



## REPORT OF THE ADJUDICATOR

<b>WASPA Member</b>	Two Screens Ltd
<b>Service Provider (SP)</b> (if any)	Integrat
<b>Service Type</b>	Subscription
<b>Source of Complaints</b>	Public
<b>Complaint Number</b>	7768
<b>Date lodged</b>	6 October 2009
<b>Code of Conduct version</b>	7.4

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### Complaint

The complaint relates to an alleged automatic subscription of the complainant to a subscription service offered by the WASPA member.

The complainant originally lodged her complaint with Vodacom, noting in an email to them that a number of unauthorised payments had been deducted from her account in respect of "Data Usage". These included deductions of R39.99 (reflecting on the account dated 31 May 2009), R79.98 (reflecting on the account dated 31 June 2009) and R99.98 (reflecting on the account dated 31 August 2009). Vodacom were asked to check the July 2009 account for any relevant debits.

The complainant noted that Vodacom was the charging agent who administered these "shady" services on behalf of the third parties providing them and required that Vodacom provide her with information as to what the charges pertain to while simultaneously reversing them.

Vodacom advised the complainant that "the money is being deducted from Integrat (Pty) Ltd. This is a WASP. Wireless Application Service Providers (WASP's) are third parties developing and offering services (such as ring tones, games, wallpapers, etc) using the Vodacom network".

The complainant was not satisfied with this, insisting that Vodacom was the party deducting monies without authorization from its clients and that she required proof of the authorisation she provided to Vodacom allowing it to deduct such amounts from her account.

The complaint was thereafter lodged with WASPA in the form of an unsubscribe request. Integrat informed WASPA that the subscription service was provided by the WASPA member (the IP in this scenario). Integrat indicated that the following message had been received by the complainant:

“U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306.”

Integrat also confirmed that this was the service which was billing the complainant and that it had sent an “accelerated request” to the WASPA member to unsubscribe the complainant.

The WASPA member unsubscribed the complainant and confirmed this by SMS. The member also indicated that it had tried to contact the complainant telephonically a number of times without success but that it had received the complainant’s postal address from Vodacom and was affecting a refund of R400.

In response to WASPA’s request to the complainant to indicate whether she was satisfied with this resolution, the complainant confirmed that she was most emphatically not satisfied.

“Now this is MOST INTERESTING! My formal complaint lodged with you – being the governing body of all these "WASPs" was that amounts were, without any authorization by me, automatically recovered by your accomplice Vodacom. This amounts to an illegal action - or do you not perceive taking something from someone else without his permission as an illegal act (in layman’s language we call that theft).

Thus you telling me that my complaint had been resolved implies that you do not have any intention of stopping the illegal practice by your members of recovering unauthorised monies from unsuspecting customers by your accomplice Vodacom (as they do the recovery from their customers).”

The matter was accordingly escalated to the formal complaints process and both the WASPA member and the SP were notified on 7 October of such escalation. At this stage both of these entities had provided logs indicating that the complainant had subscribed to the service on 23 April 2009 and which confirmed that she had been unsubscribed on 5 September 2009.

On 8 October the SP acknowledged receipt of the complaint and advised that it had spoken to the complainant and thereafter taken the matter up with the member (which was its client in

this matter). Correspondence between the SP and the member provided by the SP indicates that the latter was of the view that the relevant site was not compliant with the Code of Conduct and required that the IP either rectify the non-compliance or remove the site within 24 hours.

The member also replied on this date indicating that it had taken steps to provide a refund on 25 September and once again confirming that the complainant had been unsubscribed. On the next day the SP confirmed to the complainant, as per an earlier telephone conversation, that the refund had been sent to her.

The complainant remained unsatisfied, however:

“What is most interesting is that fact that this entity, via their accomplice Vodacom, illegally (i.e. without authorization from the Vodacom client), directly recovers monies from such client. When such illegal action is uncovered and queried by the client, the accomplice Vodacom denies any involvement - although they are the ones recovering the money, and refers their contracted client to the 3<sup>rd</sup> party (which do not even operate from South Africa) to query said illegal entry in Vodacom's accounting system.

If the above does not constitute a conspiracy in anyone's books, then please inform me what does!?

To date the WASP has told Vodacom and myself that they shall refund the monies deducted for alleged "data services" rendered. To date I have not received this - and my new account for September '09 STILL SHOWS charges for such data services, in spite of formal undertakings by both WASP AND Vodacom that this had been cancelled!

This 'undertaking' by the WASP confirms their admission of guilt.

Give the above, I thus formally request that this illegal activity be investigated and that formal answers be supplied as to:

- (1) how does a 3<sup>rd</sup> party without authorization come by my contact number & account detail - this is an obvious breach of confidentiality by Vodacom.
- (2) how does Vodacom allow such deductions without authentication that authorization had indeed been obtained by the WASP.
- (3) in querying such entry, all parties involved point at each other and none readily provides answers to requests.
- (4) how many such instances are occurring --> by far the bulk of which the clients do not even know that the WASPS and Vodacom are charging ... [One also wonders how many

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clients give up in trying resolve their queries as it is made such a mission by the WASPS AND Vodacom to get this resolved].

