



REPORT OF THE ADJUDICATOR

WASPA Member	Vodacom Service Provider
Service Type	Subscription
Source of Complaints	Public
Complaint Number	4813
Date lodged	8 September 2008
Code of Conduct version	6.2

Complaint

The Complainant in this matter disputed that they had subscribed to a service provided by the WASPA member and requested proof of subscription. She further noted that she was the only person using her phone and that this had been ongoing for two months.

The member unsubscribed the complainant after being notified of the complaint.

Under the informal complaints resolution process the WASPA Secretariat requested such proof, which was duly provided but in an unreadable format. Further requests for the proof of subscription in a proper file format were ignored. The member did not respond to the formal complaint and an amended notice, including the relevant code clauses which may have been breached, was then sent and the WASP filed a response to that.

The amended notice read as follows:

“Based on the information provided by the complainant, the WASPA Secretariat believes that there is a possible breach of clauses 4.1.1 and/or 4.1.5 and/or 11.1.2 and/or 11.1.4. of the WASPA Code of Conduct. We are unable to assess whether or not this is the case without logs indicating the complainant's interaction with your system.”

Member response

The response filed was proof of subscription presented as follows:

We apologise for a late response.

Please find below the proof of subscription and the dates are specified.

"24283968 22575403 27832221992 31127 GAMBIT

nkuxcgw,zaf,Nokia_2630,02Whats=ot,AnswerThePhoneStupid,30.00,ringtone 2008-04-26
08:12:21.437 1 2 de645=c0-2779-4c24-b05e-996c121aec39 2008-04-26 08:12:26.840
1026={value=3=;};5384={value=Nw+RDLF4ygg=;}; 10.10.2.91 SMS2HTTPSENDER.EXE
SMS2H=TPSENDER 1"

The Adjudicator requested the following further information:

1. Is the service which the complainant received a once-off content purchase or a subscription service?
2. If it was a subscription service then full logs showing all interaction with the complainant are required.

It was confirmed that the service was a subscription services and further logs were provided.

Sections of the Code considered

The following sections of version 6.2 of the Code of Conduct were considered in adjudicating this matter:

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

4.1. Provision of information to customers

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

Decision

There is extensive precedent in WASPA Adjudications to the effect that logs showing subscription and use of subscription services are to be regarded as conclusive. On the information provided the Adjudicator is not able to find a breach of the sections listed in the amended complaint.

The Adjudicator is not, however, satisfied with the level of conduct displayed by the WASPA member in responding to this complaint. This matter should never have been escalated to the formal resolution process and would not have been but for the failure of the member to provide intelligible logs timeously. This conduct leads to a waste of money and resources which could be better allocated elsewhere.

The Adjudicator finds that the conduct of the member in respect of its interaction with WASPA in responding to this complaint is below that set out in section 3.1.1 of the Code of Conduct and that there is a breach of this section.

In arriving at an appropriate sanction the Adjudicator has had regard to:

- the fact that the member has not taken the opportunity in its response to address the complaint properly
- the relatively high number of adverse findings against the member over the last year;
- the difficulties presented to consumers by subscription services and the need for firm action from WASPA with regard to these services; and
- the need to ensure that members respect the Code of Conduct and co-operate with WASPA in resolving consumer complaints.

The member is fined the sum of R10 000 in respect of the breach of section 3.1.1. noted above, which amount is payable to the WASPA Secretariat within five days of notification of this Adjudication.

The Adjudicator has also noted a number of similar complaints regarding subscription services operated by the WASPA member and requests that the Secretariat bring this to the attention of the WASPA Media Monitor for possible review.