

REPORT OF THE ADJUDICATOR

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| Complaint reference number: | #11417 |
| WASPA member(s): | Bokamoso Systems Solutions and Consultancy, known as “Banto Mobile” (the Information Provider or “IP”) and Mira Networks (the Service Provider or “SP”) |
| Membership number(s): | 1225 and 0011 |
| Complainant: | Public |
| Type of complaint: | Subscription service |
| Date complaint was lodged: | 2010-11-23 |
| Date of the alleged offence: | 2010-11-23 |
| Relevant version of the Code: | 10.0 |
| Clauses considered: | 11.2.1, 11.9.12, 11.9.9, 11.10.2 |
| Relevant version of the Ad. Rules: | Not applicable |
| Clauses considered: | Not applicable |
| Related cases considered: | Not applicable |

Complaint

Complaint # 11417 pertains to unsubscribe request #28932, where the IP (a WASPA Affiliate member) did not respond to the unsubscribe request.

Although the initial complaint notification sent by WASPA to the IP on 15 December 2010 stated that the unsubscribe request had been logged on the WASPA unsubscribe system on 24 November 2009, subsequent information provided by the WASPA Secretariat indicates that the unsubscribe request that is the subject of this complaint was logged on the WASPA system on 23 November 2010 (and that the complaint notification was accordingly sent to the IP on the 15th of the following month). There is evidence of other unsubscribe request activity on the Unsubscribe Request log generated by WASPA for the Complainant’s MSISDN but that history is irrelevant to the particular complaint at hand.

The formal complaint was forwarded to the IP as Affiliate member of WASPA on 15 December 2010 after both the SP and the IP had failed to respond informally to the abovementioned unsubscribe request. Also on 15 December 2010, WASPA notified the SP of the complaint, given that it appeared that the IP was making use of the SP’s infrastructure to provide the service complained of. The SP did not, however, respond to this notification – and subsequent clarification from the Secretariat has indicated that the SP handed over the unsubscribe request to the IP on 24 November

2010, which was the day after the relevant unsubscribe request was logged on the WASPA system. The IP's response at this stage (on 15 December 2010), was a reply to WASPA's incorrect initial complaint notification, which cited the unsubscribe request as having been logged on 24 November 2009. The IP's email to WASPA stated as follows:

"Please take note that Banto Mobile Services have been suspended and stopped running as of the end of August 2010. We do not have knowledge of all other recent services that are said to belong to Banto Mobile. Please be so kind as to enlighten us in this regard."

WASPA replied on the same day as follows:

"Banto Mobile is still a member of WASPA and is still required to respond to unsubscribe requests when logged as per our COC:

11.9.12. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA. On 2010-11-24 Mira Networks did a hand-over on unsubscribe request #28932 to Banto Mobile. As per procedure, if no response is received from a member, the complaint is escalated. Please provide a response to this complaint, as Mira Networks indicated that this number was part of your service."

No response to this communication was forthcoming, and WASPA sent a further email to the IP on 5 January 2011 to notify it that, as set out in the Code, members have 5 working days to provide a response to complaints lodged. It stated that should no response be received from the IP by close of business that day, then the Secretariat would be obliged to hand the complaint to an adjudicator without the benefit of the IP's input. No further response was received, and the complaint was accordingly referred for adjudication.

After I had considered the original documentation in this matter pursuant to its referral for adjudication, and being under the impression at the time that the relevant unsubscribe request took place on 24 November 2009, I requested on 21 June 2011 that WASPA direct the following request for further information to both the IP and the SP, for response within 5 working days:

- "1. Mira Networks is expressly requested to confirm that Banto Mobile was still a client of Mira Networks in and during November 2009.**
- 2. Mira Networks is requested to confirm the total value of all revenue received from any network providers in respect of any of the Banto Mobile services or Banto Mobile transactions during the period 1 August 2009 to 31 December 2010.**
- 3. Mira Networks is requested to confirm the value of all revenue paid to Banto Mobile by Mira Networks in the period 1 August 2009 to 31 December 2010.**
- 4. The complainant in complaint #11417 alleges the receipt of an unsolicited SMS containing a URL and video message for which she was debited R20.00. Banto and Mira are invited to provide all such information as they may have that may refute the complaint, including any subscription and/or transaction records that may**

be applicable, failing which the complaint may be adjudicated on in the absence of such response.

5. **Banto Mobile and Mira Networks are also requested to provide any advertising and /or landing pages that may have been used to promote the service or enable the transaction and any messages or screens containing terms and conditions related to the transaction."**

The above communication was sent to the SP and IP on 21 June 2011, and the IP replied on 21 June 2011 as follows:

"Please take note that:

1. **Banto Mobile was not a client of Mira Networks in the year 2009.**
2. **Banto Mobile has not received any proceeds whatsoever from Mira Networks or any other mobile network service provider or WASP.**
3. **Banto Mobile has terminated its membership with WASPA and no longer provid[es] mobile content since 01 September 2010.**
4. **Banto Mobile has no knowledge of the client and billing in question."**

A few days later, on 24 June 2011, the SP responded as follows:

"Banto Mobile was not a client of Mira Networks during 2009. They only signed an agreement with us in June 2010 for a service that was to be migrated from T Mobile. However I need to stress that it was suspended shortly after when we realized they are unable to provide any valid proof of opt-in for their database. We terminated their agreement after several unsuccessful requests to provide valid proof. No revenues were ever paid to Banto Mobile. The original complaint was made in 2009, when Banto Mobile was not yet using our gateway. Therefore this complaint does not involve Mira Networks."