I thus formally request answers - and still await answers as per my initial now dated request.”

On 12 October the SP responded to the above by confirming payment of the refund and providing confirmation from Vodacom that no further billing for September had been processed in respect of the complainant’s account. The SP further indicated that it had contacted the complainant’s husband in order to obtain a copy of the September bill so as to get to the bottom of the further billing complaint.

On 14 October the member provided a substantive response relating to the allegation that the complainant had not subscribed to the service which it offered:

“The user complains that any amounts were taken without authorization however we have received an MO direct from the user’s mobile phone requesting for the service by replying to our original campaign message with our chosen keyword.

We received no initial complaints for several months despite our compliant messages and reminder messages detailing the service was subscription, the cost and customer support number. Thus indicating the end user was happy with our service.

When customer contacted us in September, 4 months after the initial subscription, we dealt with the customer efficiently by unsubscribing customer, sending the customer an SMS message to confirm this unsubscription to our service, we also provided proof of subscription and customer opting into this subscription. Out of goodwill the customer was offered a full refund and this refund request was sent to Integrat so they could send out the postal order direct to the customer.

Integrat have also confirmed that the postal order refund has been sent. The customer also insists that they are still being charged however we have had confirmation directly from Vodacom that this user wasn’t billed again by us or any other WASP.

Full details of our communication are given below, taken from our customer support staff logs:

The initial WASPA unsubscribe request on 2009/09/04 was sent to Integrat and xxxxx emailed our support team support@support-mobile.com to unsubscribe. We then unsubscribed number 082379xxxx and also sent a free confirmation sms:

"FreeMsg:You have been successfully unsubscribed from the textcosmo sms service.  
Thank You. 2009-09-04 19:56:38"

Our support team then tried to contact customer by telephone several times but with no answer. We were then contacted by Vodacom directly by telephone and was given customers postal address to send full refund (R400). These refund details were then sent to Integrat on 25th September @ 11:22 to be processed.

Proof of subscription was provided on the 29th September via the WASPA unsubscribe system when we received the email from your Unsubscribe System Daily Reminder.

Please find attached the proof of subscription, all MT logs and all customer support comments for mobile number 082379xxxx."

In response the complainant characterised the statement that the member has received an MO (although she advised that she was not sure what this term actually meant) from her cellular phone as a "blatant lie", indicating that she did not know who the member was or what services they provided. She used her phone only for making calls and sending SMS messages and insisted that she be provided with proof that she had accepted the offer of service from the member.

The complainant stated further that her failure to complain beforehand, notwithstanding the reminder messages received, was "simply due to the fact that I (as is the case with 90% of South Africans), did not even know what these charges were for – until such time as requesting detail from your accomplice Vodacom". The complainant regarded the offer of a refund as an admission of guilt on the part of the member.

"Sir, I wish to also bring under your attention the campaigns conducted by these "service providers" which emanates in users getting ripped off, without the bulk of us even realizing it. The basis how these "operators" work is despicable as their own win-win marketing campaigns put users in a loose-loose position. Where on earth does it work that you send out a 'marketing SMS' which the user MUST DECLINE VIA RETURN SMS otherwise they are deemed to accept this "offer". Should the user in any event decline - they then have his/her number and then they really target such respondent. Lastly, should a user do nothing - then they bill such user in any event through their accomplice Vodacom, as I now seemingly bear testimony."

On 19 October the SP indicated that the complainant had not provided the latest account evidencing further billing and that the SP could therefore only assume that the amount already refunded was correct.

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### Sections of the Code considered

The following sections of version 7.4 of the WASPA Code of Conduct were considered:

#### 11.2. Reminder messages

11.2.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

11.2.2. The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

or

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

11.2.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.2.2.

11.2.4. The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

11.2.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

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### Decision

1. At the outset it needs to be explained that Vodacom is not a member of WASPA and WASPA has no jurisdiction over Vodacom. WASPA is therefore not in a position to make

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any findings regarding the allegations raised against Vodacom and these have not been considered in this adjudication. The complainant has indicated that she wishes to approach the Independent Communications Authority of South Africa (ICASA) to further her complaint against Vodacom and this would be the correct course of action insofar as ICASA has jurisdiction over Vodacom in the latter's capacity as an electronic communications service licensee under the Electronic Communications Act 36 of 2005.

