



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	Buongiorno UK
<b>Information Provider (IP):</b>	Not applicable
<b>Service Type:</b>	Subscription Service
<b>Complainants:</b>	Jean Moolman
<b>Complaint Number:</b>	6274
<b>Code Version:</b>	6.2
<b>Advertising Rules Version:</b>	2.3

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### Complaint

In the initial complaint The Complainant stated the following:

“I received an SMS on my number +27833062022 from +27839200275 that I have been subscribed to Fun Club. It expected me to SMS stop to cancel the subscription at R10/SMS. I phoned the number provided immediately to cancel (0214178001) because I can categorically prove that I did not access the link at the time they stated or at any other time. I made these calls at my own cost because I was not prepared to send the stop SMS at my cost because it would still take 24 hours to cancel and I would be charged R10/day. This has happened before and I received an MTN loaded message to the same effect for something I did not subscribe to. It may be that there is an error on the MTN network. The call centre could not assist me and MTN Service Provider could not assist either. I therefore would like them to do the following:

1. Reimburse me for the subscription I did not ask for as well as the phone calls I needed to make.
2. Block all this content on this number at all service providers until I ask for it to be removed.
3. Explain to me how this occurred.
4. Apologise for the amount of effort and time it took me to resolve something that is patently a problem on their side.”

The Complainant provided the following reason for the escalation of its request to a formal complaint:

“My problem is that I did not request this in the first place and I have evidence to prove that I did not make the request from my phone.

I therefore expect the service provider to reimburse me for all expenses incurred and apologise for the error, whether it be on my cell phone provider (MTNSP) or the WASPs side.”

In its final response the Complainant stated:

“Thank you for the feedback. I confirmed with my service provider MTN SP and no data connections were made from my account on that day.

They can refer to MTN SP if they have any queries. I also requested a detailed billing breakdown showing that no WAP connections were made from my account.

I also contacted the call centre number on the SMS they sent and asked someone to contact me.

No feedback yet. The service from this provider is truly appalling.

What is the situation now?”

The copy of the Complainant's bill of the itemised calls from the MTN was provided.

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### **Service provider's response**

The SP wrote the following:

“The user's subscription was started via mobile website, as per the media key fca\_mkh955\_4844, as can be seen in the detail options window, which the user accessed. The page accessed informs the user that by clicking the join now link that he or she is entering into the fun club subscription service at R10/day. We were not able to obtain the users mobile number in any other way but, only if the user interacted with our fun club service via our mobile website advertisement. The user was informed via sms on how to end the fun club subscription, as mentioned in his request below, therefore, we do not feel a refund forthcoming in this regard, as the user did interact with the fun club website interface and did click on the link to join.

Sms delivered to the user is available in the Mobile Traffic Report Screenshot below.

In the report, it can be noted that the user sms'd in Stop Fun to 31194 to end the subscription.

These keywords were provided within the sms's sent to the user.”

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### **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.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

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.

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

11.2.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.2.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times.

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## **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 Complaint and the SP's subsequent response.

The SP has provided proof of the fact that the Complainant in this matter has requested to stop its subscription services. It further provides proof of the subscription.

The Complainant however provided proof to the contrary, illustrating from his perspective SP provider that he made no attempt in accessing the web via his mobile phone on the dates alleged by the SP in this matter.

These facts read together with the logs provided reflect contradictory evidence and boils down to the typical scenario of I said this you said that.

However, should there be some overriding factor(s) which might alter the opinion of the Adjudicator, mention thereof must be made, and this is indeed what is unfolding here.

It has come to the attention of the Adjudicator that there have been several complaints in the same month pertaining to similar services.

These were all lodged as formal complaints against the SP in this matter.

All complaints have its origins based on similar allegations, ranging from frustrations with the “brain-age” service, users stating that they either did not receive a pin, or when receiving the pin, did not enter the pin and therefore did not consent to a subscription service, to other complaints, as can be seen in this specific matter where the Complainant stated that he did not subscribe to the said service.

In light of these circumstances and the occurrence of similar events, manifesting itself over the same time period, the Adjudicator has to ask him / her whether there is a malfunction or case of deception on the part of the SP.

This read together with other decisions based on similar cases, leaves the Adjudicator with no alternative but to find the SP in breach of sections 4.1.2 of the Code.

The Complaint is upheld.

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### **Sanctions**

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;

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The SP is instructed to refund the Complainant in full;

In addition, the sanctions provided in Adjudication 5921 refer:

1. The SP is required to suspend the service and access to the site it is hosted on until such time as it complies with the orders set out below. The SP may not initiate any new or existing billing transactions for the service during such period of suspension; however it may process any unsubscription requests;

2. The SP shall send an sms notification to all existing subscribers of the service in the format prescribed in 11.4 of the current Code (the SP shall furnish the WASPA Secretariat with confirmation that it has notified its subscribers);

3. The SP shall ensure that welcome messages sent to the service's subscribers comply with the requirements of 11.1.10 of the current Code;

4. The SP shall clearly indicate at the first point of contact with the service and all subsequent pages and sites that the service is a subscription service and

further precisely what the subscription entails. These indications must be clearly visible and unambiguous.

5. The SP shall ensure that any reference to or implication of the availability of single items is removed from the service's site such that the site only makes reference to its subscription content in clear and unequivocal terms;

6. The SP shall ensure that its terms of use are amended in accordance with Rule 9.2 of the Advertising Rules;

7. The SP is fined:

7.1. R20 000 for its breach of 4.1.2 on the basis set out above; and

7.2. R30 000 for its non-compliance with 11.1.2 and 11.1.4 in that it bundled a single item with a subscription service and its failure to adequately differentiate between single items and subscription services.

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the SP is indeed complying with this.