



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Blinck Mobile
Information Provider (IP): (if applicable)	N/A
Service Type:	Subscription
Complainant:	Public
Complaint Number:	5792
Code version:	Code v6.2 and Ad Rules v2.3
Date of Report:	3 August 2009

Complaint & Response

1. On the 10th of February 2009 the Complainant, a member of the public, logged an unsubscribe request on the WASPA unsubscribe system. The exchange reads as follows:

lorraine on 2009-02-10 15:28:37 said: Complainant writes: I have just discovered that I have been charged varying amounts since July last year, totalling R2,262.63 to date for Mira Networks Blink service. I have NOT subscribed to this and want this stopped (I have contacted Vodacom customer care) and get my money back. What do I do. This is utterly fraudulent.

lorraine on 2009-02-11 11:26:29 said: Please provide proof of subscription and/or refund as requested.

Blinck Mobile on 2009-02-13 11:06:53 said: We have managed to reach the customer on 13/2/2009. The customer has no knowledge of ever subscribing, and is disputing the charges. As per policy, they will be sending through an email with their refund application. Upon receipt of email, we hope to resolve this matter with the customer.

2. While the Complainant was unsubscribed from the service in question, the matter was not resolved through the unsubscribe service and on the 16th of February the matter was escalated to a formal complaint.
3. The Complainant did not specify the exact services for which she was charged, so it became necessary to glean this information from the Member's logs.

4. The Member responded to the complaint on the 17th of February as follows:

We feel that subscribers to our services are fully informed of the subscription nature of our services, the applicable costs, and the method of stopping the subscription service. This information is provided twice; initially (before subscription) on the sign-up page, and again through the introductory "welcome" SMS message sent to all subscribers before they begin to be billed for the service.

Additionally a monthly reminder SMS is sent out to the customer for each service, notifying them that they are subscribed to a service, how to stop the service and if there should be any questions; the hotline number to our customer care.

Further, subscribers to our services must positively confirm their subscription request through reply-SMS (the "double-opt-in" process), an action that can only be performed by the person in possession of the physical handset associated with the subscription request. Attached you will also find a MO-MT report of the subscriptions for this MSISDN.

5. Logs provided by the Member indicate that the Complainant initially subscribed to the "Classic" service on the 26th of December 2007. Note that the log entries are numbered in reverse order.

<< 248 2007-12-26 22:15:28 31631 Classic

>> 247 2007-12-26 22:15:30 31631
 ZA_31631_SOUND_V31_CLASSIC
 Welcome! You will get your first Classictone now! Info? www.text1.tv or 0800980963 (R10/sms) subscription service. Stop? classic stop. (max 3sms/week).ENJOY

6. The format of the welcome message (and those listed below) is not acceptable, but as this was dealt with in a recent adjudication involving the Member I will not discuss the matter again.
7. The Complainant then received content from the Member on a regular basis and on the 26th of January 2008 received a reminder message reading as follows:

>> 225 2008-01-26 17:49:49 31631
 ZA_31631_SOUND_V31_CLASSIC
 Reminder: you are subscribed to CLASSIC. Info? 0800 980963. R10/msg, max 3msg/wk. For the best hits join HIT (R20/sms,3sms/wk). Text HIT to 31631 now!

8. Apparently the clips provided by the Member were not compatible with the Complainant's handset, and the Complainant unsubscribed on the 12th of February 2008:

<< 209 2008-02-12 20:48:23 31631 These messages are being sent in an incompatible format. Please unsubscribe me.

>> 208 2008-02-12 20:48:28 31631
 @Default 31631

Your text is not recognized. Join LOW? Text LOW to 31631. (R10/sms; max 3sms/wk). Info? www.text1.tv or 0800 980963. REPLY LOW NOW!

<< 207 2008-02-12 20:51:08 31631 Unsubscribe

>> 206 2008-02-12 20:51:15 31631
 ZA_31631_SOUND_V31_CLASSIC
 You have been unsubscribed from CLASSIC. If you want to subscribe again, text CLASSIC to 31631. For cool logos join FISH (R10/sms,3sms/wk). Text FISH to31631

9. The following entries are found in the Member's log for the 15th of July 2009:

<< 205 2008-07-15 16:01:48 31631
 WVIBE ON PIN=57723 232636082 1076477074 41.206.160.2 subscribe

>> 204 2008-07-15 16:01:52 31631
 ZA_31631_SOUND_W33_WVIBE
 Fill in this pin 57723 to get ur downloads!Or reply OK.You'll also get a FREE BONUS SOUND in the wVibe club!
 Info:za.celldorado.com/0800980963R10/sms3sms/wk

<< 203 2008-07-15 16:03:15 31631 Ok

>> 202 2008-07-15 16:03:19 31631
 ZA_31631_SOUND_W33_WVIBE
 Welcome to wVIBE! You will get your first sound now! Info?
 za.celldorado.com/0800980963 (R10/sms) subscription; stop? wvibe stop.
 (max 3sms/week).ENJOY

10. These entries apparently show the Complainant subscribing to a further service called "Wvibe" offered by the Member, having previously unsubscribed from the Member's services some five months previously.