2. No finding is made against the SP - the adjudicator being of the view that it has acted in line with the required standards in its attempts to resolve the matter.
3. The issue falling for adjudication is thus whether the circumstances surrounding the complainant subscribing to the service (or being subscribed to the service) were such that the WASPA member acted in accordance with the WASPA Code of Conduct. In this regard there is a conflict of the versions advanced by the complainant (who denies having at any time subscribed to or used the service) and the WASPA member (which has provided logs indicating that it received an SMS message indicating that the complainant wished to subscribe the service).
4. According to the version of the member, the complainant texted "Yes" to the shortcode 31300 at 17h50 on 23 April 2009. The logs provided by the member indicate that thereafter the member sent regular instructional and reminder messages to the complainant (see Annexure A). No information has been presented as to the promotion or other mechanism which resulted in the "Yes" message being received.
5. The adjudicator – following the established WASPA precedent in matters of this nature – accepts the logs provided by the WASPA member as evidence of receipt of a subscription to the service and as evidence of the messages sent to the complainant thereafter. By necessary implication this entails finding that the complainant's handset was used to subscribe to the service. There is no evidence to support a contention that the complainant was automatically subscribed when not answering a complaint.
6. Even were it to be accepted that the complainant was improperly subscribed, the adjudicator holds the view that the complainant received a large number of weekly subscription reminders which provided clear opt-out instructions as well as a helpline number and that it is only reasonable for the complainant to have read and acted upon these reminders.
7. Although the adjudicator has noted the reference in the correspondence between the SP and the WASPA member to the site of the member being non-compliant, it is not possible on the evidence presented to make any finding in this regard. The adjudicator notes that, while there appear to be numerous complaints against the member with

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regard to this service in the United Kingdom, there are no formal adjudications in respect of the service in South Africa.

8. Furthermore the adjudicator cannot agree that the offer of a refund by the WASPA member indicates their guilt. Establishing a precedent to the effect that refunds offered voluntarily and without any further explanation (other than they are made in good faith or as a gesture of goodwill) constitute evidence of non-compliance is obviously incorrect and counter-productive. It may well be that such an approach is adopted by a WASP to avoid the formal dispute resolution process, but this has not been established in this matter or by reference to other adjudications involving the member.
  9. The adjudicator finds that the WASPA member has acted professionally in its efforts to settle the matter to the complainant's satisfaction. Given that the majority of the complainant's ire is directed at Vodacom such satisfactory resolution was probably not within the power of the member.
  10. In reviewing the logs provided it is evident that the WASPA member was not, however, fully compliant with the requirements of section 11 of the Code of Conduct. The use of the abbreviation "R20pw" in the earlier messages is in breach of section 11.2.5, although this was rectified in the later messages. Given the nature of the breach and the fact that it has already been corrected, there is no need to make a finding in this regard.
  11. The complaint is dismissed. This in no way impacts upon the voluntary decision of the WASPA member to affect a refund.
  12. Finally, the adjudicator has had regard to the decision in [Adjudication 5769](#) involving the same WASPA member. In that matter a complaint was lodged regarding an unsolicited SMS which read "FreeMsg: txt YES to 36306 and claim your reward of 150 SMS to use from [www.textpeek.com](http://www.textpeek.com)! Subscribe 10R/week inc 150 sms pm.16 stop? Txt Stop [www.textpeek.com](http://www.textpeek.com)".
    - 12.1. As noted above, no evidence has been presented regarding the manner in which the service was marketed to the complainant.
    - 12.2. The adjudicator in this matter views the above text message as non-compliant and is concerned that such messages may still be in use by the WASPA member.
    - 12.3. The adjudicator therefore requests the WASPA Secretariat to request that the WASPA Media Monitor takes steps to test the service being provided.
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**Annexure**

2009-04-23	Reminder:You are subscribed to www.textcosmo.com.username: 27823796664.password: 61e0ba.R20 pw.Reply STOP to stop.Support:0114613253
2009-04-30	Reminder: You are subscribed to textcosmo.com.Your account has been topped up to 250 credits.Subscribed at R20 pw.To stop, reply with STOP.Support:0114613253
2009-05-07	Site Access :Goto wap.textcosmo.com or textcosmo.com.R20 pw. username is 27823796664 and password is 61e0ba.Support:0114613253
2009-05-14	Site Access :Goto wap.textcosmo.com or textcosmo.com.R20 pw. username is 27823796664 and password is 61e0ba.Support:0114613253
2009-05-21	Site Access :Goto wap.textcosmo.com or textcosmo.com.R20 pw. username is 27823796664 and password is 61e0ba.Support:0114613253
2009-05-28	Site Access :Goto wap.textcosmo.com or textcosmo.com.R20 pw. username is 27823796664 and password is 61e0ba.Support:0114613253
2009-06-04	Site Access :Goto wap.textcosmo.com or textcosmo.com.R20 pw. username is 27823796664 and password is 61e0ba.Support:0114613253
2009-06-11	Site Access :Goto wap.textcosmo.com or textcosmo.com.R20 pw. username is 27823796664 and password is 61e0ba.Support:0114613253
2009-06-18	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-06-25	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-07-02	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-07-09	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-07-16	U r subscribed to textcosmo.com. 250 global sms per month. Cost

	R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-07-23	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-07-30	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-08-06	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-08-13	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-08-20	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-08-27	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306
2009-09-03	U r subscribed to textcosmo.com. 250 global sms per month. Cost R20/week. For help, sms HELP to 36306 or call 0114613253. To unsubscribe, sms STOP to 36306