

REPORT OF THE ADJUDICATOR

WASPA Member:	TMobileSA
Information Provider (IP): (if applicable)	N/A
Service Type:	Subscription
Complainant:	Public
Complaint Number:	9553
Code version:	Code v9.0 and Ad Rules v 2.3
Date of Report:	17 August 2010

Complaint

1. On the 28th of April 2010 the Complainant made use of the WASPA website to lodge an unsubscribe request in respect of a certain service provided through Cointel. No information is given as to the nature of this service.
2. The Complainant was of the view that he never subscribed to the service in question, but that monies had nonetheless been deducted from his account.
3. It subsequently emerged that the service was in fact provided by TMobileSA, and as such the matter was redirected to TMobileSA.
4. The unsubscribe log shows that the service in question was cancelled on the 17th of May 2010.
5. The Complainant was however not happy with the fact that he had allegedly been subscribed to the service without his consent, and indicated that he wished to escalate the matter to a formal complaint.
6. The full complaint reads as follows:

Hi There

As per the below - I am not happy with the response from the WASP - they first phoned and accused me of subscribing to their service by either SMS or on the Web, on asking for proof they said they had no obligation to provide proof, and could only provide a date of subscription, but they insisted the only way they could be charging me is if I subscribed.

A week later they called again saying it was a 'database' error that caused my subscription. I now have no record of how long I was subscribed to their service, unless I pay Vodacom R10 for each archived statement. On asking Tmobilesa how many other people had been 'subscribed' by this error, they couldn't answer, and said they would continue to charge them until the relevant people lodge a dispute.

I think the whole activity is fraudulent, and have been in contact with quite a few people who have been subscribed to Tmobilesa without permission - I really feel this company should be investigated further.

I do not believe this company is acting ethically, or even legally.

Vodacom have also offered very little assistance, considering they have interest in Cointel - I'm pretty sure they'd rather rake in the subscription charges than assist costumers (*sic*) in unsubscribing.

7. On the 19th of May 2010 the Member was given notice of the complaint per email by the WASPA Secretariat.
8. On the 2nd of June the WASPA Secretariat sent a further reminder to the Member.
9. The Member did not respond to either of these emails, nor was any subsequent response whatever received to the complaint.
10. According to correspondence from the WASPA Secretariat regarding the "database error" in question:

TMobileSA acknowledged the error, and informed/refunded everyone affected. They also suspended services to ensure the problem wouldn't continue.
11. I am thus led to believe that the substance of the original complaint has been dealt with; the complaint is now that the Member did not respond to the formal complaint against it.

Portion of the Code Considered

12. The following clauses of the Code of Conduct are applicable to this complaint:

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.

14.3.4. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint, including any mitigating factors that the member wishes the adjudicator to consider.

14.3.5. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

Decision

13. I will deal with a possible infringement of clause 14.3.4 first. It is clear that the Code of Conduct in clause 14.3.5 contemplates the very situation presented in this

complaint, where the Member does not respond to a formal complaint within the time period stipulated in clause 14.3.4, and deals with this by assuming that the Member did not wish to respond under those circumstances. I can thus not find that the Member has infringed clause 14.3.4 here.

14. Turning to clause 3.1.1, if the Member had failed to respond to the WASPA Secretariat when it had requested specific information from the Member, then it is possible that the Member would have infringed this clause by such conduct. Under the circumstances however, the Member did not respond to a formal complaint where such non-response is condoned in clause 14.3.5. I can hence not find that the Member has infringed clause 3.1.1 either.

15. The complaint against the Member is not upheld.

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