



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	MiraNetworks
Information Provider (IP) (if any)	SamClick
Service Type	Subscription
Source of Complaints	Competitor
Complaint Number	0656
Date received	14 November 2006
Code of Conduct version	4.6 ¹

Complaint

The Complainant alleges breaches of clauses 11.1.2, 11.1.4 and 11.1.7 of the WASPA Code of Conduct.

In the words of the Complainant:

“When you request a specific item, you are automatically subscribed to the service. This is also how it is explained in the bottom left where you are told to select an item and SMS this to the short code.

Subsequent to sending a request for a specific content item as explained, I was billed R15.50. I have not received any information explaining that I am subscribed, the cost, how to unsubscribe etc.”

The Complainant does not provide any detail as to the date and time as to when he sent a request or specific content nor does he provide any details as to the precise steps taken in testing the service.

¹ Code of Conduct version 4.6 was applicable up until 10 November 2006 whereafter version 4.7 came into force. Although the Complaint was received by the WASPA Secretariat on 14 November 2006, it lies in respect of an advert published on 10 November 2006 and it is equitable that version 4.6 apply in the adjudication of the Complaint.

SP Response

The IP provided a lengthy rebuttal of the allegations, the majority of which is not relevant for present purposes.

“We fail to understand why Mr Penkin did not receive such message – unless of course he did not subscribe to our service.

We again request Mr Penkin to provide the number used to subscribe, the approximate date and time of the subscription request and proof that he has been billed for a subscription service. Unfortunately with the inadequate information provided by Mr Penkin, we cannot investigate this issue further.”

Further on its Response the SP continues:

“We have noted the number provided by Mr Penkin as the number used by him to subscribe to the service.

We must reiterate that we have no record of this number having been subscribed to our service or having been billed by Club UNYC. We again request Mr Penkin to confirm the number used to subscribe, the approximate date and time of the subscription request and proof that he has been billed for a subscription service. Unfortunately with the inadequate information provided by Mr Penkin, we cannot investigate this issue further.

We speculate that Mr Penkin may have confused the billing by a different subscription service for the billing from our service.

We will continue to work with our aggregator Mira to uncover the reason for this billing anomaly and ask Mr Penkin and WASPA to assist us in doing so.”

Decision

The Complainant in this matter is no stranger to the WASPA complaints logging procedure. In the experience of this Adjudicator the Complainant has, in the course

of logging other complaints, provided the time and date on which he tested a particular service and has set out the exact steps taken in undertaking such test.

In the instant Complaint, however, he has made only vague allegations which, in the opinion of this Adjudicator, do not make out a Complaint with sufficient particularity to allow the SP to respond properly thereto. This much would appear obvious from the Response of the SP.

Upon request from the WASPA Secretariat the Complainant did provide the number used to test the service but no further detail. It appears from the Response that the SP has no record of the number provided being used to subscribe to the service in question or being billed by the SP.

In the circumstances the following preliminary order is made:

- The Complainant is required to furnish the Secretariat, within 10 days of date hereof, with
 - Confirmation of the number used
 - The approximate date and time at which the service was tested, and
 - Proof that the number used was billed by the SP as a result of the test undertaken by the Complainant.
- In the event that this information is furnished within the stipulated time period then the Secretariat is requested to forward such information to the SP and allow it a further 10 day period within which to replace, amend or augment its Response; thereafter the Secretariat is requested to forward the augmented Complaint and Response to this Adjudicator.
- In the event that the requested information is not provided by the Complainant within the 10 day period then the following order shall apply in respect of this Complaint –

“The Complaint is not upheld.”