISDN and cannot be duplicated.

Monthly reminder messages were also sent to the complainant on the anniversary of his subscription informing him that he was in fact a member of the club.

The IP also states that the complainant is a Vodacom subscriber and would not have been subscribed to this service had he or she not entered the uniquely generated pin number. The mobile pin must be inserted to join the club, without the insertion of the pin there can be no club membership.

The complainant's request to be unsubscribed was complied with and a confirmation SMS to this effect was sent to the complainant's MSISDN on 09/05/2012.

The logs provided show the proof of subscription on 04/10/2011 and the unsubscription the 09/05/2012.

The IP maintains that there has been no breach of the Code and that the complaint should be dismissed.

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.

11.2.2. 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.

11.3. 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.

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information, in the following order:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

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 unsub, 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 unsub, sms STOP [service keyword] to [short code].

11.6.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.6.2.

11.6.4. The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way

that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

11.6.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

11.6.6. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

11.6.7. The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

11.6.8. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

11.8. Reminder message for WAP services

11.8.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.6.2 or the the following format must be used:

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 unsub, click here [WAP link].

11.8.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.8.3. The WAP link in the reminder message must begin with "www" to ensure that all phones recognise this as a clickable link.

11.8.4. All of the other requirements set out in section 11.6 of the Code continue to apply to services where the primary means of interacting with the service us via WAP.

11.10. Subscription service directory and logs

11.10.1. Members must register all subscription services with WASPA, by providing the following information:

- (a) the name of the service;
- (b) the short code or access method (e.g. WAP) the service uses;
- (c) the price and frequency of billing for that service;
- (d) the customer support number associated with the service; and
- (e) unsubscribe instructions for the service.

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
- (b) proof that all required reminder messages have been sent to that customer;
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (d) any record of successful or unsuccessful unsubscribe requests.

Decision

I have perused the logs uploaded by the IP as well as the explanation given for the subscription process and I am satisfied, in the absence of any contrary proof, that the complainant was validly subscribed to this service.

I am also satisfied that the required welcome and reminder messages were sent to the complainant's number as required by the Code, and that he was validly unsubscribed pursuant to his request on 9 May 2012.

I cannot find any contravention of the WASPA Code and the complaint is accordingly dismissed.
