



## ADJUDICATOR'S REPORT

<b>WASPA Member (SP):</b>	Integrat
<b>Information Provider (IP):</b>	Flycell
<b>Service Type:</b>	Subscription service
<b>Complainant:</b>	Monitor
<b>Complaint Number:</b>	11199
<b>Code Version:</b>	10.0
<b>Advertising Rules Version:</b>	2.3

### Complaint

This complaint by the WASPA Monitor (“the Monitor”) concerns the Flycell subscription content service (“the Service”) which is accessible through <http://www.flycell.co.za/> (“the Website”). The Monitor reported the Service’s failure to deliver requested content to subscribers after testing the Service and not receiving requested content to her test phone. The Monitor’s conclusion after documenting her tests (an example of one such test is annexed to this report) was as follows:

*From the start of the test it was very obvious that the customer would be entered into a subscription service. The required double opt-in procedure is present, but the content is not readily available for download to the customer. Errors are billed per each time you connect to the content you wish to download, even if your download is unsuccessful. This needs to be rectified.*

The Service was apparently defective and was reported to the SP for follow-up. The Monitor has alleged that the Service violated numerous sections of the Code including 3.1.1, 3.1.2, 3.3.1, 3.3.2, 4.1.1, 4.1.2, 6.2.2 and 6.2.3 which I have detailed below. The Monitor has asked that the Service be suspended pending a determination that it does, in fact, work properly.

### Service provider’s response

The SP referred the matter to the IP and requested that it test the Service. The SP reported back to WASPA once its or the IP's tests had been conducted and advised WASPA that the Service was found to be "in perfect working order". The Monitor tested the Service again and reported that it still experienced difficulties with the Service. There was discussion regarding the type of phone used for the test and the SP advised WASPA that it or the IP had successfully tested the Service using a Blackberry smartphone. Ultimately, the SP's/ IP's tests concluded that the Service was working properly and the Monitor's tests concluded that it was not working properly.

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

I have considered this matter in the context of version 10.0 of the Code. The following sections of the Code are relevant to the Complaint and my determination:

*3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.*

*3.1.2. Members are committed to lawful conduct at all times.*

*3.3.1. Members will not offer or promise services that they are unable to provide.*

*3.3.2. Services must not be unreasonably prolonged or delayed.*

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

*4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.*

*6.2.2. All advertisements for services must include the full retail price of that service.*

*6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.*

### **Sections of the Advertising Rules considered** [if applicable]

Not considered.

### **Decision**

The crux of the Complaint is that the Service does not perform as advertised or intended. In other words, the Monitor has complained that when following the process required in order

to download content from the Service to its testing device, it did not receive the content requested as was charged for this through a credit deduction.

The Complaint included concerns about whether pricing information was adequately disclosed. The screenshots from the Monitor's tests indicate that the Website clearly displayed the cost of the Service, namely "R5.99/Day (R6/Day for Cell C users) +R5 Joining Fee" and that the service was/is a subscription service with a double opt-in mechanism. I therefore do not find that the SP or IP violated sections 6.2.2 or 6.2.3 of the Code.

The Monitor's and SP/IP's inability to reach consensus on whether the Service was performing as advertised or intended presents a practical difficulty. I am unable to make a determination whether the Service was, in fact, working properly and, therefore, whether the SP or IP infringed the Code's provisions as detailed in the Complaint. The Complaint does not refer to complaints from consumers reflecting similar experiences to the Monitor's testing team. Such evidence would support the Monitor's contentions that the Service is, indeed, defective and that its failed tests are not due to some or other technical issue peculiar to the Monitor's testing environment or process.

There is therefore insufficient evidence to merit an order that the Service be suspended. That said, the possibility that the Service may not be working properly and that consumers may be charged for content they requested and did not receive is a concern.

### **Sanctions**

In the circumstances, I instruct the SP to send all of the Service's subscribers a reminder in the format prescribed by section 11.6 of the Code within 48 hours of being advised of my findings, or such time period as the WASPA Secretariat may deem more appropriate.

