



REPORT OF THE ADJUDICATOR

WASPA Member	Vodacom Service Provider
Service Type	Subscription
Source of Complaints	Public
Complaint Number	4990
Date lodged	13 October 2008
Code of Conduct version	6.2

Complaint


The complainant queried billing of R30.70 which she traced to the WASPA member. She was unable to contact them telephonically or via e-mail.

“I have on my last statement from Supercall Altech an amount of R30.70. On querying with Supercall I was told that I am being billed by Cointel. I have tried without success reaching them by telephone or cell. I have sent them an e-mail. I have not clue who they are and have never subscribed to them. The cell no. that appears on my account is 083 123 6701. I have just now received an sms to the effect \\\"unexpected bills!\"”

SP Response

The SP did not grant a refund and the matter proceeded to the formal adjudication as follows:

- On 15 October the WASPA member responded with message logs showing reminders as per the WASPA unsubscribe system.
- On the same date the Secretariat sent a follow-up query regarding proof of subscription (as opposed to reminder messages)
- The member replied but did not include the logs and a further reminder e-mail was sent by the Secretariat on 24 October, to which there was no response
- An amended formal notice was sent to the member on 11 March 2009 noting that there were potential breaches of clauses 4.1.1 and/or 4.1.5 and/or 11.1.2 and /or 11.1.4.
- The logs were then provided on the same date. These are set out below:



The screenshot displays a table titled "Club Subscription History For 0836004147". The table has two columns: "Subscription date" and "Club Status". The data rows are as follows:

Subscription date	Club Status
2007-09-08 11:25:26	SUBSCRIBED
2008-10-01 13:40:43	UNSUBSCRIBED
2008-10-08 08:57:07	UNSUBSCRIBED

The member noted that the complainant was unsubscribed on 1 October 2008 and 8 October 2008.

Full logs were eventually provided and these are set out in an annexure to this Adjudication.

No other response was provided.

Sections of the Code considered

The following sections of version 6.2 of the WASPA Code of Conduct were considered:

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.

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.

Decision

There is extensive precedent in WASPA Adjudications to the effect that logs showing subscription and use of subscription services are to be regarded as conclusive.

Having said that there is much about this matter that does not make complete sense. The logs provided do show proof of subscription but they also that the Complainant had been a

long-time subscriber (for more than a year as at the time she was unsubscribed). This does not tally in any way with the complainant's statement that she has no "clue who they are and have never subscribed to them". It would be reasonable to assume that someone who has had R7 deducted weekly for such a period of time would be aware of the fact that they were subscribed to a service.

It is also not clear to the Adjudicator why the billing records provided indicate that the customer was billed twice R3.50 twice weekly, with this amount being deducted twice on the same day weekly. From the fact that the complainant appears to have been unsubscribed twice it seems that she may have been subscribed to the service twice over (although only one subscription date has been provided). On the other hand the member's website (www.freshmobile.co.za) indicates charges of R7 per week – leaving only uncertainty as to why this should be charged in two instalments of R3.50.

The logs provided do not provide any evidence that the Complainant at any time utilised the service. Nor is it clear how the amount of R30.70, which the Complainant raises as the amount inexplicably deducted from her account, relates to the logs provided.

The Adjudicator may only decide a matter on the basis of the information provided as applied to the provisions of the Code of Conduct. It is noted that the WASPA member has chosen not to respond in full to the complaint but has only forwarded logs without adducing evidence to refute any of the breaches alleged in the amended notice of complaint. A proper response from the member is likely to have cleared up much of the uncertainty set out above.

On this basis the Adjudicator cannot find sufficient grounds to hold that the WASPA member may have breached sections 4.1.1., 11.1.2 or 11.1.4 of the Code. The Adjudicator is satisfied, however, that there is sufficient uncontroverted evidence to sustain a finding that the member has breached section 4.1.5.

The Complainant explicitly states that she attempted to contact the member in a number of ways without success. This has not been canvassed at all in the response from the WASPA member and the Adjudicator must decide the matter on the facts presented. The version advanced by the Complainant is accepted and it follows that the member failed to comply with section 4.1.5.

The Adjudicator is further not satisfied with the level of conduct displayed by the WASPA member in responding to this complaint with particular regard to the delays in the provision of logs. Notwithstanding that this matter could well have been escalated to the formal resolution process in any event given the breach of section 4.1.5 this approach to interacting with WASPA is not satisfactory and falls short of the levels required by section 3.1.1 of the Code. The member is found to have breached this section.

In arriving at an appropriate sanction the Adjudicator has had regard to:

- the fact that the Complainant had been a subscriber to the service for more than a year without apparently using it and the fact that the member has not taken the opportunity in its response to address the nub of the complaint
- the relatively high number of adverse findings against the member over the last year;
- the difficulties presented to consumers by subscription services and the need for firm action from WASPA with regard to these services; and
- the need to ensure that members respect the Code of Conduct and co-operate with WASPA in resolving consumer complaints.

The member is fined the sum of R5 000 in respect of the breach of section 3.1.1. This is differentiated from the sanction imposed under Adjudication 6413 on this basis that that matter would not have been escalated to the formal procedure but for the tardiness of the member.

In respect of the breach of section 4.1.5 the member is fined the sum of R5 000 and required to effect a refund to the complainant in a total amount of R30.70.

Payment of all amounts is to be effected within five days of date of notification of the WASPA member of this Adjudication, and proof of refund is to be supplied to the WASPA Secretariat within this period.

