



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Buongiorno UK
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	Public
Complaint Number	#4110
Date received	24 April 2008
Code of Conduct version	5.7

Complaint

The Complaint centres around a dispute as to whether the Complainant subscribed to a service offered by the SP or not.

The Complainant most vehemently denied having subscribed to the SP's service as well as that of another WASPA member. After becoming aware of the deduction of money from his prepaid account he immediately contacted Vodacom who indicated that he was subscribed to the two services. He thereafter contacted both SPs requesting that he be unsubscribed, that proof of subscription be provided and that he be refunded for the charges deducted.

The Complainant acknowledged having received reminder messages from the two SPs but states that he regarded these as spam and deleted them immediately – he had no reason to believe he was subscribed to any service and therefore did not take further cognisance of them.

The Complaint now revolves around the refusal of one of the SPs to provide a refund, the other having done so of its own volition.

SP Response

The SP produced logs showing that the Complainant subscribed to the service on 18 November 2007 and that monthly reminders of such subscription were sent to him, which reminders included reference to the cost of the service, being R10 per week.

The SP unsubscribed the Complainant after the SP was notified of the Complaint and a confirmation sent to the Complainant.

Given that the logs unequivocally evidenced the subscription the SP did not believe that the Complainant was entitled to the requested refund.

Sections of the Code considered

Version 5.7 in its entirety was reviewed and no specific section was considered as being directly relevant to this Complaint.

Decision

There is ample precedent in the body of WASPA Adjudications for the acceptance of proof in the form of logs as being dispositive of a factual dispute as to the use of a short code. The Adjudicator accepts the version of the SP and cannot, on the facts before him, find that it has acted contrary to the provisions of the WASPA Code of Conduct.

Nevertheless the Adjudicator has no reason to disbelieve the version advanced by the Complainant, which is found to be credible. Of particular relevance to the matter is the fact that the logs advanced by the SP clearly indicate that no use of the subscription was ever made by the Complainant.

The Adjudicator is accordingly in the invidious position of not finding a breach of the WASPA Code of Conduct on the part of the SP but nevertheless being strongly of the view that the Complainant should receive the refund which he has requested.

In this regard it must be noted that the other WASPA member in respect of which a similar issue arose vis-à-vis the Complainant identified the reasonableness of providing a refund in these circumstances.

In expressing this view the Adjudicator is mindful of the fact that WASPA's members are often faced with false claims regarding subscription services or that a third party (often a child) is found to have subscribed to the service unbeknownst to the Complainant. The Adjudicator is nevertheless of the opinion that, given the fact that the service was not used and notwithstanding the questions as to whether it was reasonable for the Complainant to disregard the reminder messages, the SP would not be creating an undesirable precedent but simply exercising its discretion in the manner dictated by the facts.