## Fly Cell Compliancy test

9 December 2010

Handset: Nokia E52

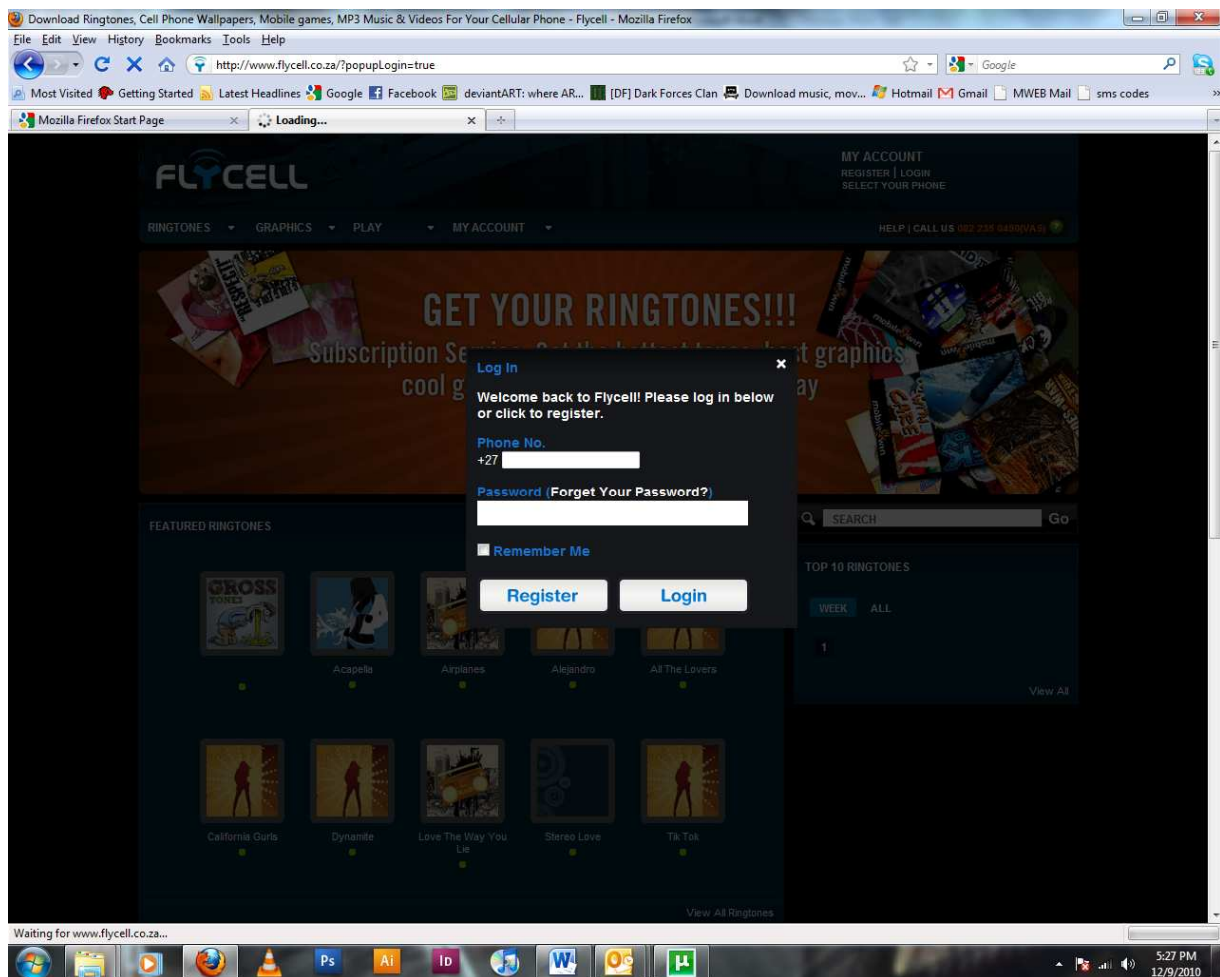
Cellphone Number: 0723680378

Starting Airtime:R398.75

Service Provider: Integrat (Pty) Ltd

URL: [www.flycell.co.za](http://www.flycell.co.za)

I went to the above website on my computer (it seemed they knew I was once a member):



I clicked REGISTER and was redirected to the following page:

Ringtones, Cell phone wallpapers, Mobile games, MP3 Music & Videos For Your Cellular Phone - Flycell.com - Mozilla Firefox

File Edit View History Bookmarks Tools Help

http://www.flycell.co.za/welcome-back

Most Visited Getting Started Latest Headlines Google Facebook deviantART: where AR... [DFJ] Dark Forces Clan Download music, mov... Hotmail Gmail MWEB Mail sms codes

Mozilla Firefox Start Page Ringtones, Cell phone wallpapers...

