



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#34678
Cited WASPA members	airG Worldwide Cooperatie U.A. (1526)
Notifiable WASPA members	n/a
Source of the complaint	Public
Complaint short description	No explicit confirmation of subscription and no reminder message sent
Date complaint lodged	2017-07-05
Date of alleged breach	Same as above
Applicable version of the Code	v15.0
Clauses of the Code cited	15.9; 15.19
Related complaints	n/a

considered	
Fines imposed	n/a
Other sanctions	n/a
Is this report notable?	No
Summary of notability	n/a

Complaint

1. The complainant logged an unsubscribe request to be unsubscribed from the member's subscription service.
2. The member responded by unsubscribing the complainant and offered a full refund of all charges incurred by the complainant. The member also uploaded copies of its internal server logs to prove valid activation of the subscription.
3. The complainant was not satisfied with the member's response and requested that the complaint be referred to formal adjudication.
4. The complainant denied that they knowingly subscribed to the service in question or that they could have done so by mistake.
5. In support, the complainant confirmed that they did use the mobile application from where the subscription request originated (i.e. a currency application known as XE.com), but argued further that this application has limited functionality and the complainant would not have mistakenly clicked on anything except perhaps closing pop-up adverts that appeared on the screen while using the application.

6. The complainant added that even if they had mistakenly clicked on an advert to initiate a subscription request, they would not have confirmed the subscription. The complainant has no recollection of ever seeing a subscription confirmation page for the service in question. Had one been presented to them, they would have recognised this immediately because the confirmation page would have been notably different to the look and feel of the XE.com application pages.
 7. The complainant also states that they never received any reminder message after the subscription was activated and continuing for approximately 60 days before the unsubscribe request was made. The complainant therefore alleges that the member has also breached clause 15.19 of the WASPA Code.
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Member's response

8. The member states that it promptly communicated with the complainant immediately after the complaint had been lodged, firstly through its overseas service centre and subsequently through its local staff in South Africa, and confirmed that it had refunded all charges incurred with no questions asked.
9. The member provided copies of "expanded purchase logs" allegedly demonstrating the interactions on its servers for this particular subscription.
10. The member alleges that its logs show the following:
 - 10.1 the complainant's initial landing on the offer landing page at 2017-02-22 T21:08:51;
 - 10.2 approximately 10 seconds thereafter, the complainant's acceptance of the offer at 2017-02-22 T21:09:01; and
 - 10.3 approximately 5 seconds thereafter, delivery of an SMS welcome message containing clear unsubscribe procedures at 2017-02-22 T21:09:06.

11. The member states that logs show further that the initial advertisement for its service was shown on the XE.com currency reporting application and that the advertisement was served through the MoPub ad network. The member confirmed that it purchases mobile ads on this platform.
 12. The member states that the logs also show what mobile device, operating system, and browser software were used during the various interactions with its servers, including throughout the landing and purchase.
 13. The member believes that the information contained on its logs collectively creates a unique meta-data "fingerprint", and invited the complainant to evaluate whether this fingerprint matched any of the devices etc. used by the complainant or those of anyone in their household.
 14. The member stated further that it complies with, and often exceeds all industry regulations related to the billing and advertising of mobile content services, customer service, and customer education. It then detailed some of the steps taken in general to prevent fraudulent activity taking place.
 15. The member initially did not respond to the allegation that it had contravened clause 15.19 by failing to send a reminder message after the subscription had been activated.
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Complainant's further response

16. In response to the member's "very detailed assertions", the complainant reiterated that they would not and did not knowingly subscribe to the service in question and would not have done so by "mistake".
17. The complainant argued that the logs produced by the member could easily be manufactured and/or amended and could not be trusted without independent verification by a third party.

18. The complainant also stated that the logs produced by the member indicate that the member had violated clause 15.19 of the WASPA Code since there was no indication in the logs that the required reminder message/s were sent.
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Member's further response

19. The member responded to the complainant's further submissions and arguments by categorically denying that it had manufactured the server logs provided.
 20. The member argued that because the logs contained at least 8 different indicators of the source of the subscription activation, it would be almost impossible to manufacture the logs.
 21. Although it had not been able to verify whether the handset, operating system, and browser software reflected on its logs were linked to the complainant or someone in their household, the member stated that the complainant had confirmed their use of the relevant mobile application from where the subscription request originated and that they were aware of mobile ads when using the application.
 22. The member stated that if the complainant's handset and software etc. did not match the information contained in its logs, it could then investigate the matter further and possibly provide other explanations for the interactions on its servers, including the possibility of a shared data plan or sim card.
 23. In response to the complainant's allegation that the member failed to send the required reminder message after the subscription was activated, the member alleges that the service in question is launched as a Vodacom "on-deck" service, and as a result billing and subscription management of the service is controlled and managed by Vodacom. This meant that after the subscription was activated, SMS billing reminders are handled by the Vodacom billing system and not by the member.
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Sections of the Code considered

24. The complainant cited clause 15.9 and 15.19 of the WASPA Code of Conduct as the basis for their complaint.

25. Clause 15.9 reads as follows:

The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

26. Reference should also be made to clauses 15.10 and 15.11, which deal with how confirmation should be effected when the subscription request is made via a webpage, as was the case in the present complaint.