Given the above responses, I subsequently directed certain questions to WASPA on 5 July 2011 for further clarification. WASPA responded on the same day, explaining the reason for the confusion around the actual date of the relevant unsubscribe request (namely that there is a history of other unsubscribe request activity on the Complainant's MSISDN, which history predates the actual unsubscribe request that has given rise to the particular complaint at hand. The relevant unsubscribe request occurred on 23 November 2010). It also clarified that the WASPA membership database reflected that the IP joined WASPA on 29 June 2010 and left on 1 February 2011.

On 30 August 2011 the SP and IP were both given a further opportunity to respond to the complaint after the actual date of the unsubscribe request had been clarified. A request for further information was forwarded to the SP and IP in the following terms:

1. **The initial complaint notification sent by WASPA to the IP on 15 December 2010 recorded that the unsubscribe request had been logged on the WASPA unsubscribe system on 24 November 2009.**
2. **The IP and SP have responded by pointing out that the IP was not a member of WASPA in November 2009 and that the SP was not providing any services to the IP in November 2009.**

3. **Subsequent information provided by the WASPA Secretariat confirms that the unsubscribe request that is the subject of this complaint was logged on the WASPA system on 23 November 2010 and not 24 November 2009 as stated in the original complaint notification.**
4. **Can the IP and/or SP now give their reply as to why this unsubscribe request logged on 23 November 2010 was allegedly not processed by 15 December 2010?**

Please could you provide the requested information to the WASPA Secretariat at your earliest convenience, but in no later than five working days."

Information Provider's and Service Provider's response

The IP responded as follows on 30 August 2011:

"Kindly note that this does not concern Banto Mobile. The services for Banto Mobile have been terminated a long time ago prior to the dates stated below."

According to WASPA's database, the IP was a member of WASPA until 1 February 2011, which covers the date on which the relevant unsubscribe request was logged. As verified previously by the SP, there was also a service being provided by the IP in and during 2010. Indeed, the SP responded to the IP's above communication, copying WASPA, on 30 August as follows:

"The number 27837290791 was billed by yourself through Mira Networks's platform on the 30.08.2010 and amount of R2 was taken from the customer. The reason for the below escalation to a formal complaint is because there was no response on a complaint that was escalated to yourselves on the 23 November 2010."

The IP responded by saying that it was no longer practicing as a "WASP company" in November 2010, and that it could not have received any escalations or queries since it had "gone out of business" due to the fact that it did not receive any proceeds from the SP. Following this email interchange the SP requested that WASPA close the case, stating that the amount billed was only R2.00 and that the Complainant had in any event not requested a refund. WASPA responded that the complaint had already been escalated and was in the process of adjudication, and that the escalation was not because of the charges to the Complainant, but because the IP did not respond to an unsubscribe request as required by the Code.

Sections of the Code considered

"11.9.12. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA."

“11.9.9. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

Or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. You'll then be resubscribed at [cost of service and frequency of billing].”

Decision

The following facts have been established:

- the IP joined WASPA in June 2010;
- the SP and IP signed an agreement in June 2010 regarding a service in terms of which the IP used the SP's gateway;
- WASPA has confirmed that the date on which the unsubscribe request was logged was 23 November 2010;
- the SP handed over the unsubscribe request to the IP for it to deal with, the following day (24 November 2010); and
- the IP's membership of WASPA was terminated on 1 February 2011.

The original arguments by the IP and SP that the service that formed the subject of the unsubscribe request could not have been offered by the IP in conjunction with the SP due to the timing of the unsubscribe request is not capable of being upheld in light of the above clarified facts. The SP has conceded that the relevant unsubscribe request that is the subject of this complaint did arise due to the service offered by the IP using its gateway in and during 2010.

Section 11.9.12 of the Code imposes an obligation on WASPA members to honour any unsubscribe request within 48 hours of the request being passed on by WASPA. It states as follows:

“11.9.12. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.”

The relevant unsubscribe request was logged on the WASPA system on 23 November 2010. The SP received the unsubscribe request and handed it over to the IP on 24 November 2010, and the IP never responded. The IP was still a member of WASPA at this time, and was so for at least a further 2 month period (until 1 February 2011).

The brief response from the IP above that this complaint does not concern the IP is insufficient to successfully dispense with the complaint, especially given WASPA's records and the additional information provided by the SP.

The complaint is upheld. The IP is found to be in breach of section 11.9.12 of the Code.

Sanctions

For its breach of section 11.9.12 of the Code at the time of it being a member of WASPA:

1. a fine of R5 000.00 is imposed on the IP; and
 2. the fine in paragraph a fine of R5 000.00 is imposed on the IP; shall be paid within 10 working days of the date of delivery of this report.
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