# GET 1 BONUS RINGTONE NOW!

Join today to get access to the latest mobile content. Everything from ringtones, games and more.

SUBSCRIPTION SERVICE. R5.99/day + R5 Joining Fee

## ENTER YOUR CELL PHONE NUMBER TO SUBSCRIBE TO FLYCELL.

+27 0

VODACOM

**CONTINUE**

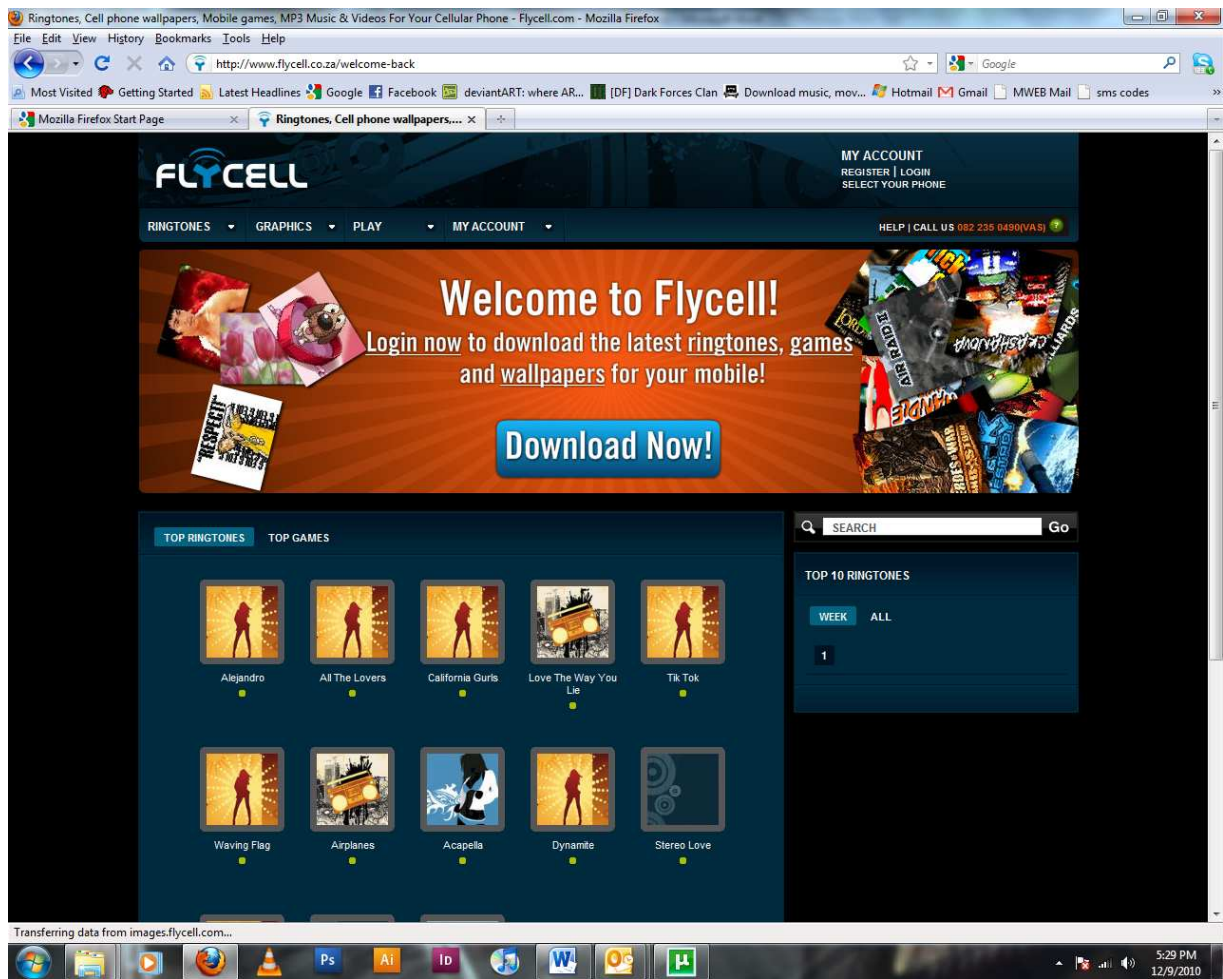
**FLYCELL**

SUBSCRIPTION SERVICE: You will receive ringtones and other downloadable content. R5.99/day (R6/day for Cell C customers) + R5 Joining Fee. To unsubscribe, sms STOP to 35900. Flycell. Helpline: 082 235 0490 (VAS) Errors billed. [support@flycell.co.za](mailto:support@flycell.co.za), For WASPA Code of Conduct visit [www.waspa.org.za](http://www.waspa.org.za). Terms & Conditions [click here](#).



