REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Mira Networks
Telephone Networks	Cell C, MTN, Vodacom
Information Provider:	emexus.com
Service Type:	SUBSCRIPTION
Source of Complaints:	Consumer
Complaint Number:	#0469
Code of Conduct:	V 4.6

1.   Complaint

1.1   A complaint was received by the WASPA Secretariat on 03 October 2006 from a member of the public concerning a subscription service resulting from a TV advertisement. The complaint reads:

"OtherID: Short code SMS \"Ring\" to 31213

Code_Breached: 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.7, 11.3.1, 11.3.2, 11.3.3, 11.3.4

Detailed_Description_Complaint: Using MSISDN 08xxxxxxxx [coded for privacy purposes]*, I SMSed \"Ring\" to 31213 on 29/09/2006 to receive a Ringtone after seeing a television ad. Since then, I received 3 ringtones per week that cost R10 each. I was tricked into a subscribtion service. I replied with STOP Ring (as explained) to the sender of the content but it did not work. I also phoned the helpline 0800980430 which took me to an IVR system requesting my MSISDN after which the call was disconnected. Clearly, the unsubscribing channels do not work.*

Service provider has not resolved my complaint to my satisfaction".
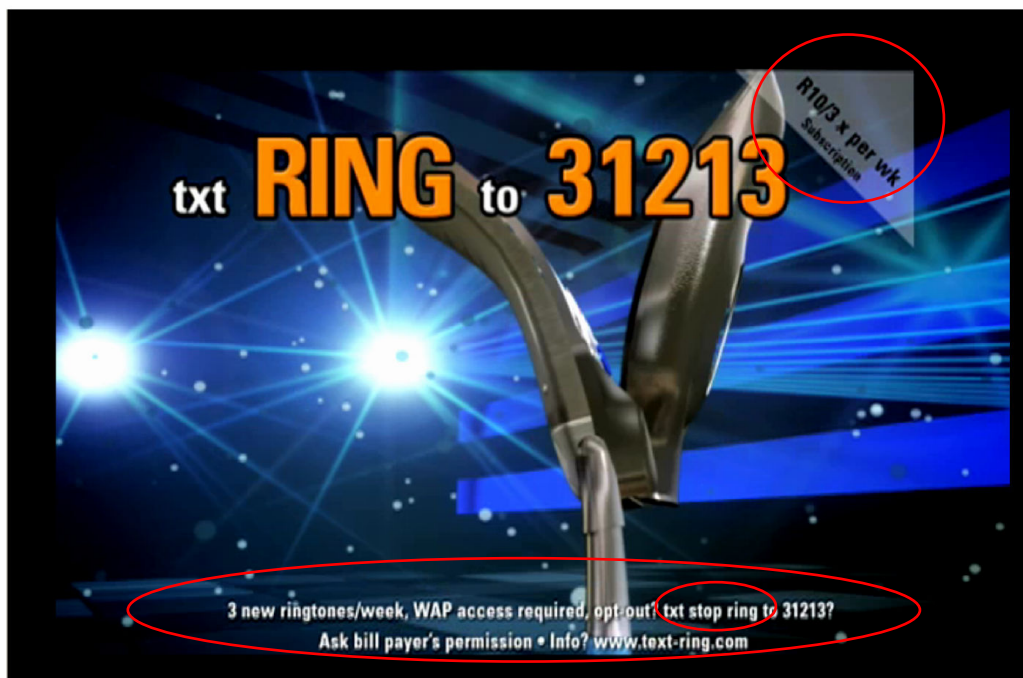
2.   SP Response

2.1   The WASPA Secretariat received an initial response from the SP on 12 October 2006 supported by a response from the IP to whom the complaint had been referred.

2.1.1   The response from the SP reads:

"As per the advert on TV, the service clearly states that the service is a subscription service and the TV advert also mentions the frequency of the billing and the price.

Please see attached screen shots".

