



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	Content subscription service
Complainant:	Public
Complaint Number:	9334
Code Version:	9.0
Advertising Rules Version:	2.3

Complaint

The complainant is a member of the public who was subscribed to the SP's content subscription service ("the service"). The SP indicated to WASPA that the complainant subscribed to its service through a Web site. The complainant ought to have received a code confirming his subscription which, when submitted to the SP, would have activated the complainant's subscription to the service. This process appears to have taken place between 06:49 and 06:50 on 27 February 2010.

The complainant indicated that he did not subscribe to "any service" and remained dissatisfied with informal attempts to address his complaint, which he lodged with WASPA on, or about 22 April 2010. The complainant was unsubscribed from the SP's service on 20 April 2010 although he was not offered a refund of charges pursuant to the subscription.

Service provider's response

The SP submitted a report of sorts to WASPA detailing the service's mechanics. This report is annexed to this report and is marked "A". The SP provided WASPA with screenshots from its system indicating that the complainant received a

confirmation code, presumably entered the confirmation code, and activated his subscription to the SP's service.

Sections of the Code considered

This complaint was lodged on 22 April 2010. The applicable version of the Code is therefore version 9.0.

Code version 9.0

2.11. A "content subscription service" includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a "club" or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location-based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.

2.24: A "subscription service" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

3.1.1: Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2: Members are committed to lawful conduct at all times.

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential 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.

6.2.11. The member providing the service must keep a record of the confirmation provided by the customer (for 6.2.9 (a)) or the notification sent to the customer (for 6.2.9 (b)).

Code version 9.0

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.

11.1.6. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

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.

11.2.4. 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 number 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.

11.2.5. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ

Code version 9.0

[service] from [name of service provider] @ [cost of service and frequency of billing].

11.2.5. 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.

11.4.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

(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.

11.5.1. 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.

11.5.2. The reminder messages specified in 11.5.1 must adhere exactly to the following format, flow, wording and spacing:

You are subscribed to [name of service provider] [content/service description].
Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + “(VAS)” if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

or

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

Code version 9.0

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

11.8.2. 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.

11.8.9. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

or

You've been unsubscribed from [service name].

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. You'll then be resubscribed at [cost of service and frequency of billing].

I have highlighted the sections of the Code which are particularly relevant to this specific complaint and which I have relied upon below.

Sections of the Advertising Rules considered

Sections 9.2 and 9.3

Decision

What is interesting about the SP's report is the screenshot of the Web page the complainant allegedly visited and began his subscription process on. The Web page primarily consists of a morbid sort of quiz, which suggests it can tell its participants how much longer they have to live. It is only on closer examination that it a visitor to the page would discover that this quiz is part of a subscription service. This is apparent from wording at the top of the page stating "FUN CLUB SUBSCRIPTION SERVICE R6/DAY YOU WILL GET THE DEATH CLOCK, MUSIC GAMES AND TONS MORE". This line of text is only slightly lighter than the black background of the page's border.

There is also wording below the submission mechanism on the page where a visitor can submit a mobile number and specify which mobile network he or she uses. Having regard to the screenshot this wording is virtually the same shade orange as the colour used for the panel on which the submission mechanism is located. I can't make out all the wording in the screenshot the SP presented WASPA with and can't imagine the wording would be much more distinct on the actual Web page.

The terms and conditions at the bottom of the page describe the service further and state that it is a subscription service at a cost of R6 per day. The terms and conditions further describe how to stop the subscription, the number to call for help and other information.

Notwithstanding these references to the subscription nature of the service, the dominant impression the Web page gives is that submitting a mobile number returns an indication how much longer the participant has to live. The references to a subscription service and the details of that service are largely obscured by background colours and small print.

This is similarly the case on the page a would-be subscriber is taken to to enter the activation code. The text indicating that the would-be subscriber is about to subscribe to a service is either obscured by the black border of the page or in fine print at the bottom of the page. There is no indication that the service is a subscription service where it arguably would have the most impact, namely where the would-be subscriber is invited to enter the activation code and submit it, thereby activating a subscription to the service. The SP's representative concludes the report with the following lines:

"In light of the above we do not deem a refund justified as, no information is obscured during this entire process followed by the user.