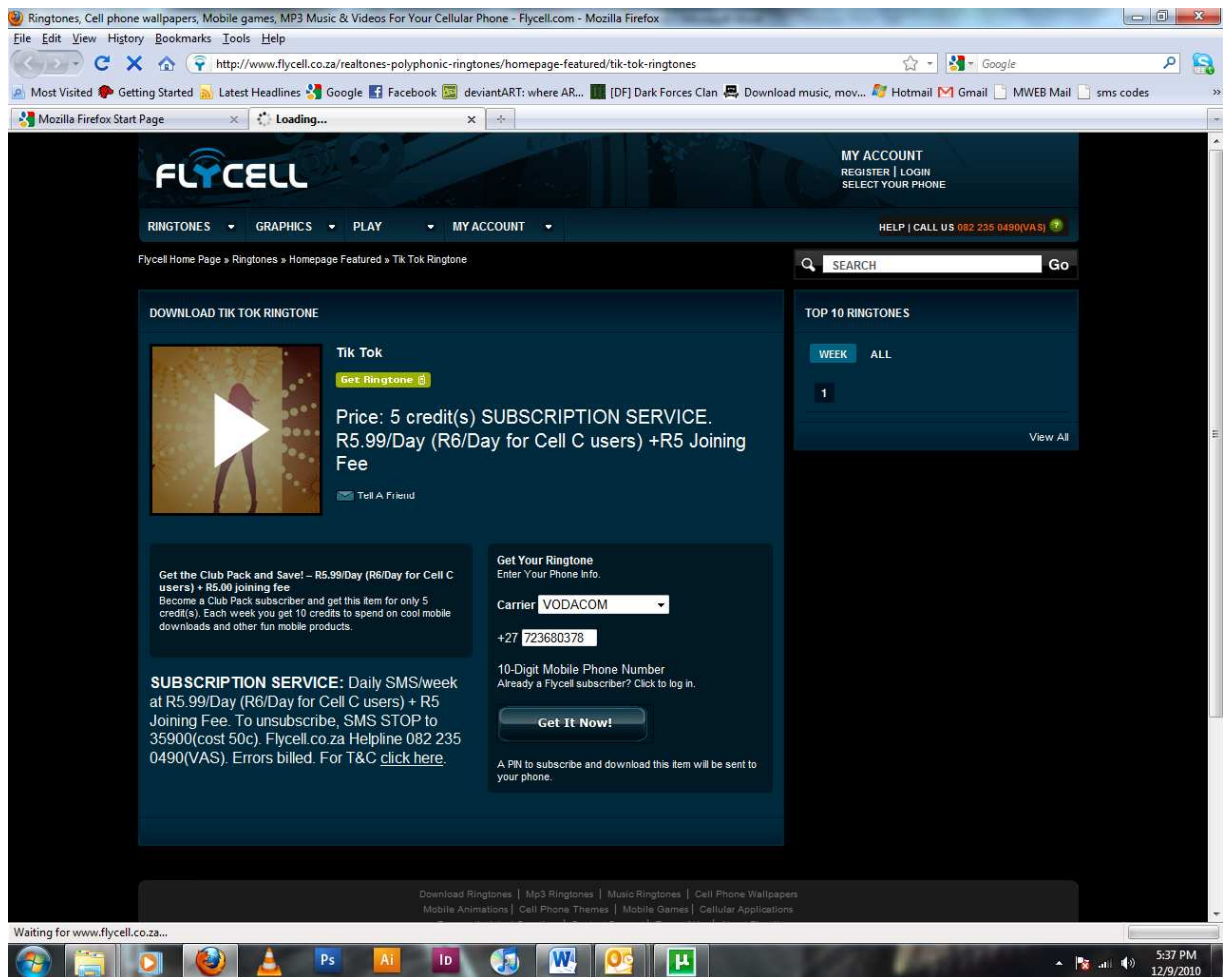
I entered my details and selected continue.