2.1.2   The following two screen shots were provided with the response from the SP:

2.1.3   In addition, the SP stated:

"*As per the service content providers [IP] reply below, the person [Complainant] sent in the incorrect text to stop the service, when they used the IVR, the service was cancelled.*"

2.1.4   The response from the IP was:

"*What should we do with this. The number is not subscribed since the IVR is working now and he unsubbed like that.*

This particular person text ring stop in stead of stop ring. The text he send us is not according to the unsubscribe instructions communicated in the welcome message, website or commercial."

3.   Investigation

3.1   Relevant sections of the applicable WASPA Code of Conduct provide:

"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.

11.1.7. 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.

11.3. 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.

3.2   Following receipt of the complaint, the WASPA Secretariat requested logs from the SP of all transactions relating to the complaint. Logs detailing transactions through Vodacom, Cell C and MTN were received on 17 November 2006 and were referred to the Adjudicator in support of the investigation. These are summarised below:

Results from m2 logs – (Confirmed to be Vodacom)						
Event No	Date	Time	To	From	Message	Adjudicator's Comments
1	2006-09-29	16:40:56	31213	+278xxxxxxxx (Complainant)	msg:4:Ring	Complainant sends sms to subscribe to Ring tone
2	2006-09-29	16:51:00	31213	+278xxxxxxxx (Complainant)	msg:4:Ring	10 minutes later logs show that Complainant again sends sms to subscribe to Ring tone

Results from m5 logs – (Not specified, assumed to be Cell C)						
Event No	Date	Time	To	From	Message	Adjudicator's Comments
3	2006-09-29	16:41:15,058	278xxxxxxxx (Complainant)	2782004842231213 (SP)	msg:136:welcome to RING subscription service. R 10/ring tone. 3 x a week. To unsub Reply STOP RING. Info: 0800-980430. Mono tones? Reply RING M.	SP response to Event No 1 above providing all the information required by Section 11.1.7 of the Code
4	2006-09-29	16:41:17,887	2782004842231213 (SP)	278xxxxxxxx (Complainant)	msg:126:id:1569007544 sub:001 dlvrd:001 submit date:060929164115 done date:060929164118 stat:DELIVRD err:000 Text:Welcome to RING subs	The Complainant responds to welcome message in Event No. 3 above and generates an error message
5	2006-09-29	16:44:05,479	278xxxxxxxx (Complainant)	2782004842231213 (SP)	msg:114:01060403ae81ea02056a0045c60b03687474703a2f2f646f776e6c6f61642e656d657875732e636f6d2f34323534392f4e2e5f4675727274461646f5f4d616e65617	The SP's response in unintelligible

No.	Date	Time	From	To	Message	Comment
					465722e6d6964 0011032d31334 073796e617070 2e636f6d000801 034e2e2046757 27461646f204d6 16e6561746572 000101] [udh:7:0605040b 8423f0] [smscid:46/00/5d 858338/11278xx xxxxxx]	
6	2006-09-29	16:44:08,774	2782004842231213 (SP)	278xxxxxxxx (Complainant)	msg:126:id:1569 030968 sub:001 dlvrd:001 submit date:060929164 406 done date:060929164 409 stat:DELIVRD err:000 Text:⌐—⌡ ⌐ ???⌐ ⌐ jE? ⌐http:] [udh:0:]	The Complainant sends a further sms and generates another error message similar to Event No. 4 above
7	2006-09-29	16:53:51,684	278xxxxxxxx (Complainant)	2782004842231213 (SP)	[msg:84:You are already receiving ring tones. Hilarious Jokes? Reply JOKE. info: 0800-980430] [udh:0:]	The SP's response seems to indicate that the errors in Events No. 4 & 6 above are the result of the Complainant repeating the sms to subscribe to the Ring tone. The SP confirms that the Complainant is already subscribed and offers a new additional service
8	2006-09-29	16:53:55,076	2782004842231213 (SP)	278xxxxxxxx (Complainant)	msg:126:id:1569 110584 sub:001 dlvrd:001 submit date:060929165 352 done date:060929165 355 stat:DELIVRD err:000 Text:You are already rece] [udh:0:]	The Complainant sends a further sms and generates another error message similar to Event No. 4 & 6 above
9	2006-09-29	17:40:19,111	2782004842231213 (SP)	278xxxxxxxx (Complainant)	msg:9:Ring stop	The Complainant first subscribed at 16:40:56 ref Event No. 1. Approximately 1 hour later he sends this clear message to stop the subscription service, however, the logs show that he did in fact use the words in the incorrect order as recorded under the heading "SP Response"
10	2006-09-29	17:40:33,812	278xxxxxxxx (Complainant)	2782004842231213 (SP)	[msg:84:You are already receiving ring tones.	The SP's response is similar to Event No. 7 above