All messages sent to the user informs him or her of the Fun Club Subscription Service."

These statements are disingenuous. The dominant impression the Web page gives is that the service is a content service, not a subscription service. The wording stating that the service is a subscription service is obscured by similar coloured backgrounds and is hardly as prominent as the Code requires.

Based on the SP's report, the complainant was also not sent a message that complies with section 11.2.5 of the Code informing him that he was about to be subscribed to a subscription service.

The fundamental problems with the service are the manner in which its subscription nature is obscured and the apparent confusion of an offer of a specific content item and a subscription service. This is not the first time the SP has been criticised for formatting its quizzes. I addressed the SP's "Brain Age" in May 2009 and was part of an emergency panel review in February 2010. In both cases the SP was sanctioned and/or cautioned about its formatting and how subscription notices are obscured by background media. My colleagues have similarly addressed the SP's similar campaigns in other complaints and yet the SP persists with its chosen formatting.

The service violates the Code's provisions, which require that subscription services be clearly, unambiguously and independently marketed and that requests for subscription services be "an independent transaction, with the specific intention of subscribing to a service". I refer specifically to section 11.2 of the Code in this regard.

Sanctions

The SP is required to cease all instances of its Fun Club service which are the same as or similar to the service which forms the subject matter of this complaint.

The SP shall send all subscribers of the service a message a reminder message in the format prescribed in section 11.5.2 of the Code and process any unsubscription requests it receives without delay.

The SP shall refund the complainant all amounts received from the complainant as a result of his subscription to the service within 7 days of receipt of a copy of this order. This order may be suspended pending appeal at the WASPA Secretariat's discretion.

The SP is fined R250 000 for its continued breach of the Code, including but not limited to, section 11.2 of version 9.0 of the Code. This fine is payable on demand by the WASPA Secretariat.

From: "Sharief Holt" <sharief.holt@buongiorno.com>
Subject: Re: [WASPA.complaints] [formal] Complaint Ref:# 9334 Escalation of unsubscribe #46917
Date: 26 April 2010 11:58:42 AM SAST
To: <complaints@waspa.org.za>, "Rosalinda van Rooyen" <rosalinda.vanrooyen@buongiorno.com>
Reply-To: "complaints@waspa.org.za" <complaints@waspa.org.za>
 7 Attachments, 266 KB

Dear WASPA,

Our investigation shows that the user was subscribed via Website advertisement. The web Media key accessed is fca_tek521_3762. This media is directly linked to the web pages accessed further below.

In the mobile traffic report for February 2010, we had sent the user his or her 4 digit pin code which was [REDACTED], as well as the welcome message.

The pin code is needed before the subscription could have been initiated, which in the users case was entered correctly on the day the subscription started.

All messages sent to the user shows delivered successfully, thus the networks confirmed the recipients receipt of the messages sent from the Fun Club Service.

The reporting information window, shows the users start and end subscription dates and times.

The screenshot shows a web interface with two main sections:

- GENERAL SETTING:** Includes a text input field for 'Email or Sms:' with a [REDACTED] value, and two checked checkboxes: 'Select all lists' and 'Select all channels'. Below this is a 'BLACKLIST' section with 'Test', 'Insert', and 'Delete' buttons.
- REPORTING INFORMATION:** Starts with the message 'This user isn't member of control panel'. It features a table titled 'History subscriptions' with columns: nr. sub/unsub, list, channel, date, source, options, failures tracking, and code. Below the table are two buttons: 'Get history subscriptions' and 'Get current subscriptions'.