I did not receive a PIN and was redirected to the next page.



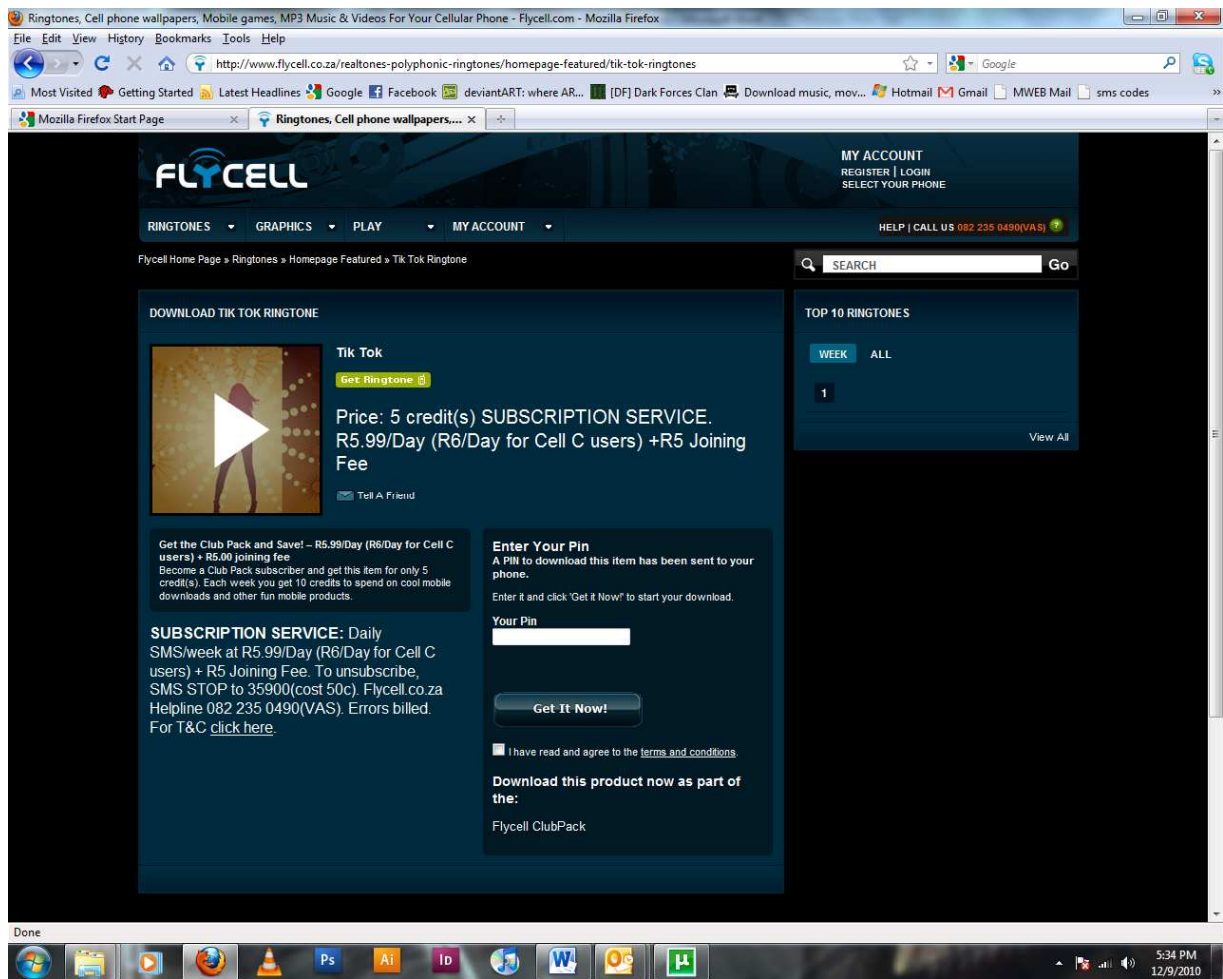
I clicked on TIK TOK and selected "GetRingtone".

I entered my information and selected "Get it Now!".





