



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Exactmobile
<b>Information Provider (IP)</b> (if any)	
<b>Service Type</b>	Subscription
<b>Source of Complaints</b>	Public
<b>Complaint Number</b>	#2262
<b>Date received</b>	4 October 2007
<b>Code of Conduct version</b>	5.3

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### Complaint

This Complaint raises an interesting if unfortunate set of circumstances.

The Complainant became a Vodacom subscriber in September 2006. After registering on the Vodacom network the Complainant received SMS messages from the SP indicating that the Complainant had subscribed to a subscription service charged at R10 per week.

The Complainant admitted that a ringtone had been requested from the SP but denied having subscribed to any service provided by the SP. On contacting the SP to complain the Complainant was advised to unsubscribe and did so but here is claiming for return of subscriptions debited and the unsubscribe fee.

Under the informal complaints resolution process offered by the Code of Conduct the SP provided logs indicating the following:

#### Billing:

2007-10-02 10:28:43.000 27826622673 10.0000 Successful ExactmobileNOWCLub  
2007-09-02 10:27:24.000 27826622673 10.0000 Successful ExactmobileNOWCLub  
2007-08-02 10:23:54.000 27826622673 10.0000 Successful ExactmobileNOWCLub

2007-07-02 10:20:38.000 27826622673 10.0000 Successful ExactmobileNOWCLub  
2007-06-02 10:19:36.000 27826622673 10.0000 Successful ExactmobileNOWCLub  
2007-05-02 10:14:53.000 27826622673 10.0000 Successful ExactmobileNOWCLub  
2007-04-02 10:15:28.000 27826622673 10.0000 Successful ExactmobileNOWCLub  
2007-03-04 08:28:07.000 27826622673 10.0000 Successful ExactmobileNOWCLub  
2006-07-03 11:21:39.000 27826622673 10.0000 Insufficient funds ExactmobileNOWCLub  
2006-06-03 11:17:12.000 27826622673 10.0000 Insufficient funds ExactmobileNOWCLub  
2006-06-01 11:10:21.000 27826622673 10.0000 Insufficient funds ExactmobileNOWCLub  
2006-04-30 11:09:53.000 27826622673 10.0000 Successful ExactmobileNOWCLub

From the above it is obvious that the MSISDN subscribed to the service offered by the SP on 30 April 2006. This was before the Complainant had become a Vodacom subscriber. The Complainant was also a postpaid subscriber implying that it is unlikely there would be a problem with insufficient funds.

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### **SP Response**

Once the matter had been escalated to the formal procedure the SP undertook a further investigation which revealed that the problem subscription had arisen from the re-issuing of the relevant number by Vodacom between the previous possessor and the Complainant in a period of approximately 4 months (April – September 2006).

“The Mobile Number 0826622673 subscribed to the Exactmobile Club via the Exactmobile WAP portal on the 30<sup>th</sup> April 2006. A successful billing transaction took place and R10.00 was deducted. On the same day the Mobile number requested a number of content items and downloaded these items.

The Exactmobile system was programmed to regularly attempt to collect the subscription fee over a maximum period of 12 months once a monthly subscription was active. If after this period no funds had been collected, the subscriber would be unsubscribed automatically.

On the 27<sup>th</sup> March 2007, a new WASPA code of conduct version 4.92 was released. In this version a new clause was included stating that after 3 months of unsuccessful billing, the subscriber must be unsubscribed. On or around the 27<sup>th</sup> March, Exactmobile commenced with the process of changing our subscription

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engine to reflect the new rules. This process took about 10 days, including testing across the dozens of different subscription services we offer.

The subscriber in question was re-billed on the 4<sup>th</sup> of April 2007, about a week after the new rules were communicated but before our system was adapted to reflect the 3 month maximum criteria. By the time the system was changed, the subscriber was showing as successfully billed and hence the billing continued. All billing thereafter was successful. The subscriber was sent the SMS reminders. The subscriber confirms this in the complaint.

A further complication in this matter is that it appears as though the original subscriber with the number 082 662 xxxx stopped using the number during May 2006. The network reissued the same number in September, a mere 4 months later, to the new user. Therefore as the WASPA code at that point did not cater for a limited period of billing retries, the new user continued to pay for the subscription started by a previous user of the same number. It was indeed for this reason that the Code of Conduct was changed to reflect the 3 month rule. The networks are not in theory supposed to be recycling mobile numbers this quickly.

Due to the current user not being the person that originally subscribed to the service, Exactmobile has refunded the user the full amount paid - R 80.00 plus the R1.00 to unsubscribe, i.e. R 81.00 in total. Exactmobile can also confirm that the subscriber has been unsubscribed from all Exactmobile Services.”

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### **Sections of the Code considered**

The following sections of version 5.3 of the WASPA Code of Conduct were considered:

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.2.5. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

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## **Decision**

The version of the SP is accepted and note is taken of the remedial action taken by the SP in refunding the Complainant. In the circumstances the Complaint against the SP is dismissed.

The Complaint and the unhappiness of the Complainant remain valid however, and it is clear that some form of action must be taken to ensure that situations of this nature do not arise as such misunderstandings clearly benefit neither consumers nor the industry. It is equally apparent that WASPA has recognised the dangers created by the network operators recycling numbers on an increasingly efficient basis and that it has effected an amendment to the Code of Conduct to address this.

The Secretariat is requested to bring a summary of this Adjudication to the attention of both the network operators and the members of WASPA to alert both parties to the difficulties being experienced by consumers. Members should, in particular, be reminded of their obligations under section 11.2.5 of the WASPA Code of Conduct.