



REPORT OF THE ADJUDICATOR

WASPA Member	Integrat & Opera Interactive
Information Provider (IP) (if any)	Mobile Toe
Service Type	SMS
Source of Complaints	Public
Complaint Number	7038
Date lodged	15 July 2009
Code of Conduct version	7.0 & 7.4

Complaint

This matter comes for adjudication as a result of the escalation of an unsubscribe request where the Complainant alleged that she had been subscribed to two separate subscription services offered by Mobile Toe through Integrat and through Opera respectively. Both WASPA members duly unsubscribed the complainant and offered refunds, but the complainant remained dissatisfied as to how she came to be subscribed to the two services in the first place.

During the informal resolution process the complainant was provided with logs listing communications between herself and Integrat. Although she professed to not being able to fully understand these, she noted the following.

On the 10/05/2009 at 19h11 she received an SMS from 082007030302 with the following content:

Subject: Enter Pin 8305

Text Message - Enter pin 8305 ULL B SUBSCRIBED TO MIND50W FROM MOBILE TOE @R50.00 TYPES EVERY WEEK Etc.....

She did not respond to this but, one minute later, received the following SMS:

U VE SUBSCRIBED TO IQ! U LL GET UR LINK 4 UNLIMITED ACCESS.....

The complainant denies subscribing to this service and stated that she would obtain statements from the networks to support this denial.

A second set of SMS communications appears to have been received from Opera (0820048640976):

SUBJECT : WELCOME TO MO

WELCOME TO MOBY CLUB - HELP 084195111 OPT OUT? SMS STOP TO 31976

COST R14 / 2DAYS SP: OPERA BE SUBSCRIBED 28 DAYS FOR PRIZE

Again she did not respond. The complainant queried whether no response on her part was construed as an acceptance by the service providers. She pointed out that it cost her money to send an SMS to unsubscribe from a service and that she should not have to pay this given that she had not subscribed in the first place.

On 30 June the complainant sent STOP but was at pains to emphasise that this did not mean she had at any stage accepted the service.

In a later communication the complainant set out her position as follows:

"I would like to be informed as to how they managed to raise two "Subscription" on my behalf as I have never subscribed in my own capacity. I query their legitimacy and their conduct. My account was debited by two companies 1. Mobi Planet and 2. Intergrate for different amounts R14.00 EVERY TWO DAYS AND R50.00 ONCE A WEEK. However I have only been contacted by ONE company and MAY RECEIVE a "FULL" refund from "ONE" company namely Intergrate.

Surely this explains that these companies are actually "ONE" and/or THEY "Piggy Back" on each other's marketing process.

How many consumers have been caught like this? I believe their action to be fraudulent and misleading and want your body to investigate this unfortunate affair.

The cost to myself in time and expenses has been high and I would like to ensure that the under privileged and privileged is not taken by the same process as they SURELY will not know of this scam. Food money, gone to some unscrupulous person and/or company."

SP Responses

Integrat

In response to the initial unsubscribe request Integrat indicated that the subscription was stopped on 30 June 2009 and that they were of the view that the number does not deserve a refund as the customer was given a "Secret Pin Number" to enter on the Internet. According to Integrat this PIN was used and a welcome was also sent to the customer.

The logs provided are not in a reader-friendly format, which is unfortunate. Nevertheless the following can be discerned therefrom:

Date received	Content
2009-05-10 19:11:10	Enter pin 8305! U'll b subscribed to mind50w from MobileToe @ R50.00/1 times every week(s). Help? Call 0822350400, VAS rates apply. To unsubscribe, sms STOP to 31990.
2009-05-10 19:12:14	U ve subscribed to IQ! U ll get ur link 4 unlimited access 2 Optical Brain Teasers weekly @ R50/SMS. Send STOP mind50w to 31990 2unsub.call 0822350488 4help
2009-05-10 19:12:19	Link.
2009-05-16 15:01:40	Link.
2009-05-23 15:00:32	Link.
2009-05-30 15:02:57	Link.
2009-06-06 15:00:59	Link.
2009-06-10 10:02:05	U r subscribed to MOBILETOE MIND50W. Cost R50.00 1/week. For help call 0822350400, VAS rates apply. To unsubscribe, sms STOP MIND50W to 31990.
2009-06-13 14:52:17	Link.
2009-06-22 04:08:55	Link.
2009-06-27 14:44:08	Link.
2009-06-30 16:47:03	You were successfully unsubscribed from all services. Thank You.

Integrat advised further that they had tried to contact the complainant to resolve the matter but that she had abruptly terminated the call. In determining whether a refund was warranted in this matter Integrat raised the following considerations:

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- The fact that the complainant's mobile provider account did not evidence the subscription is not relevant given that this was a web-based subscription.
 - This subscription took place before the WASPA Code was amended to make specific provision for web-based subscriptions.
 - The subscription was initiated on 10 May 2009 at 09h12 and the welcome message stated
"U ve subscribed to IQ! U ll get ur link 4 unlimited access 2 Optical Brain Teasers weekly @ R50/SMS. Send STOP mind50w to 31990 2unsub.call 0822350488 4help"
 - This followed the PIN message which stated:
"Enter pin 8305! U'll b subscribed to mind50w from MobileToe @ R50.00/1 times every week(s). Help? Call 0822350400, VAS rates apply. To unsubscribe, sms STOP to 31990."

