

REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Integrat
Information Provider (IP): (if applicable)	Total Tim
Service Type:	Subscription Service
Complainant:	Vishaan Singh
Complaint Number:	2070
Code version:	Code v5.3 and Ad Rules v1.6

Introduction

This complaint in essence relates to a subscription service offered by the IP through the SP which the Complainant alleges he never subscribed to that which he was apparently nonetheless charged for.

The service "Hits Club" offered by the IP was allegedly subscribed to on the 16th of July 2007 and terminated on the 13th of September 2007.

The dispute commenced with a complaint lodged by the Complainant on the WASPA website. E-mails were exchanged between the Complainant and the SP, the upshot of which was that the SP maintained that the Complainant had in fact subscribed to the service and produced logs of SMS messages sent between the Complainant and the IP to substantiate this, while the Complainant maintained his denial of having subscribed to the service and demanded a refund. A decision must thus be made based on the credibility of the versions advanced by the two parties.

Complaint

The complaint itself was lodged via the WASPA website on the 13th of September 2007 and reads as follows:

"I was \"registered\" by integrat. I never sent an Sms or registered at all but I have been charge R5 a day for this service. I dont even know what this service entails or how they got my number.The phone number in Question is 0839771443. I just receive an Sms everyday and am billed R5 per sms.I was registered apparently from July but only billed from august."

The Complainant's allegations are thus:

1. that he sent no SMS to the SP or IP to register for any service;
2. that he was charged R5 a day for the service alternatively R5 per SMS; and

3. that while he was registered in July he was only billed in August.

In correspondence subsequent to the complaint, however, the Complainant also made following allegations:

4. that he specifically did not register through a website as contended by the SP;
5. that he did not unsubscribe by SMS and that someone else unsubscribed him;
and
6. the subscription that he made to the service was fabricated.

There is a distinct lack of evidence produced by the Complainant in support of his contentions, the only substantive evidence being contained in an e-mail to the SP on the 3rd of October 2007 in which the Complainant alleged that he had confirmed telephonically with Nashua Mobile (presumably his cellular telephone service provider) that he did not send any SMSes to stop the service.

Response

In response to the Complainant's allegations the SP furnished logs of SMSs received from and sent to the Complainant in an e-mail to him of the third of October 2007.

The "incoming" log shows 2 SMSs sent on the 13th of September 2007 from the number "27839771443" (the same number listed by the Complainant in his complaint) containing only the word "STOP".

The "outgoing" log shows a series of SMSs sent to the above number starting on the 16th of July 2007 and ending on the 13th of September 2007. I list the most important SMSs in the order in which they were sent:

16/7/2007: "Enter password 1362 and accept subscription HitsClub:3 ringtones+3 Games per week for R4,99 per day until you send Stop hits to 31606.Helpline 0822350466"

16/7/2007: "You have joined HITS Club. 3 ringtones+4 wallpapers+3 Games per week for R4,99 per day until you send Stop hits to 31606. Helpline 0822350466"

13/9/2007: "You've cancelled all your Clubs. To re-join send, for instance, "dance" to 31606! Cheers: TOTAL TIM"

13/9/2007: "You're not registered in any CLUB! To join SMS TOP to 31606. Helpline:0822350466 Cheers: Total Tim"

When it became clear that the dispute was to be escalated, the SP submitted a formal response to the complaint. The SP alleges that it explained in correspondence to the Complainant how website registration services work:

- "1. *According to our records the number 083 977 1443, was subscribed to TotalTim's Hits Club on 16 July 2007, via webspot. The manner in which web subscriptions are activated is highlighted below;*

- 1.1 a user accesses a webspot;
 - 1.2 fills in his mobile number in the space provided (home screen/page);
 - 1.3 registration process is activated, the password PIN is forwarded to the mobile number;
 - 1.4 user must key-in the password on the screen (registration screen);
 - 1.5 subscription is activated and user receives Welcome message.
2. *Although you aver that you did not register for any services, because of the means of registration, it is highly unlikely that there is foul play. Supposing that the registration process was fraudulent, an impostor would have to be in possession of your handset after the PIN password had been generated; and then enter the latter on the screen. We submit that you have not suggested that you had lost your handset at anytime. In the absence of any indication to the contrary, we must suppose that you, have been in possession of your handset all along.*
 3. *Transaction logs are considered the industry's incontrovertible index, for tracking traffic on mobile numbers. The technology used by Integrat, has not been called into question, and is in fact in compliance with Mobile Network Operators' requirements for aggregation services. It is on this basis that we cannot find justification for awarding Mr Singh a refund."*

Unfortunately the SP has not produced a full copy of this correspondence, nor has it indicated when it was sent to the Complainant. It suffices however as a statement of the steps taken by the IP in registering users for services.

