



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:	23965
Code Version:	12.4

Complaint

The complainant submitted that he was subscribed, without his knowledge, to a service. The complainant wanted a full refund, which he detailed, and questioned how the WASP came to have his phone number.

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

WASP's response

The IP offered a full refund.

The IP also addressed various points raised and said, *inter alia*:

With regards to the 3rd point raise, as to how the complainants Service Provider and mobile number was traced. In this particular case, the mobile number was in fact given to us by the user. When we advertise services, we run promotional banners across the internet and mobile internet space. When a user is interested in the promotion, they will click on the banner which will redirect them to a landing page detailing more information about the service, this will include pricing, billing frequency, links to our Terms and much more. The key element of this landing page is the fact that the requestor is requested to insert the

MSISDN (cell phone number) into the box provided. When a requestor does this and clicks continue the information is sent to the network operator and our aggregator (whom is also a member of WASPA) and the Service provider details are returned.

At my request, the IP provided copies of the landing page. At this stage, they raised a point that MSISDN recognition may have been in place, making it unnecessary for the complainant to enter his cell number.

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. This matter arose at the same time as the matter considered in matter 23637, and raises many of the same challenges for the WASP relating to the possible use of data cards and, in this case, an express allegation that there may have been automatic recognition of a data sim card MSISDN.
2. In addition, the process explained was similar to that explained in 23637, and the breach of the Code is therefore similar.
3. The Code at Clause 11.3.1 is 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.”
4. 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.
 5. In addition, the WASP would be able to furnish proof in the form of logs that the verification message was sent and acted on, shifting the enquiry somewhat.
 6. **In a case where the WASP does not even attempt to show that it has sent a verification message, the inevitable conclusion is that they are in breach of Clause 11.3.1.**
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Sanctions

I consider these very serious breaches. However, the WASP has been harshly sanctioned in matter 23637, and as that matter has a suspended fine, I consider that it adequately addresses the issue going forward.

I do, however, order the WASP to pay a full refund. The WASP has alleged that this amount is R 938. I have calculated that this is indeed a fair reflection of a R7 a day charge from date of subscription in November 2013 to March 2014. The complainant is alleging greater charges, but this seems unlikely if he did not actually use anything related to the service. Given that he denies subscribing or knowledge of the service,

it is unlikely he would have incurred further costs. I am therefore satisfied that the amount of R938 is *ex facie* fair, and order that if it has not been paid, it should be paid within 7 days of receipt hereof.