Integrat expressed the view that this process was clear and that the complainant should have been in no doubt as to that she had subscribed to the service. Integrat indicated further that it would investigate the matter further with Mobile Toe, which was the relevant information provider.

Integrat later indicated that it would provide a refund to the complainant, although no explanation for this was advanced. The following summary of the complaint and their response thereto was provided:

"The subscriber was subscribed to an IQ test service. The subscriber claims to have never entered the PIN. In the absence of any other complaints of the same nature we have to logically assume the system was fully functional and complaint at the time the subscriber subscribed to the service.

We have however committed to refunding the subscriber as a gesture of good faith. The subscriber is currently unreachable. An out of office is returned which indicates that the subscriber is currently overseas and will be back on the 11th of September – please see attachment A. The subscriber's cell phone is also currently off. The subscriber will be contacted on the 11th of September to advise of banking details and will be refunded within 3 working days.

Our customer service manager is also currently investigating a Vodacom refund directly to the subscriber's phone. We will advise immediately once the refund is completed."

After affecting the refund Integrat sent her a further email to check that she was satisfied with the resolution of the matter. No response to this is recorded but it appears that the complainant remains desirous of formal adjudication.

Opera Interactive

Opera Interactive confirmed that it had received an opt-out from the subscriber on 30 June 2009, noting that the subscriber had joined the Moby Club on 8 May 2009.

Opera Interactive provided logs which indicated the following:

Date	Mobile Number	Message	Local	Service
2009-06-30 16:41:39	27823346717	STOP stop	*31976	STOP – 31976
2009-05-08 10:21:23	27823346717	Prize	*31976	2nd Scratch Card 1.1

Opera indicated after receipt of the formal complaint that the complainant had been contacted and had indicated that she is satisfied with our resolution of this matter.

As indicated above, the complainant was, however, far from satisfied.

Sections of the Code considered

The dates of subscription were 10 May and 30 June 2009 for the services provided through Integrat and Opera respectively. It follows that the provisions of version 7.0 are relevant to the complaint regarding Integrat while the provisions of version 7.4 are relevant insofar as Opera is concerned.

Version 7.0

Sections 11.1 and 11.2

Version 7.4

Sections 11.1 and 11.2

Decision

1. In adjudicating matters of this nature – where there is a dispute as to whether or not a complainant subscribed to a particular service – the Adjudicator can only consider the matter within the scope of the evidence provided by the parties measured as against the rules and standards created by the WASPA Code of Conduct and Advertising Rules.
2. In this regard there is a long line of WASPA Adjudications which recognises that proof of subscription in the form of logs constitutes prima facie proof that the complainant's MSISDN was subscribed to a service. The Adjudicator accepts the proof of subscription in both cases. As will be seen below it is likely that the complainant in this matter did go through the required actions to subscribe to the services but there it is probable that she did not, at the time that she did so, appreciate that she was subscribing to a subscription service.

3. The Adjudicator is aware of other complaints relating to subscription services provided using IQ tests as a marketing tool as well as complaints relating to scratch card promotions offered by Opera (see <http://www.waspa.org.za/code/download/6858.pdf>). With regard to the latter the Adjudicator accepts from the use of the short code that this is the same promotional competition found to have been non-compliant with the Code in the above cited adjudication.

Integrat / Mobile Toe

4. It may well be that the subscription in this matter is related to the complaints about IQ tests noted above, but, in the absence of further evidence relating to the sign-up procedure employed, no finding can be made in this regard.
5. Integrat have provided full logs from which it is evident that the complainant received the required welcome message as well as the monthly reminder in the format dictated in section 11.2 of both relevant versions of the Code of Conduct. The Adjudicator is therefore of the view that Mobile Toe acting through Integrat has complied with its obligations and afforded (subsequent to the sign-up process, about which no comment can be made) the protections offered by the Code to the complainant. Notwithstanding any possible issues with the sign-up process the complainant should have been in a position to appreciate that she was subscribed to the service and what she needed to do in order to unsubscribe both immediately after subscribing and on the one month anniversary of the conclusion of this subscription.
6. The fact that Integrat has refunded the complainant is also noted.
7. The complaint against Mobile Toe acting through Integrat is dismissed.

Opera Interactive

8. Having accepted that the service subscribed to by the complainant was that which forms the subject of the adjudication in Complaint 6858, which matter is currently subject to appeal, the Adjudicator orders that the finding in this matter follow the appeal finding as regards Complaint 6858. One of the sanctions imposed in that matter relates to the refund of those who subscribed to the service.