					Hilarious Jokes? Reply JOKE. info: 0800-980430]	
11	2006-09-29	17:40:36,946	2782004842231213 (SP)	278xxxxxxxx (Complainant)	msg:126:id:1569 526072 sub:001 dlvrd:001 submit date:060929174 034 done date:060929174 037 stat:DELIVRD err:000 Text:You are already rece] [udh:0:]	The Complainant sends a further sms and generates another error message similar to Event No. 4 & 6 & 8 above
12	2006-10-02	15:13:01,160	278xxxxxxxx (Complainant)	2782004842231213 (SP)	msg:113:010604 03ae81ea02056 a0045c60b0368 7474703a2f2f64 6f776e6c6f6164 2e656d6578757 32e636f6d2f393 6373436372f526 968616e6e615f5 56e6661697468 66756c2e6d696 40011032d3430 4073796e61707 02e636f6d00080 103526968616e 6e6120556e666 169746866756c 000101] [udh:7:0605040b 8423f0] [smscid:46/00/62 79a138/11278xx xxxxxx]	The SP's response in unintelligible
13	2006-10-02	15:13:03,992	2782004842231213 (SP)	278xxxxxxxx (Complainant)	msg:126:id:1652 138296 sub:001 dlvrd:001 submit date:061002151 302 done date:061002151 304 stat:DELIVRD err:000 Text: ⌐−⌐ ⌐ ???⌐ ⌐ jE? ⌐ http:] [udh:0:]	The Complainant sends a further sms and generates another error message similar to Event No. 4 & 6 & 8 & 11above

Results from m4 logs – (Confirmed to be MTN)				
Date	Time	To	From	Message
Logs provided are meaningless. Refer to Annexure A				

Summary of Transactions and Costs shown in logs provided by SA
278xxxxxxxx Mira Receive SMS: 3 Mira Sent SMS: 5 DLR SMS: 5 Number(s) sent to by subscriber 2782004842231213 (1) 31213 (2) Number(s) sent from by Mira 2782004842231213 (5) 2 * R10.00 successful OBS transactions