nr. sub/unsub	list	channel	date	source	options	failures tracking	code
1	sub	fun_club_site	2010-02-27 05:49:51	za_funclub_web	club.pin=.8!%25	0	0 1294743
2	sub	fun_club_fretrial	2010-02-27 05:50:28	za_funclub_web	code=JG00000259	0	0 115101
3	sub	fun_club_standard	2010-02-27 05:50:28	za_funclub_web	code=JG00000259	0	0 692146
4	sub	fun_club_stim	2010-03-31 10:37:58	JMAILER_LOAD	operator=vodaco	0	0 243756
5	unsub	fun_club_site	2010-04-20 11:52:41	SUB_HISTORY	n.a.	n.a.	n.a.
6	unsub	fun_club_standard	2010-04-20 11:52:41	SUB_HISTORY	n.a.	n.a.	n.a.
7	unsub	fun_club_stim	2010-04-20 11:52:41	SUB_HISTORY	n.a.	n.a.	n.a.
8	unsub	fun_club_fretrial	2010-04-26 10:20:09	SUB_HISTORY	n.a.	n.a.	n.a.

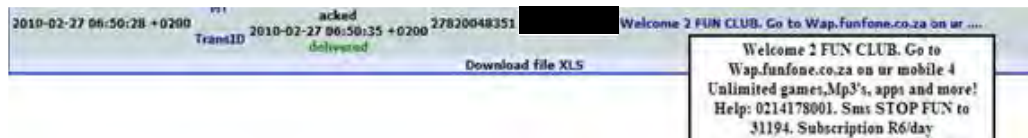
The screenshot shows a 'MOBILE TRAFFIC REPORT' table with columns: CREATED, MO/MT, RESPONSE, FROM, TO, TEXT, and MORE. A callout box highlights a specific message text.

CREATED	MO/MT	RESPONSE	FROM	TO	TEXT	MORE
2010-02-27 06:49:51 +0200	MT	2010-02-27 06:49:52 +0200 acked	27820048351	[REDACTED]	>> Your CODE is 0175 << enter it in the web confir....	
	TransID	2010-02-27 06:49:57 +0200 delivered				
2010-02-27 06:50:28 +0200	MT	2010-02-27 06:50:30 +0200 acked	27820048351	[REDACTED]	Click here to download your conte	
	TransID	2010-02-27 06:50:46 +0200 delivered				
2010-02-27 06:50:28 +0200	MT	2010-02-27 06:50:29 +0200 acked	27820048351	[REDACTED]	Welcome 2 FUN CLUB. Go to Wap.funfone.co.za on ur ...	
	TransID	2010-02-27 06:50:35 +0200 delivered				

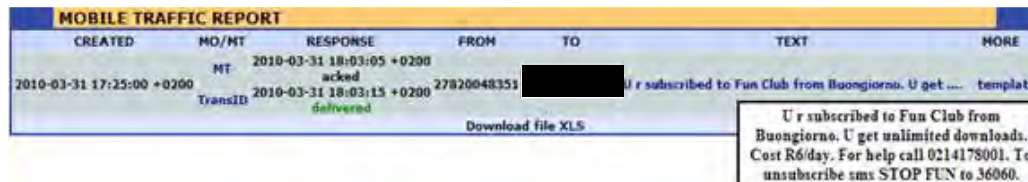
Callout box text: >> Your CODE is 0175 << enter it in the web confirmation page. FUN CLUB best mobile service R6/day subscription GAMES & TONES enjoy the fun.

In the welcome message directly below, we state the cost involved and the stop command as well the call centre

contact details.



The reminder message was sent to the user, as can be seen in the March Mobile Traffic report one month after the subscription start date. The message includes our call centre contact number as well as the Correct Stop command in order to withdraw from the Mobile Content Subscription Service.



Herewith is the pages the user had accessed in order to be subscribed to the Fun Club Mobile Content Subscription Service.

The user needed to tick the Terms and Conditions block and enter his or her mobile number and mobile carrier. Only then is the user sent the pin code and taken to the pin verification page.



