



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Blinck

Information Provider (IP): N/A
(if applicable)

Service Type: Subscription

Complainant: Consumer

Complaint Number: 6761

Code version: Code v6.2 and Ad Rules v2.3

Date of Report: 9 May 2010

Complaint & Response

1. On or about the 4th of June 2009 the Complainant, a member of the public, made an unsubscribe request via WASPA's online unsubscribe facility in respect of the Member's "IQ Test" subscription service. The Complainant was successfully unsubscribed from the service but insisted that the matter proceed to formal adjudication. The facts of this complaint set out below are distilled from the initial complaint and response as well as further particulars requested by the Adjudicator.
2. The Complainant alleged that he had never subscribed to the service in the first place. On his version the Member advised him that he had subscribed to the service on the 20th of March 2009, but that his itemised billing cellphone account did not show any such entry.
3. The Complainant further contended that the Member offered to pay him an amount of R240 in good faith. The Complainant however insisted on a full refund, and requested that the complaint should be referred to formal adjudication.
4. The Member for its part contended that it had in fact offered the Complainant a full refund of R 480 as a good faith gesture, and provided a record of its interactions with the complainant. The first four items on that record read as follows:

>> 41	2009-03-20	11:31:30	31631 ZA_31631_GAME_W1_WGAME8 Welcome to WGAME8! You will get your first game now! Info? za.celldorado.com/0800980963 (R20/sms) subscription service. Stop? WGAME8 stop. (max 3sms/week).ENJOY
<< 42	2009-03-20	11:31:28	31631 WGAME8 OK PIN=42910 1151146916

			1858368761 198.54.202.195 confirm
>> 43	2009-03-20	11:30:38	31631 ZA_31631_GAME_W1_WGAME8 Fill in this game code 42910 to get ur IQ test! Or reply OK.You'll also get a BONUS GAME in the WGAME8 club!Info:za.celldorado.com/0800980963 R20/sms 3sms/
<< 44	2009-03-20	11:30:36	31631 WGAME8 ON PIN=42910 1151146916 1858368761 198.54.202.226 subscribe

5. The items are in reverse order and are to be interpreted as follows (in quotes where the member is quoted *verbatim*):

44: "This is the initiation request that our database received when the MSISDN was filled in on our landing page initiating the request for the subscription service: The service name and the IP address of the requestor is included in the report."

43: This is a message sent to the subscriber's MSISDN requesting a confirmation PIN code to be filled into the Member's web site.

42: "This is the confirmation of the service, where the personal pin-code that was received on the handset was filled in on the landing page by the customer. Again the IP address of the user is logged in the message report."

41: This is the welcome message sent to the subscriber's MSISDN confirming the subscription.

6. There follow the prescribed monthly reminder messages, and finally the confirmation of the termination of the Complainant's subscription.

7. The Adjudicator requested that the WASPA Secretariat obtain the Complainant's cellphone itemised billing account for the period 10 March 2009 to 30 March 2009. On receipt of the records, the Adjudicator discovered that they in fact related to the same period in 2008. The WASPA Secretariat then requested the proper records from the Complainant, but received no reply despite reminders.

Portion of the Code Considered

8. As the conduct complained of took place on or about 20 March 2009, version 6.2 of the WASPA Code of Conduct applies to this complaint. The following portions of the Code of Conduct are relevant here:

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.

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

Decision

9. The Adjudicator has to make a decision based on the facts at his disposal. The Member has submitted logs that purport to show that an MSISDN corresponding to that of the Complainant (as set out in his cellphone account) was used to subscribe to its service. The Complainant has not been able to produce evidence to contradict the Member's log. An itemised billing cellphone account for the period showing no interaction between the Complainant and the Member would probably have sufficed to put the Members' record in doubt, but alas no such submission was forthcoming.
10. It is possible that the Member's log does not reflect reality, but the Member must be aware of the dire consequences of submitting falsified logs to the Adjudicator. This coupled with the failure of the Complainant to submit proper records leads the Adjudicator to prefer the Member's version of events.
11. Consequently the Adjudicator finds that the Member DID subscribe to the service in question, and that consequently the Member has not infringed the WASPA Code of Conduct.

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