05 December 2006

3.3   Screen shots of SP's website:
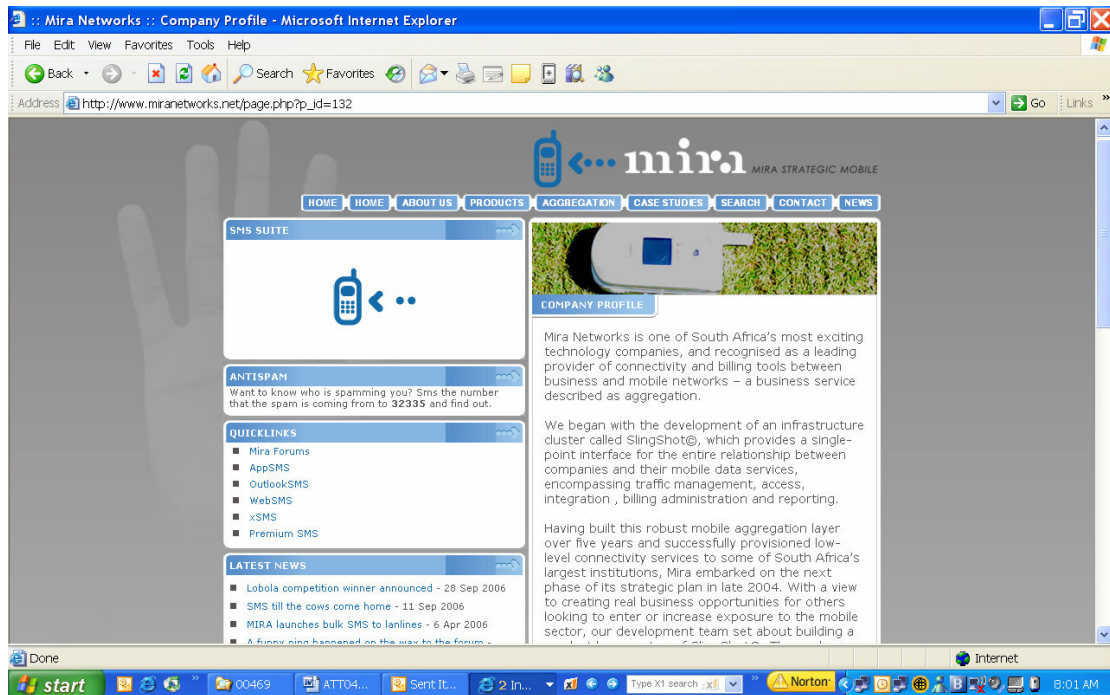
4.   Decision

4.1   Having regard to the complaint that the SP breached the WASPA Code of Conduct, the Adjudicator finds that:

4.1.1   Section 11.1.1
Subscription services were properly and explicitly identified in the TV advertisement. No breach occurred and the complaint is not upheld.

4.1.2   Section 11.1.2
"Bundling" of content and subscription services is not at issue. The complaint is not relevant and is not upheld.

4.1.3   Section 11.1.3
The logs provided to the Adjudicator by the SP correctly specify that billing is subscription based. The complaint is not upheld.

4.1.4   Section 11.1.4
"Bundling" of content and subscription services is not at issue. The complaint is not relevant and is not upheld.

4.1.5   Section 11.1.7
The SP provided the name of the subscription service and the cost and frequency of the service charges. The SP provided helpline contact details and apparently *"clear and concise instructions for unsubscribing"*. This complaint is not upheld. See however comments below (4.1.6 and following).

4.1.6   Section 11.3.1
Regarding the requirement that instructions for terminating a subscription service must be, "*clear, easy to understand and readily available"*, the Adjudicator finds that the SP appears on the face of it to have provided the required information in the TV advertisement and in its "Welcome" sms. See "event No. 3" under 3.2 above. This complaint is not upheld. See however comments below (4.1.7 and following) as it is in the implementation of the ability to unsubscribe the SP is found to have breached the Code.

4.1.7   Section 11.3.2
Regarding the requirement that subscription services must have a *"readily available unsubscribe facility"*, the Adjudicator finds that the SP has failed to provide such facility either through the sms or the IVR functionality. See detailed reasons below.

Regarding the maximum cost of R1 to unsubscribe, the Adjudicator is not in a position to comment as no information was provided in this regard.

4.1.8   Section 11.3.3
Regarding the requirement that a subscriber must be able to unsubscribe via sms with just 2 words, one of which is "STOP", the Adjudicator finds that while on the face of it, the SP appears to have complied with the provision   of   the Code, the SP has in fact contravened the spirit and purpose of the Code which is clearly to make it as easy and efficient as possible to terminate a subscription service. By restricting the termination of its subscription service to one particular word order, being "*STOP Ring" as opposed to "Ring STOP"* the SP is in fact limiting and / or manipulating the provision of the Code for its benefit, the net effect being the extended period of the subscription and the continued revenue flowing to the SP. The purpose of this provision of the Code is clearly the emphasis on "STOP" to terminate a service and not on

semantics. The Adjudicator finds that the SP has breached the WASPA Code of Conduct and the complaint is upheld.

