



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Viamedia (Pty) Ltd
Information Provider (IP):	Unclear
Service Type:	Subscription
Source of Complaints:	Public
Complaint Number:	5086
Code Version (CoC and AR):	Code of Conduct 3.2 up to and including Code of Conduct 6.2
Date of Request:	24 March 2009
Date of Adjudication:	22 May 2009

Complaint

1. On the 27th October 2008 a Vodacom network subscriber (the Complainant) logged a request to unsubscribe himself from a subscription service which is offered by the SP in this matter (see above).
2. The Complainant was subsequently successfully unsubscribed, but indicated that he required a refund for the funds that had been paid by him in that he “never agreed to any subscriptions”. He further indicated that the service was unfair as he surfed the websites without being aware that this had a cost for which he would be paying. In the alternative he alleges that even if he did agree to the subscription then the way the subscription was entered into was misleading and he was thus unaware that he was entering into a subscription agreement.

SP Response

3. In response the SP indicated that the Complainant had subscribed to the Xplicit club in 2006 and had used the service as it was intended to be used.

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4. Moreover the SP indicated that this particular service does not make use of a web site and as such the Complainant would not have been able to surf any web site.
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Complainant Response

5. Reacting to the SP's response above the Complainant thereafter indicated that he now understands that he joined a "club" in 2006 rather than a web site.
 6. However he contends that this is impossible as he was billed for the service in June 2008 while he supposedly subscribed to the service in 2006.
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SP Second Response

7. In response to the allegations by the complainant the SP provided the full log history relating to the complainant dating back as far as 14 October 2005. As is apparent from the log history the complainant had spent R1555.00 on this subscription service during the period between 14 October 2005 and 23 October 2008.
 8. On 09 June 2006 the complainant subscribed to two services according to the log provided by the SP. After sending the required key word to the Short Code, the SP responded with an SMS which read as follows¹:
 - 8.1. *Brilliant! U subscribed 2 the XXX club. U get HOTstuff 4 yr cell. 2download Info or 2Stop dial *120*31310 @ (60c/min).U get 2 items at R5/week.*
 - 8.2. *Brilliant! U subscribed 2 the PORN club. U get HOTstuff 4 yr cell. 2download Info or 2Stop dial *120*31310 (60c/min).U get 2 items at R5/week.*
 9. The SP then attempted to contact the Complainant to resolve the matter informally, but was unable to contact him.
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Portions of the Code of Conduct and Advertising Rules Considered

¹ Please note that technical symbols in the original message log as provided by the SP have been replaced by the appropriate symbol or space in order to provide a more accurate version of what would have been represented to the complainant.

10. Clauses 11.1.1 - 11.1.8 of the WASPA Code of Conduct version 4.3

11. Clause 11.3 of the WASPA Code of Conduct version 4.3

Decision regarding Subscription on 09 June 2006

12. This matter is complicated by the lack of specificity on the part of both the SP and the Complainant. While adjudicators in WASPA matters are able to have a somewhat inquisitorial approach to the evidence, the overly brief manner in which the complaint was formulated by the Complainant and the failure by the SP to provide the content of the presumed subscription in 2005 which were sent prior to June 2006 (but are nonetheless recorded in the full log history of the complainant) leaves the adjudicator in the invidious position of having to decide a matter with less evidence than is required.

13. In this matter it is common cause between the parties that once the Complainant had requested that the subscription service be stopped the SP complied with this request. Consequently there is no infringement of the WASPA Code of Conduct by the SP in this respect.

14. The Complainant however alleges that he did not enter into a subscription service or, if he did, then he entered into the subscription service unknowingly.

15. In answer to this allegation the SP has provided two messages that were apparently sent on 09 June 2006 indicating that the complainant was subscribed at a cost of R5.00 per week².

16. Additionally a perusal of the message log indicates that the complainant was never charged more than R5.00 per week during the approximately three year period during which he was subscribed.

17. Notwithstanding this long-standing subscription service the complainant only raised his objection some years after he was first subscribed and, according to the logs provided by the SP, used the service regularly during this period.

18. Moreover the log provided by the SP appears to support the amount that was charged by the Mobile Network Operator Vodacom for "content services" in June

² See clause 8.1 and 8.2 above.

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2008. Unfortunately due to a lack of specificity of the dates for the June 2008 invoice as provided to us by the Complainant it is not possible to make a definitive finding regarding this issue.

19. As a result it is held that the complainant was correctly subscribed during the period between 09 June 2006 and the 23 October 2008 and the complaint of a breach of clauses 11.1.1 up to and including 11.1.8 of the WASPA Code of Conduct by the SP is dismissed.

Decision regarding subscription in October 2005

20. The only remaining question to be answered relates to the fees charged by the SP during the months of October and November 2005 during which the complainant was billed R35.00 for content by the SP, as set out in the full log history of the Complainant.
21. In the circumstances it would be inappropriate to make any finding regarding this issue as no allegation has been made by the complainant that he was incorrectly subscribed to a content service in 2005 nor has the SP been provided with the opportunity to advance evidence in this regard.
22. It should further be noted that the matter would have prescribed in terms of South African law in that the subscription in question would have been entered into more than three years ago.
23. Should the Complainant wish to raise this matter he is invited to submit a further complaint to WASPA in order to address this matter.

Mitigation/Aggravation

24. There are no factors to consider.

Sanction Imposed

25. The complaint is dismissed.
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Appeal

Please note that should the SP or complainant wish to appeal this decision it must inform the secretariat of this within five working days of this decision in terms of section 13.6 of the Code of Conduct version 4.3 (and as amended thereafter).
