



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	TIMw.e. New Media Entertainment South Africa / Mira Networks
<b>Information Provider (IP)</b> (if any)	
<b>Service Type</b>	Subscription
<b>Source of Complaints</b>	Mr S Ganger
<b>Complaint Number</b>	10739
<b>Date received</b>	6 October 2010
<b>Code of Conduct version</b>	9.0

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### Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 24 August 2010. The SP actioned the unsubscribe request and uploaded proof of subscription. No refund was offered as the SP held the view that the complainant had validly subscribed to the service.

The complainant denies that he ever subscribed to the relevant service. He does admit that he received a number of SMS messages from July 2010, which he deleted. The complainant noted from his August cellphone account that his account had been debited with an amount of R 149.80 for content services. He requested his network operator to terminate the service which he believed had been done. He continued to receive a few further SMS messages after that.

The complainant is claiming a refund of the amount deducted from his account. The complaint has been escalated for adjudication according to the formal complaint procedure.

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### **SP's response**

The SP states that the subscription service was initiated when the complainant's mobile number was entered on its web page. The SP has provided logs of all messages sent to the complainant's number before and after the subscription was activated.

According to the SP's logs, the following message was sent to the complainant's number on 4 October 2009 at 14:37:28:

*Well done!U've joined TopMusic Club. 3Tones+4WPapers per week,  
R4,99/day.Stop?Dial \*120\*33535# & follow the menu(1c/sec).Helpline:(0)11  
4470357!www.za.natta.com*

The following message was sent at 14:37:54 on the same day:

*Your password is:9875 ull subscribe to Top Club from Natta.com@R4,99/day.To  
unsubscribe?Dial \*120\*33535# and follow the menu(1c/sec)Helpline(0)11 4470357*

The logs provided also show that the following monthly reminder message was sent to the complainant's mobile number each month after the subscription was activated:

*FreeMsg: You are subscribed to Top Music Club.Cost R4.99/day. To Stop  
Subscription, SMS STOP to 33535. Helpline (0) 861106472 (VAS Rates). Total Tim*

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

Section 11.2.4

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If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- (a) contain a PIN number which is then confirmed or validated on the web page,  
or
- (b) contain a URL with a unique identifier, which, when clicked, validates the handset number.

#### Section 11.2.5

Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

*[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].*

#### Section 11.4.1

Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (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 telephone number.

#### Section 11.5.1

A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

#### Section 11.5.2

The reminder messages specified in 11.5.1 must adhere exactly to the following format, flow, wording and spacing:

*You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].*

or

*You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].*

#### Section 11.5.3

The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.5.2.

#### Section 11.5.4

The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

#### Section 11.5.5

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The cost of service and frequency of billing must use the format “RX/day”, “RX/week” or “RX/month” (or RX.XX if the price includes cents). No abbreviations of “day”, “week” or “month” may be used.

#### Section 11.5.6

The text “(VAS)” must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

#### Section 11.5.7

Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

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### **Decision**

Regular complaints are made from consumers that they had been subscribed to a service without having entered their number anywhere. There have also been reported cases where no verification of the activation code has been done, meaning that anyone could have entered any activation code to sign up someone else to a service.

Section 11.2.4 of the WASPA Code is intended to avoid the possibility of a third-party entering a subscriber's number on a web site and causing that subscriber to be subscribed to a service without their consent.

The monthly reminder messages required by section 11.5.1 also provides a further opportunity for subscribers to be notified that they are subscribed to the service.

Based on the information contained in the logs provided by the SP, the complainant was subscribed to the service before the activation password had been sent to him.

It should also be noted that no content was ever downloaded by the complainant after the subscription was activated. It is highly improbable that a subscriber who

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intentionally subscribes to a content subscription service would then not use that service to download any content.

I therefore find that the activation of the subscription was not valid and the complaint is accordingly upheld.

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### **Sanction**

1. The SP is ordered to refund the complainant, within 7 (seven) days of receiving notice of this decision, all amounts which were debited to the complainant's account, as per the tax invoices that have been submitted to the WASPA Secretariat by the complainant.
2. The refund must be provided in a form acceptable to the complainant, either in South African Rands or air-time useable on a South African mobile network.
3. The SP is fined the sum of R 25 000.00.