



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK/iTouch
Information Provider (IP):	Not applicable
Service Type:	Automatic Subscription
Complainant:	Helena de Swardt
Complaint Number:	5252
Code Version:	5.7
Advertising Rules Version:	Not applicable

Complaint

The Complainant lodged the following complaint:

“Please stop immediately the "worldplay online" and "integrat online" stuff that comes through on my cell phone. Don't know how it got there and I very upset about the HIGH fees connected to it. – Please unsubscribe, provide proof of subscription and or refund.”

The Complainant was unsubscribed, but was unhappy and requested a refund due to the fact that she allegedly did not request the subscription service.

Service provider's response

In its final response the SP stated the following:

“We thank you for forwarding this complainant through to us. Please note that in the reporting information window below you will find the date on which the user subscribed and the date on which the user was unsubscribed: This user is no longer subscribed to the Club Movilisto service...”

Attached you will find the messages sent in by the user on the date the user subscribed to the service, as well as the messages sent to the user from the club movilisto service and monthly reminder messages during his or her subscription window...”

The SP attached the logs wherein the Complainant's subscription window was revealed.

Sections of the Code considered

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

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

11.1.2. 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 bundled with a request for a specific content item.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the SP's response and has analysed the logs provided.

This is a typical cases of an I say you say case where the Complainant alleged that she did not subscribe to a service and the SP alleging that the Complainant did indeed subscribe.

In this matter the SP provided sufficient proof that the Complainant subscribed. The SP also followed the correct protocol and sent a confirmation SMS where it made the Complainant aware of the fact that she was indeed subscribed. The SP also provided the Complainant with the opportunity to unsubscribe. Monthly reminders were also forwarded onto the Complainant and without any evidence from the Complainant to prove otherwise, the Adjudicator has no alternative but to accept the logs from the SP as proof that the Complainant was subscribed.

Whether the Complainant was in fact aware of the fact that she subscribed and whether it was a third party that subscribed on her behalf, is not relevant here. The Adjudicator is of the opinion that subscribers to services are responsible for their own handsets and that it cannot be expected from SPs to refund every subscriber that came to realize that they are being charged for services to which they themselves may not have subscribed, but where somebody else made use of their handsets and subscribed on their behalf.

The Adjudicator is further of the opinion that the Complainant had more than enough ample time to stop the subscription and the time elapsed from subscribing to the eventual request to have the services stopped, is a clear indication thereof.

The Complaint is dismissed.