Fun Club. By entering the PIN that was sent to your cellphone you will be entered into Fun Club subscription service, and you acknowledge that you are subscribing to the service. This subscription service is available to MTN, Vodacom and Cell C users. You will be billed R6 every day. You will receive a WAP link in your welcome messages. By clicking on the WAP link you will be able to download unlimited items for your phone. These items are not charged for separately from your daily subscription fee. Download charges apply and standard text messaging rates may apply. The shown item(s) form(s) part of the subscription service and is/are indicative of the content items that will be received. You may stop this subscription service at any time by sending a text message with the words STOP FUN to 36060. You must be the owner of the device or you need to acquire the bill payers permission to join this subscription service. For help call 0214178001. Your cellphone handset must be WAP enabled to download the products. You will have the option to download as many items as you like of the wap.funfone.co.za wap site, this includes but is not limited to ringtones, animations, videos, wallpapers and games. You are also agreeing to receive occasional promotional messages.

The pin code [REDACTED] was sent to the user as can be seen in the mobile Traffic report as shown above for February on the day of subscription.

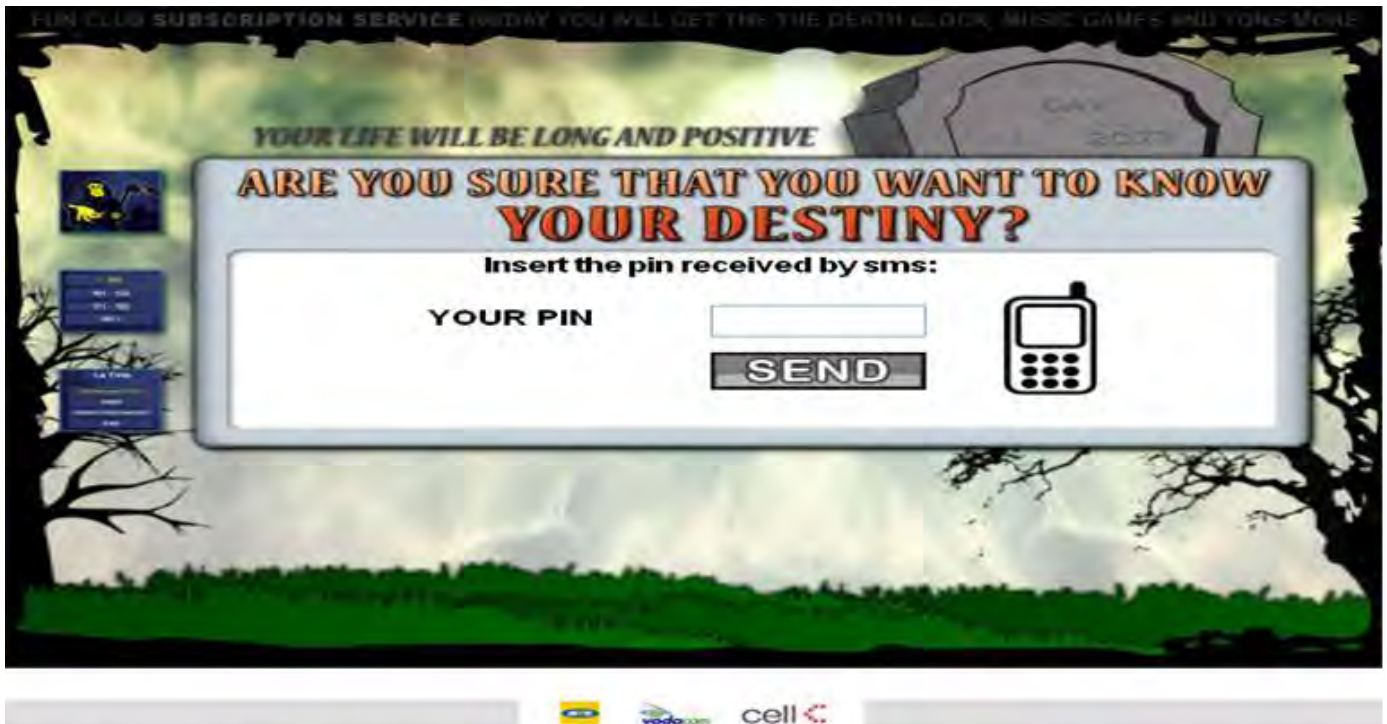
Under no circumstances would the subscription be started without entering the code correctly, which was done by the user, as the code is specifically sent to the user on the day he or she interacts with the mobile subscription service.

