



REPORT OF THE ADJUDICATOR

Service Provider (SP):	MIRA Networks (Pty) Ltd
Information Provider (IP):	Flexiba Services Interactive S.L
Service Type:	Subscription
Complainant:	Public
Complaint Number:	23637
Code Version:	12.6

Complaint

The complainant submitted that he was subscribed, without his knowledge, to a service. The number in question is a data sim that is in his modem.

The complainant did not believe that a refund addressed the issue.

WASP's response

The IP offered a full refund.

The IP also provided a full explanation of its double opt-in process and records. It also provided further detail at the adjudicator's request regarding the manner in which data sims operate and the measures that have been put in place to prevent data sims being used for subscription processes.

The IP also submitted that the refund had been accepted by the complainant in 'full and final settlement'.

Sections of the Code considered

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.3.1. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- (a) contain a PIN which is then confirmed or validated on the web page, or
 - (b) contain the name of the service, an explanation of the confirmation process, and a URL with a unique identifier, which, when clicked, validates the handset number.
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Decision

1. In the first place, I refer to the submission that the refund was accepted in 'full and final settlement'. I accept that in a situation of threatened litigation, with lawyers involved, these words have the effect of finalising the matter. However, in the first place I see nothing before me to show an acceptance of the offer in full and final settlement. The complainant in fact said, "Notwithstanding Flexiba's offer for a full refund, albeit interest free....I do not regard my complaint as resolved and therefore require further and formal investigation into the way Mira networks/Flexiba/Cellspice conducts their business".
2. I am also not convinced that a consumer who is not *au fait* with the very specific meaning of the offer can have its right to complain curtailed by accepting the offer. Finally, the WASPA forum is not a court of civil dispute, but an industry body tasked with holding members to the Code.
3. I am therefore satisfied that the payment of a refund did not resolve this matter.
4. The WASP has explained that it is not possible to pick up when a data sim is subscribing to a subscription service. It has said:

Imagine the following scenario (not uncommon): A customer is visiting one of our landing pages using his iPhone with a Cell C contract. The iPhone is connected via WiFi to a MiFi router. A Vodacom MiFi router

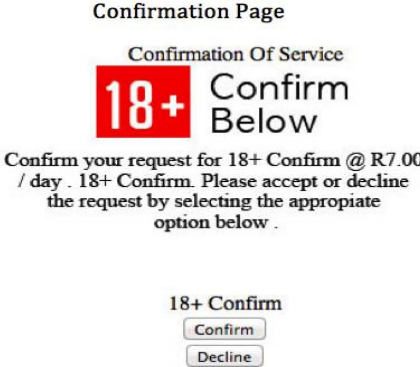
uses a data sim to connect to the mobile operator network and from there to the internet. In this case, we will register a visit from an iPhone on the Vodacom network, and Vodacom will likely sign the user up without asking for the msisdh because Vodacom will detect the msisdh belonging to the MiFi router. For us, the subscriber would show as using an iPhone on Vodacom - it's entirely impossible to know that the network of the iPhone is different to the MiFi router because the MiFi router is invisible to us.

5. I am sympathetic to the challenge inherent in this situation as set out, but do not believe that the situation would be as fraught if due process was followed. I explain below.
6. The WASP explained its double opt-in process in its submissions. These submissions include the completion of a Vodacom pop-up. The WASP said:

On the same day at the same hours, the MSISDN completed the **Opt-in** process clicking on the Vodacom pop-up. Please see hereunder:

<< 2013-09-18 09:27:53 **Optin** 43887 Adult YES Code:2446IP
Address: Page:[http://cellspice.com /lps/amateur/pksa3/](http://cellspice.com/lps/amateur/pksa3/)

7. The relevant pages look like this:

Landing Page	Confirmation Page
	

8. In other words, on the WASP's version, the consumer has to enter a cell phone number into the system. I find it very unlikely that the consumer would enter their data sim number. In the first place, as the complainant

has pointed out, this is not a number that people usually know. In the second place, it would serve no purpose as the idea would surely be to have the content delivered to your cell phone.

9. I do accept that in certain circumstances the number is “automatically” logged. There is no allegation that this is what happened in this matter. In any event, the reasons supplied below belie this problem.
10. The Code at Clause 11.3.1 is quite clear that the process started on a website must involve some sort of verification of that number by way of “a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:
 - (a) contain a PIN which is then confirmed or validated on the web page, or
 - (b) contain the name of the service, an explanation of the confirmation process, and a URL with a unique identifier, which, when clicked, validates the handset number.”
11. I see no evidence from any submissions that such a message was sent. Had it been sent, and the sim was indeed a data sim, then it is unlikely that it would have been received and acted on. In other words, based on the Code and the information before me, if the IP was following the process set out in Clause 11.3.1 then the “problem” of data sims would be addressed. At the point that the consumer entered their cell phone sim number, the communication would “swap” to that number, a verification process would occur, and welcome and reminder messages would actually be received. If the system was still working on the data sim, the verification message would not be received and the subscription could not occur.
12. I am left with the inevitable conclusion that the process described by the WASP is inaccurate, as it cannot have played out as explained. In addition, had the WASP complied with Clause 11.3.1, the situation would have been avoided.

13. I therefore find the WASP in breach of Clauses 11.2.1 and 11.3.1.

Sanctions

I consider these very serious breaches. In addition, I note that it is impossible that all the WASP's submissions are true, given that the submissions are mutually exclusive – either the consumer entered a cell number OR Vodacom automatically ascribed one.

Given this, I fine the WASP:

- [R150 000,00 payable within seven days of receipt hereof;
- [A further suspended fine of R150 000 payable should another breach of this nature occur after the date of receipt of this ruling. Such a fine will be in addition to any other imposed in that matter.