27. Clause 15.10 reads as follows:

For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

- (i) The customer's mobile carrier may implement the confirmation step.*
- (ii) The member can provide the customer with a "confirmation page".*
- (iii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.*

28. Clause 15.11 reads as follows:

A confirmation page must contain the following information:

- (a) the name of the service,*
- (b) the pricing information,*
- (c) a customer support number,*
- (d) instructions for confirming the initiation of the subscription service, and*
- (e) a link to any applicable terms and conditions.*

Additional information about the service may also be included, provided it follows the above information.

29. Clause 15.19 reads as follows:

A reminder SMS message must be sent to a subscription or notification service customer within 30 days of the initiation of the service, and once per calendar month thereafter. This message is referred to as the "reminder message". The customer must not be charged for any reminder message.

30. Reference should also be made to clause 15.20, which contains further requirements for the content of the reminder message. Clause 15.20 reads as follows:

The reminder message must be a single message for each service the customer is subscribed to, and must not contain any line breaks or carriage returns. The reminder message must begin with the word "reminder" and then contain only the following additional information:

- (a) the name of the service,*
- (b) the pricing information,*
- (c) an indication that the customer has already reached the threshold (if this is an additional reminder message),*
- (d) a customer support number,*
- (e) instructions for terminating the service, and*
- (f) (optionally) a link to a WAP landing page or a web page describing the service*

31. No further clauses were assigned by WASPA.

Decision

Alleged breach of clause 15.9

32. As is common in complaints of this nature, the complainant has denied that they ever intended to subscribe to and/or make use of the member's service.
33. However the issue to be determined here is not whether the complainant intended to subscribe to the service, but rather whether the confirmation process mandated by clause 15.9 was properly followed before the subscription was activated.
34. The member has produced detailed logs of the various interactions that took place on its servers before and up to the activation of this particular subscription.
35. The logs provided include details about the make and model of the subscriber's handset, as well as the type of operating system and browser software used.
36. The complainant has alleged that these logs could easily be manufactured by the member and cannot be accepted as valid without independent verification from a third party.
37. However, before it becomes necessary to engage independent experts, the complainant could easily have verified whether or not the details appearing in the logs provided actually matched the handset, operating system, and browser normally used by the complainant. Despite being invited by the member to do so, the complainant did not take the opportunity to do so.
38. In the absence of any further proof, there is nothing further before me that indicates that the member's logs were "manufactured" and/or that the information contained therein is not valid.
39. Furthermore, it has been established that the subscription request came in via a mobile advert displayed with the XE.com mobile application and that the complainant was a frequent user of this application. The complainant has also confirmed that the time of the evening when the subscription was activated corresponds with the time that that usually make use of the application.

40. The complainant also confirmed that they were aware of the mobile ads that often appeared on screen when using the XE.com application, and that they would click to close these adverts from time to time.
41. Despite the complainant being extremely knowledgeable with respect to mobile services, it is not unreasonable to conclude that the complainant may have inadvertently clicked on an ad for the member's subscription service while using the XE.com application.
42. However, even if they did, the more pertinent questions are a) was the complainant then presented with the further confirmation step mandated by clause 15.9; and b) were they required to give explicit confirmation before the subscription was activated.
43. The information contained in the member's logs suggests that the required confirmation step was followed and that confirmation was explicitly given.
44. The complainant, on the other hand, has stated that even if they had inadvertently clicked on an ad for the service in question, their attention would have been drawn to a confirmation page because it would have a different look and feel to the normal webpages associated with the XE.com application.
45. The complainant stated further that they do not recall ever seeing a confirmation page for the member's service and alleges that the confirmation was obtained through some other "prohibited actions".
46. The complainant offered no further evidence in support of this allegation other than their own subjective views on the motives behind the conduct of the member when dealing with the complaint and the unsupported allegation that the logs provided by the member were not valid.
47. Unfortunately, I cannot rely purely on the complainant's own conjecture and unsubstantiated allegations to contradict what is contained in the member's logs.
48. As previously stated, it would have been a relatively simple exercise for the complainant to demonstrate that the "unique meta-data fingerprint" relied on by the member did not match the complainant's hardware and software. The complainant has failed to do so and I find this telling.

49. In the absence of any further proof, I am unable to make a finding that the member has breached clause 15.9.

50. The complaint in this regard is accordingly dismissed.

Alleged breach of clause 15.19

51. Regarding the alleged breach of clause 15.19, the member has stated that the complainant's network provider was responsible for sending the required reminder message/s.

52. The member's submission in this regard has not been challenged by the complainant.

53. Therefore, in the absence of any proof to the contrary, I must accept the member's explanation as valid.

54. The complaint in this regard is accordingly dismissed.