



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP)** Itouch  
**Service Type** Subscription Service  
**Source of Complaints** Public  
**Complaint Number** #0348

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### Complaint

A complaint was received from a member of the public regarding charges to his mobile phone account. The complainant states:

*I have been trying to cancel some sort of subscription to my vodacom account for about a year now, i have NO IDEA when it started or why or from where but i do know it costs me money i can ill afford sometimes 2/3 times a mth... mycell number is \*\*\*\*\**

*My service provider Nashua Mobile would not delete it and neither would the ITouch people respond to my complaint emails.*

*I just want it stopped and my money refunded pls if possible.*

The Adjudicator considered the following provisions of the WASPA Code of Conduct:

2.21. A "subscription service" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

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. Subscription services**

##### **11.1. Manner of subscription**

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services".

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 bundled with a request for a specific content item.

11.1.3. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

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.

11.1.5. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.6. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's contact information.

11.1.8. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

#### 11.2. **Customer support**

11.2.1. Assistance, such as 'help' information, for subscription services must be easily available to customers, and must not be limited to a medium that the customer is unlikely to have access to.

#### 11.3. **Termination of a service**

11.3.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.3.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

11.3.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.3.4. Members must ensure that the termination mechanism is functional and accessible at all times.

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## **SP Response**

The SP initially provided the following response:

*We have investigated the matter and pulled all records pertaining to content downloaded from ITouch SA. It appears from our records that the customer has never pulled content from Jippii but only on a direct basis from 35050.*

*Our Call Centre Manager will contact the customer directly to clarify the matter. We will revert back should the matter not be resolved.*

*Please find attached the report:*

*This customer was never subscribed to Jippii and only downloaded from 35050.*

*We have also not received any correspondence from this customer, email or otherwise. I suspect Autopage/Nashua informed the customer that we were billing them due to the 35050 downloads.*

The SP then provided a further response indicating:

*It has become apparent from the investigation that the number the customer supplied was used for direct downloads from 35050. Hereafter our Call Centre Manager determined that the user used another [number] to download content from Jippii, which at that point of our correspondence to you we were not in the know hereof.*

*The customer was unsubscribed on the 22 August 2006 (customer request).*

*Please refer to our report detailed below and previous data submitted in this regard.*

...

*"From: \*\*\*  
Sent: Friday, August 25, 2006 8:40 AM  
To: \*\*\*  
Cc: \*\*\*  
Subject: RE: Escalation of complaint #0348: Jippii*

...

*I contacted the customer yesterday; the number below (\*\*\*\*) is not the one in question. He provided me with the correct number but requested me to call him back yesterday at 15h30 as he was in class. Called on two occasions and got voicemail (the subscriber you have dialled is not available). Called on both numbers this morning again and left a message on the number in question (\*\*\*) and requested him to return my call.*

*The number was indeed subscribed to Jippii for Fart2. Once I make contact with the customer, I will explain how and when he became subscribed. He was unsubscribed and opted out on 22 Aug 2006 (customer request).*

*I will provide more feedback once I make contact with the customer.*

...

*Call Centre Manager  
iTouch SA*

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### **Adjudicator's Decision**

Understanding the SP's response is significantly hampered by the SP's use of informal and often imprecise language. This is not a criticism of only the SP, as many if not most WASPA members respond in this manner to complaints received.

Having attempted to decode the SP's response, the Adjudicator noted:

- The SP has a number of content brands. One of these, "35050" provides direct content downloads and does not provide any form of subscription service, while another of the SP's brands "Jippii" provides both direct content as well as a subscription service.
- The "Jippii" subscription service operates in the form of a "club membership" or silent subscription. Subscribing to the subscription service will not result in content being "pushed" to the consumer or the consumer being notified that content is available for download by being sent a download link. Instead, the consumer receives substantial discounts on the cost of content items they chose to download and in return the consumer pays a subscription fee for this privilege. In the Case of "Jippii", this subscription fee is an amount of R5, charged fortnightly.

- The complainant provided a mobile phone number (the “A number”) and indicated that the billing was in respect of the “Jippii” subscription service.
- The SP investigated the use of the A number and found that it had been used for content downloads from the SP’s “35050” brand but not its “Jippii” brand.
- The SP did not leave the matter there and instead contacted the complainant and was advised that the subscription amounts were being deducted from a different mobile phone number (the “B number”). The SP investigated the use of the B number and found that it was subscribed to the Jippii “Super Saver Club” or subscription service, to be more accurate.
- The SP unsubscribed the B number from the Jippii subscription service as of 22 August 2006.
- The SP’s response is confused in that it suggests that the B number is a number on the MTN system, however MTN has only recently launched subscription services and has not had such services in place for the period of approximately one year that the complainant refers to. Furthermore, the reference to being “subscribed to Jippii for Fart2” seems inappropriate. Besides for the obvious scatological reference, this seems to refer to a series of content items containing two “farting monkeys” and includes ring tones, screen savers, message alerts, wall papers, picture messages and logos, provided by the SP through its Jippii brand. This calls into question the independence of the transaction where a consumer requests content and is automatically subscribed to a subscription service.

Have noted his interpretation of the SP’s response above, the Adjudicator made the following ruling:

- There is no indication that the SP failed to respond to the complainant’s e-mailed requests for assistance. This is simply denied by the SP and the complainant did not provide any evidence in his complaint that would refute this bare denial. Moreover, the SP’s action in this complaint was not simply to respond to the complaint, but to actually contact the complainant and attempt to resolve the complaint.

Conduct of this nature is laudable and marks the SP as a WASPA member that takes its obligations under the WASPA Code of Conduct seriously;

- There is insufficient information provided by the complainant to make a finding of a breach of the provisions of Clause 11.1 of the WASPA Code of Conduct. The confusing nature of the SP’s response is not sufficient to justify a finding against it.

As such, the complaint is not upheld.