11. Later the same day the following entries appear:

<< 197 2008-07-15 18:38:06 31631
 WTOP ON PIN=95510 1559533843 1111259168 196.2.124.251 subscribe

>> 196 2008-07-15 18:38:11 31631
 ZA_31631_REAL_W1_WTOP
 Reply OK to 31631 to get your realtonesand join.You will also receive a FREE BONUS TONE. Info: za.celldorado.com/0800980963 (R20/sms,3sms/wk).Text OK to 31631

<< 195 2008-07-15 18:39:05 31631 Ok

>> 194 2008-07-15 18:39:10 31631
 ZA_31631_REAL_W1_WTOP
 Welcome to Wtop! You will get your firstrealtone now! Info?
 za.celldorado.com/0800980963 (R20/sms) subscription service. Stop? wtop stop. (max 3sms/week).ENJOY

12. This entry apparently shows the Complainant subscribing to yet another service called "Wtop".

13. A reminder message was subsequently sent to the Complainant on the 15th of every month from August 2008 until January 2009 in respect of both subscription services. Content was sent to the Complainant during this period up until the unsubscribe request was put into effect on the 11th of February 2009.
14. I was puzzled by log entries 205 and 197, as they did not appear to be the sort of message that the Complainant would have sent as an SMS. I requested the WASPA Secretariat to obtain clarification from the Member on this issue, and the Member furnished the following explanation:

The message in row 205 of the MO-MT logs indicates an attempt to activate a subscription. On 2008-07-15 17:01:48, the customer had entered their mobile number into the required field on our website celdorado.com.

When a valid mobile number is entered, our server sends an invitation message, to the said number, which outlines all relevant details of the service. Only should the holder of the phone in question respond with OK, (or enter a pin code) to confirm activation, is the service initiated.

In the case of MSISDN +27829236859, we can see that the subscription was confirmed activated on 2008-07-15 17:03:15 following an OK text message that was sent from the mobile phone in question.

Portion of the Code Considered

15. The complaint was made on the 10th of February 2009, making Code of Conduct version 6.2 the version applicable to it.
16. The Complainant does not set out what sections of the Code of Conduct relate to this complaint, so it is for me to determine based on the facts which sections need to be scrutinised here. The Complainant is accusing the Member of subscribing her to a subscription service without her knowledge or consent. If this were indeed the case, the Member may have infringed section 4.1.1 of the Code of Conduct, which reads as follows:

4. Customer relations

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.

17. Inasmuch as such conduct could constitute fraud, the Member could also be infringing section 3.1.2:

3.1. Professional and lawful conduct

...

3.1.2. Members are committed to lawful conduct at all times.

Decision

18. In reaching a decision I have to rely on the information provided to me by the parties to the adjudication. In this matter, the Member has provided comprehensive logs of its interactions with the Member, and has provided an acceptable explanation for entry numbers 205 and 197 set out above. The contents of logs are generally accepted unless there is compelling evidence to the contrary. One of the reasons for this is that were a Member of WASPA to be found to have falsified a log, the likely consequence would be expulsion from WASPA.
19. The facts as I have ascertained them by reading the complaint and supporting documentation are then as follows: the Complainant, or someone using the Complainant's SIM card, initially subscribed to the "Classic" service and subsequently unsubscribed from it. The Complainant or a person unknown later subscribed to two services on the Complainant's MSISDN via the Member's website. These subscription services ran (and were charged) for several months until terminated by the Complainant. While it is not possible to prove that the Complainant personally subscribed to any of the services (as opposed to someone who borrowed her handset for example), the fact that the MSISDN concerned is linked to her by virtue of her contractual relationship with the relevant cellular telephony network provider creates a presumption that she ordered the service by using her handset. Certainly none of the three services could have been subscribed to without use of her MSISDN, in all likelihood by use of her handset. The first service was subscribed to directly via SMS to the Member's shortcode, while the second two were ordered via the Member's website, but the order was confirmed by SMS.
20. The fact that I have accepted the Member's version of events does not necessarily mean that the Complainant has been untruthful: it is quite possible that a third party subscribed to one or all of the services. For example the Complainant may have lent her handset to a child who subscribed to the services without her permission. Such a set of facts does not appear from the evidence but is possible.
21. The drafters of the WASPA Code of Conduct had scenarios such as the above in mind when making it obligatory for Members to send subscribers a "welcome message" by SMS when they subscribe to a service, and also send subscribers monthly reminders of an ongoing subscription. This requirement minimises the chance of a consumer remaining subscribed to a subscription service in ignorance. If the Complainant allowed a third party to use her handset, she may not have been aware of these messages, but the fact that she is responsible for the account related to the handset's MSISDN places a duty upon her to ensure that such a third party does not incur charges of which she does not approve.
22. Finally I will address the matter of the defective welcome messages discussed briefly above. It could be argued that the welcome messages received by the Complainant were defective and hence that she did not receive adequate notice of the subscription. I am not inclined to this view. The welcome message was indeed defective, but the Complainant was still sent monthly reminder messages in the

correct format which she seems to have either not seen or ignored; hence a correct welcome message would have made no difference in this case.

23. I accordingly find that the Member has not infringed any provision of the WASPA Code of Conduct, and the complaint is not upheld.

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