The pin is unique to each subscription initiation into the Fun Club Service.

The user was instructed to enter the pin code [REDACTED] on the pin confirmation page via sms, which he or she had done.

The pages accessed shows the user that he or she is interacting with a mobile subscription service, as well as the terms and Conditions of the Service.

The Terms and Conditions also inform the user of our 24x7 contact number, should he or she have had any problems with the service subscription.



Fun Club. By entering the PIN that was sent to your cellphone you will be entered into Fun Club subscription service, and you acknowledge that you are subscribing to the service. This subscription service is available to MTN, Vodacom and Cell C users. You will be billed R6 every day. You will receive a WAP link in your welcome messages. By clicking on the WAP link you will be able to download unlimited items for your phone. These items are not charged for separately from your daily subscription fee. Download charges apply and standard text messaging rates may apply. The shown item(s) form(s) part of the subscription service and is/are indicative of the content items that will be received. You may stop this subscription service at any time by sending a text message with the words STOP FUN to 36060. You must be the owner of the device or you need to acquire the bill payer's permission to join this subscription service. For help call 0214178001. Your cellphone handset must be WAP enabled to download the products. You will have the option to download as many items as you like of the wap.funfone.co.za wap site, this includes but is not limited to ringtones, animations, videos, wallpapers and games. You are also agreeing to receive occasional promotional messages.

In light of the above we do not deem a refund justified as, no information is obscured during this entire process followed by the user.

All messages sent to the user inform him or her of the Fun Club Subscription Service.

We thank you for bringing this to our attention.

Best Regards
Sharief Holt
Buongiorno ZA

-----Original Message-----

From: WASPA Complaints (Lorraine Hartzer) [mailto:complaints@waspa.org.za]
Sent: 22 April 2010 12:46 PM
To: sharief.holt@buongiorno.com; 'Rosalinda van Rooyen'
Subject: [formal] Complaint Ref:# 9334 Escalation of unsubscribe #46917

Dear WASPA member,

The appended unsubscribe request was logged on the WASPA unsubscribe system on 2010-04-19, but the complainant has indicated that they are not satisfied with your response.

Therefore, the WASPA Secretariat has no choice but to escalate this query to a formal complaint against Buongiorno UK.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to <complaints@waspa.org.za>. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the unsubscribe request follows below ---

The user who escalated this request has provided the following reason for escalation: \\\"consumer has never subscribed to any service. He is unhappy with the outcome\\\"

WASP members

Buongiorno UK

Details of the complaint

Mobile number: [REDACTED]
Customer name: [REDACTED]
Customer email: [REDACTED]
Customer alternate phone: [REDACTED]
Actions requested:
- 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

WASPA member response: Buongiorno UK

Response to unsubscribe request: Unsubscribed
Confirmation SMS sent to the customer: Sent
Response to the request for a refund: No refund offered
Upload proof of subscription: Uploaded by WASP
Proof of subscription available from
<http://secure.ff.co.za/unsubscribe/proof.php?action=view&id=46917&wasp=9>

Comments

charles on 2010-04-19 13:43:15 said:
id by customer

Buongiorno UK on 2010-04-20 12:12:27 said:
Member has been un subd and confirmation sms has been sent.Attached is
the proof of sub.Member has been contacted.Thanks

charles on 2010-04-20 15:36:29 said:
Please send sms again to msisdn as he has not received.

charles on 2010-04-20 15:38:29 said:
he wants one as notification

Buongiorno UK on 2010-04-20 16:31:27 said:
Will send again.Thanks



[\[REDACTED\].xls \(21,3 KB\)](#)