4.1.9   Section 11.3.4
Regarding the requirement that Members of WASPA must ensure that the termination mechanism is functional and accessible at all times, the adjudicator is left in some doubt as to the information provided by the SP and wishes to highlight the points below in support of its finding that the SP has breached the Code in this regard:

4.1.9.1.   The IP stated that the Complainant *"sent in the incorrect text to stop the service, when they used the IVR, the service was cancelled."* i.e the subscription service was terminated not through sms but through IVR. The summary of "Transactions and Costs" shown in the logs (see 3.2 above) provided by the SP records that the SP received 3 sms messages and sent 5. However, the logs show that the Complainant sent 8 (not 3) sms messages to the SP in an attempt to terminate the subscription service. It becomes clear that the 5 "missing" (i.e. error) sms messages are the 5 attempts by the Complainant to terminate the subscription service by sms before resorting to the IVR. It becomes clear that the SP's service has been programmed to respond to incorrect word order in the form of an error message thereby playing on semantics (word order) as opposed to complying with the consumer protection provisions of the Code which in turn derive from the provisions of ECT. The Adjudicator finds that the SP failed to provide a termination mechanism that was functional and accessible at all times.

4.1.9.2   The Complainant stated that *"I also phoned the helpline 0800980430 which took me to an IVR system requesting my MSISDN after which the call was disconnected. Clearly, the unsubscribing channels do not work".* This statement also demonstrates the SP's failure to provide the requisite termination service.

4.1.9.3   The IP asked the SP "*What should we do with this. The number is not subscribed since the IVR is working <u>now</u>* (Adjudicator's emphasis) *and he unsubbed like that".* This statement suggests that the IVR was not working at some time and supports the Complainant's statement in 4.1.9.2 above that "*Clearly, the unsubscribing channels do not work",* and again demonstrates the SP's failure to provide the requisite termination service.

4.1.9.4   Recordals in 4.1.9.1, 4.1.9.2, and 4.1.9.3 all breach Section 11.3 of the Code.

4.1.9.5   Given that the response to the complaint referred to the website, (see 2.1.4 above), the Adjudicator would like to record that during the investigation into this complaint, no terms and / or conditions were found on the SP's website relating to subscription services. Neither were all of the requirements of the Electronic Communications and Transactions Act (ECT) 25 of 2002, from which WASPA and the Code derive existence, complied with. The SP has in addition failed to comply with Sections 50(1) (c) and 171) of the Companies

Act 61 of 1973 and there is nothing on the website that clearly identifies the SP as a juristic entity. All these are relevant to Consumer protection and service provider obligations.

4.1.9.6   In summary, the Adjudicator:

4.1.9.6.1   Does not uphold the complaints relating to Sections 11.1.1, 1.1.2, 11.1.3, 11.1.4 or 11.1.7 of the Code;

4.1.9.6.2   Does uphold the complaints relating to a breach of Sections 11.3.1, 11.3.2, 11.3.3 and 11.3.4 of the Code;

4.1.9.6.3   Formally reprimands the SP for failing to properly cater for consumer protection.

Regarding the breach of Sections 11.3.1, 11.3.2, 11.3.3 and 11.3.4 of the Code the SP is ordered to refund all monies paid by the Complainant to him and to pay a fine of R10 000 to WASPA. In determining the amount of the fine the Adjudicator has taken into account the seriousness of breaching provisions relating to consumer protection and the high level of concern among regulators regarding subscription services which it is mooted could lead to specific legislation to regulate the industry should the WASPA Code be found to be ineffective.

Fines are payable to WASPA within five (5) working days of notification of this sanction. Should an appeal be lodged, the fine will be suspended until the determination of the appeal. Should the fine be upheld (in whole or in part, or increased) the fine will be payable within five (5) working days of notification of the appeal finding.