The Adjudicator has also noted a number of similar complaints regarding subscription services operated by the WASPA member and requests that the Secretariat bring this to the attention of the WASPA Media Monitor for possible review.

Should the Complainant, on the basis of the information revealed in this Adjudication and a further check of amounts billed to her in respect of this service, be of the view that she is entitled to a further refund then she is invited to lay a further complaint with the WASPA Secretariat.

REMINDER MESSAGE HISTORY

Message	Date
Reminder:Ur a member of FreshMobile! Get ur free love po	2008/03/10 15:34
Reminder:Ur a member of FreshMobile! Get ur free love po	2008/05/08 15:35
Reminder:Ur a member of FreshMobile! Get ur free love po	2008/06/09 18:44
Reminder:Ur a member of FreshMobile! Get ur free love po	2008/08/08 15:36

BILLING HISTORY -- FROM 1 MARCH 2008

Result	Amount	Date	Service
success	R 3.50	2008/03/01 13:58	weekly_subscription club
success	R 3.50	2008/03/01 19:17	weekly_subscription club
success	R 3.50	2008/03/08 06:00	weekly_subscription club
success	R 3.50	2008/03/08 13:59	weekly_subscription club
success	R 3.50	2008/03/15 05:25	weekly_subscription club
success	R 3.50	2008/03/15 09:25	weekly_subscription club
success	R 3.50	2008/03/22 05:29	weekly_subscription club
success	R 3.50	2008/03/22 09:15	weekly_subscription club
success	R 3.50	2008/03/29 06:24	weekly_subscription club
success	R 3.50	2008/03/29 11:52	weekly_subscription club
success	R 3.50	2008/04/05 06:02	weekly_subscription club
success	R 3.50	2008/04/05 10:56	weekly_subscription club
success	R 3.50	2008/04/12 05:26	weekly_subscription club
success	R 3.50	2008/04/12 09:44	weekly_subscription club
success	R 3.50	2008/04/19 06:17	weekly_subscription club
success	R 3.50	2008/04/19 11:41	weekly_subscription club
success	R 3.50	2008/04/26 05:58	weekly_subscription club
success	R 3.50	2008/04/26 11:02	weekly_subscription club
success	R 3.50	2008/05/03 08:56	weekly_subscription club
success	R 3.50	2008/05/03 08:56	weekly_subscription club
success	R 3.50	2008/05/10 05:10	weekly_subscription club
success	R 3.50	2008/05/10 08:06	weekly_subscription club
success	R 3.50	2008/05/17 05:56	weekly_subscription club
success	R 3.50	2008/05/17 10:03	weekly_subscription club
success	R 3.50	2008/05/24 04:45	weekly_subscription club
success	R 3.50	2008/05/24 11:28	weekly_subscription club
success	R 3.50	2008/05/31 04:24	weekly_subscription club
success	R 3.50	2008/05/31 06:58	weekly_subscription club
success	R 3.50	2008/06/07 03:53	weekly_subscription club
success	R 3.50	2008/06/07 20:36	weekly_subscription club
success	R 3.50	2008/06/14 07:48	weekly_subscription club
success	R 3.50	2008/06/14 07:49	weekly_subscription club
success	R 3.50	2008/06/21 03:43	weekly_subscription club
success	R 3.50	2008/06/21 06:16	weekly_subscription club
success	R 3.50	2008/06/28 04:53	weekly_subscription club
success	R 3.50	2008/06/28 08:30	weekly_subscription club
success	R 3.50	2008/07/05 04:24	weekly_subscription club
success	R 3.50	2008/07/05 07:25	weekly_subscription club

success	R 3.50	2008/07/12 04:30 weekly_subscription club
success	R 3.50	2008/07/12 07:42 weekly_subscription club
success	R 3.50	2008/07/19 04:33 weekly_subscription club
success	R 3.50	2008/07/19 07:58 weekly_subscription club
success	R 3.50	2008/07/26 05:15 weekly_subscription club
success	R 3.50	2008/07/26 09:35 weekly_subscription club
success	R 3.50	2008/08/02 04:54 weekly_subscription club
success	R 3.50	2008/08/02 12:12 weekly_subscription club
success	R 3.50	2008/08/09 04:01 weekly_subscription club
success	R 3.50	2008/08/09 07:08 weekly_subscription club
success	R 3.50	2008/08/16 04:18 weekly_subscription club
success	R 3.50	2008/08/16 07:38 weekly_subscription club
success	R 3.50	2008/08/23 04:46 weekly_subscription club
success	R 3.50	2008/08/23 08:46 weekly_subscription club
success	R 3.50	2008/08/30 05:21 weekly_subscription club
success	R 3.50	2008/08/30 09:02 weekly_subscription club
timeout	R 0.00	2008/09/08 00:14 weekly_subscription club
success	R 3.50	2008/09/08 08:23 weekly_subscription club
success	R 3.50	2008/09/08 11:45 weekly_subscription club
success	R 3.50	2008/09/13 04:51 weekly_subscription club
success	R 3.50	2008/09/13 07:54 weekly_subscription club
success	R 3.50	2008/09/20 05:21 weekly_subscription club
success	R 3.50	2008/09/20 08:42 weekly_subscription club
success	R 3.50	2008/09/27 04:04 weekly_subscription club
success	R 3.50	2008/09/27 08:49 weekly_subscription club

TOTAL AMOUNT BILLED	R 217.00
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