



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	W2mobile (Venista)
Information Provider (IP):	"Not applicable"
Service Type:	Subscription Service
Complainant:	"Public"
Complaint Number:	9669 (escalation of 69209)
Code Version:	9.0
Advertising Rules Version:	"Not applicable"

Complaint

Complainant complained of subscription process in respect of a subscription service. Following on her sending of an unsubscribe message to the WASPA member, the complainant was unsubscribed from the service and all monies deducted repaid in full.

Notwithstanding the foregoing, the complainant held that his complaint had not been resolved to her satisfaction due to the fact that she claims she was automatically subscribed to the service and that this is in effect "trapping innocent consumers" and that should be contrary to the WASPA code, and that furthermore the refund which she received took 5 weeks to be paid.

Service provider's response

The service provider responded with details of how and when the subscription had occurred as well as details of how and when billing had occurred and details of removal from subscription to the service of the complainant and consequent refunding of monies deducted.

The service provider's response was as follows:

"On 2nd November 2009 at 17:07:43 this customer's number was entered onto our website <http://www.mobile-africa.net/total-embarrassing> requesting an invitation wappush to join our service. Our website makes it abundantly clear that this is a subscription service. The details of the service, cost and duration are made explicit on the site, and are repeated in the Terms and Conditions displayed (please see attached screenshot). The instructions above the number-input box state: "TYPE in your NUMBER and JOIN". Once the customer has typed in their mobile number they then need to click the link "JOIN" to send their request for an invitation wappush to join the subscription service. They are not, at this stage, subscribed.

The requested wappush was sent a few seconds later to this customer's phone. The customer was then free to either ignore the message, delete it, or use it to visit our wapsite. At 18:05:13 she chose to use it to visit our wapsite. She was not, at this stage, subscribed.

Once there, she was reminded, yet again, that this was a subscription service and given the service details and costs. She was free to browse the wap site and, if she so wished, exit it without making a purchase. She would not be billed by us, but possibly by her provider for the airtime she spent browsing. She was also free to opt-out of receiving any further messages from our company by using the op-out provision beneath the Terms and Conditions, by clicking the link which says: "Stop promotion to 27832673089?". She was not, at this stage, subscribed.

This customer did not opt-out at this stage, or any other, but proceeded to subscribe to the service by downloading content: at 18:05:19 on 2nd November 2009, she downloaded the video clip entitled "Video100056" using a Nokia N70 handset (our system records the make and model of the handset used to make a download).

At 18:07:14 a welcome message was sent to this customer's handset detailing the service, cost, how to contact us, and instructions how to stop the service, which reads: "Welcome to the Total Embarrassing video service! Help: 0861000980. To stop SMS STOP to 31639. Cost R20 / 5 days."

This customer did not opt-out, or send a 'stop' command, at any time, and continued using our service for over 5 months (24 weeks).

During those 5 plus months, aside from the content messages she received each week from our company and was billed for via her service provider MTN (62 in total), she also received a free of charge cost-reminder message each month (5 in total) which reads: U r subscribed to w2mobile Total Embarrassing Club. Cost R20/5days. For help, sms HELP to 31639 or call 0861000980. To unsubscribe, sms STOP to 31639. (Please see attached log).

The following year, on April 30th 2010, this customer's subscription was stopped by a member of our Customer Care team, after receiving an email from WASPA that day, requesting us to do so as the customer had lodged a complaint and wished to be refunded for the service she had used for the previous five months.

It is well known that to encourage our customers to remain loyal and to enable them to purchase from us with confidence, unique to the industry our company offers, world-wide, a simple no-quibble full refund guarantee to any customer who is not completely happy with our services.

Immediately our Senior Customer Service Operator, Donna, was in receipt of this customer's complaint she contacted the customer and confirmed that the subscription had been cancelled and that, as a gesture of goodwill, she would be receiving a full refund of R1240.00.

On the same day, Friday April 30th 2010, Donna received an email reply from this customer in which the customer thanked us for our prompt response and detailed the method of refund of her choice.

The following Tuesday 4th May 2010 (after the Bank Holiday Monday), Donna replied confirming that the refund would be arranged and advising the customer that she should allow up to 4 weeks for the complete process.

Three weeks later this customer mailed WASPA stating that she had waited more than 4 weeks to receive her refund (which is untrue, please see attached proof), accusing our company of fraud and demanding that we credit her account the incredible amount of R1240.00. “

Sections of the Code considered

The service complained of falls within the ambit of the definition of a subscription service as set out in the Code of Conduct. The sections of the Code of Conduct applicable to this issue are sections 11 dealing with Subscriptions Services and section 4.3.3 dealing with the payment of a refund.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her.

With reference to (i) the SP's response to the complaint, (ii) the complainant's reply, (iii) the logs accompanying the SP's response to the complaint, and (ii) the sections of the Code considered. It appears from the information contained in the SP's log that the mobile number in question did subscribe to the service and a confirmation message was sent to the complainant's number by the SP regarding his subscription to the service. On the basis of such information and in the absence of any contradictory evidence or the contents of the communications, I am inclined to give the SP the benefit of the doubt regarding the manner of subscription.

Further, I am satisfied that the SP has dealt with the unsubscribe request and that the complainant has been validly unsubscribed from the service.

It is therefore my decision after careful consideration of both the code and the intention behind the drafting thereof that the WASPA member/service provider has not fallen foul of the abovementioned sections either partially or in whole.

The rational for my decision is as follows:

1. The service provider follows and complies fully with the WASPA code in their processes for subscription services.
2. The service provider offered a full refund without question and although this took time to process I do not think this is unreasonable bearing in mind that they informed the complainant that the refund would take this period of time.

Sanctions

None