Portion of the Code Considered

The Complainant did not cite any clauses of the Code of Conduct that had allegedly been breached, but as set out in clause 13.1.3 of the Code of Conduct, it is not necessary for those not involved in the industry to cite chapter and verse of the code. It is thus up to the arbitrator to determine which portions of the Code of Conduct are at issue, which in the light of the allegations made by the Complainant are clause 3.1 dealing with "Professional and Lawful Conduct" and clause 11 dealing with "Subscription Services".

Decision

I will deal with **allegations 1, 4, and 6** together. I have been given no reason to disbelieve the information set out in the logs provided by the SP, which, read with the description of the subscription procedure set out above leads me to believe that the following steps were taken: the number indicated by the Complainant was entered into a website operated by the IP on the 16th of July 2007. The first outgoing SMS listed above was sent to the telephone number which the Complainant readily admits is his cellular telephone number on that date. It is clear that a subscription cannot be entered into unless the password sent by SMS is in fact sent back to the IP. Thus an SMS must have been sent from the Complainant's cellular telephone to confirm the subscription and to cause the second "outgoing" SMS to be sent. It is clear that the Complainant, or someone using the Complainant's cellular telephone without his knowledge, did in fact subscribe to the service at issue. The Complainant has not alleged that his cellular telephone was stolen or was otherwise out of his control at the time that this transaction took place.

The only other possibility is that a third party entered the Complainant's number into the website, intercepted the SMS sent to the Complainant, and used the password so acquired to subscribe the Complainant to the service. This possibility seems remote however, especially when read with my comments on allegation 5.

The Complainant has tendered no evidence to contradict the version set out by the SP. The only reasonable conclusion I can come to is thus that the Complainant subscribed to the service.

The Complainant alleged that his subscription records were fabricated but there is certainly nothing in the evidence that points to fraud on the part of either the SP or the IP.

Allegation 2: should the Complainant have been billed per SMS sent to him, this would probably have constituted an infringement of the Code of Conduct, but in the circumstances it is not necessary to decide this point as it is clear from an examination of the logs (which I do not deem necessary to reproduce) that the Complainant was sent a daily e-mail as a matter of course; he was paying for the availability of the service, and the fact that he happened to receive one e-mail per day from the IP is inconsequential.

Allegation 3 -- the Complainant was only billed during August for a subscription service entered into on the 16th of July: I can find no clear provision in the Code of Conduct dealing with the amount of time which should elapse between utilisation of the service and the billing for such a service. However, if a service were billed for an unreasonably long period of time after it was provided, such an action would in the absence of mitigating factors probably fall foul of clause 3.1 of Code of Conduct. Under the circumstances, however, the Complainant has given no indication of when in August he received the account in question. Be that as it may, even in the event of the account being sent to him at the end of August, the lapse of six weeks would be unfortunate but not sufficiently severe to constitute an infringement of the Code of Conduct.

In its formal response the SP quotes a letter from Altech Autopage Cellular (Pty) Ltd reporting a technical problem which led to late billing for services. It is the Complainant's contention that Nashua Mobile is his cellular service provider, and I cannot tell what basis the SP alleges that Altech Autopage Cellular (Pty) Ltd is in any way involved. Given my comments above however, it is not necessary to delve into this issue.

Allegation 5: it is clear from the logs presented by the SP that on the 13th of September 2007 two SMSs terminating the subscription service were sent from the cellular telephone number which the Complainant admits is his. The first SMS was received at 19:05:41, and the second SMS was received at 19:07:35. Moreover, it is clear from the last two "outgoing" SMSs listed above that the unsubscribe instruction was received as stated in the "incoming" log, the second-last SMS having been sent at 19:05:47 (6 seconds after receipt of the first cancellation instruction). I have no reason to disbelieve the logs presented by the SP. I moreover find it significant that the complaint was lodged on the WASPA website at 7:19 PM on the 13th of September, some 12 minutes after the second of the two SMSs terminating the service were received. The only reasonable conclusion that I can come to is thus that the Complainant unsubscribed himself from the service by SMS and then lodged a complaint.

The complaint is dismissed in its entirety.