



REPORT OF THE ADJUDICATOR

| | |
|---|--------------|
| WASPA Member (SP) | ViaMedia |
| Information Provider (IP) (if applicable) | CBT Media |
| Service Type | Subscription |
| Source of Complaints | Public |
| Complaint Number | #0076 |

Complaint

A complaint was received from a member of the public indicating:

“There has been 5 weekly unauthorized deductions from my account. I did not knowingly subscribe to any such service, NOR did I ever receive any content. The deductions were for the amount of R4.39 on the 5th and 12th Nov (unknown dates in October). The service was hosted by ViaMedia”

The following clauses of the WASPA Code of Conduct were considered:

2.20. A “**subscription service**” is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

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.

11.1.3. Where feasible, billing for a subscription service must indicate that the service purchased is a subscription service.

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.

SP response

The Secretariat received a response from the IP, forwarded by the SP.

Such response indicates:

I have check[ed] our records with regard to [the complainant].

What follows is a chronology of events that we have recorded:

- *The customer sent a request to our service on 05/29/2005 at 00:59 with the keyword "Beaver". The adverts for this service stated that the service was a subscription service.*
- *This keyword was a trigger for our HARDcore Club Subscription service and content.*
- *He was sent a Welcome message, which confirmed the user had joined a subscription club with info on pricing, billing frequency, stopping- which we have confirmed, was delivered to the customer.*
- *He lodged this a complaint with WASPA.*
- *He subsequently called ViaMedia's call centre and after having had the situation explained, is satisfied with the explanation.*
- *At the same time he requested that his club membership be terminated and it was immediately stopped by our operator and he was sent a confirmation sms.*
- *The SP has subsequently verified his satisfaction, with him, in an independent follow up call (which apparently led to a very constructive conversation as the Complainant is also a WASP and understands the industry well).*

Although it appears as if the complaint has been resolved directly with the complainant, I'd like it to be noted that:

- *The customer made a valid Club request for which he was subscribed*
- *The service, at the time, was what is now considered 'bundling' and is prohibited by the Code of Conduct, to which we do conform, however, the event occurred (29th May 05) long before the code of conduct was published or in place (1 Sept 05).*

We trust that the fact that:

1. *first and foremost, the complainant has been satisfied and;*
2. *secondly that the only contravention of the Code of Conduct was 'bundling' BUT this occurred long before the implementation of the Code of Conduct*

that this complaint can be considered resolved.

Decision

The WASPA Code of Conduct does not allow for a complainant to respond to the submission of an SP (or IP) and as such, the IP's submission must be taken at face value.

Notwithstanding the suggestion of certain WASPA members, at the time that the WASPA Code of Conduct was introduced on 1 September 2005, no measures were put in place, which would require a WASPA member providing a subscription service to unsubscribe customers who had subscribed to the subscription service prior to 1 September 2005. As such, the Adjudicator is unable to find against the SP in respect of the actions of the IP prior to the introduction of the WASPA Code of Conduct, even though these actions continued after the introduction of the Code.

The complaint is accordingly not upheld.

The Adjudicator notes that there is no appeal mechanism available to a complainant however, should the complainant not agree with the factual version submitted by the IP, he is welcome to submit a further complaint.