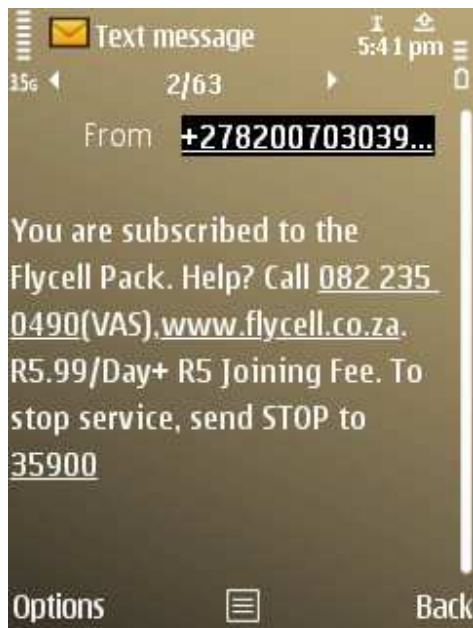
I was redirected to the following page:



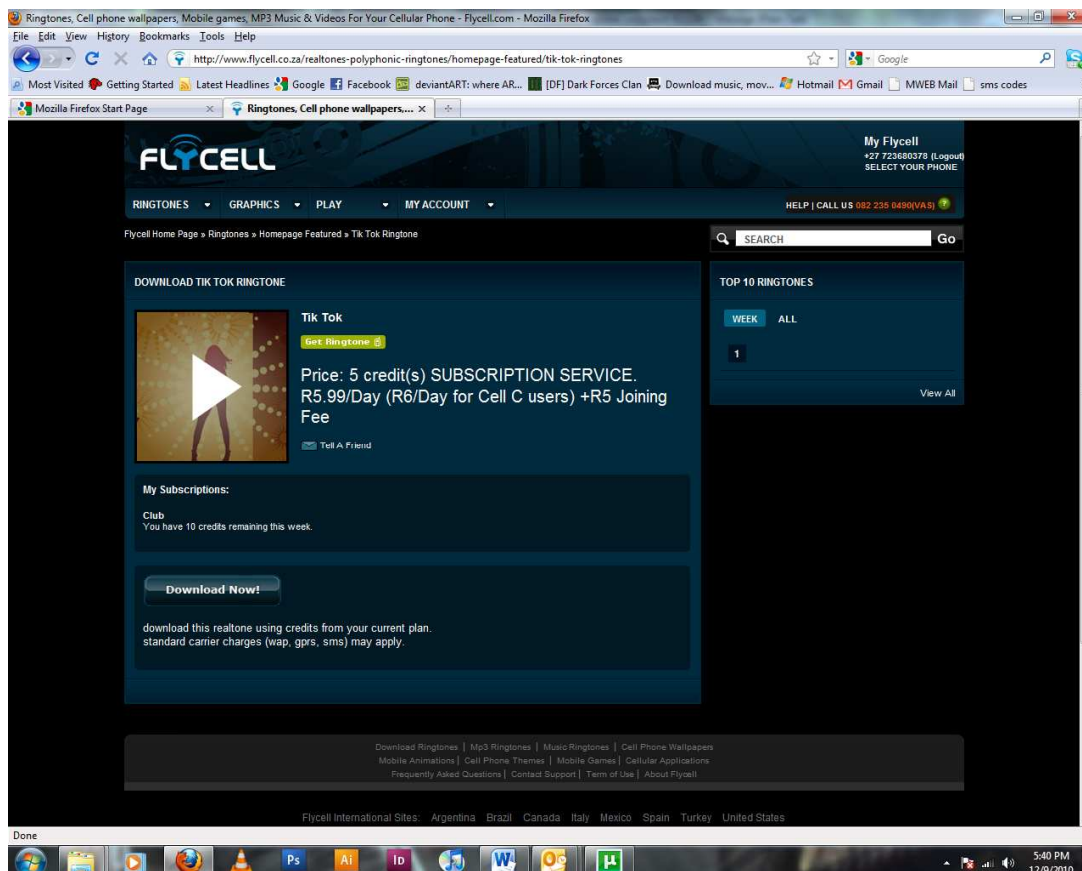
I received a message with a PIN and entered it into the space provided and ticked the check box. I then clicked GET IT NOW!



I received the following welcome message.



I was redirected to the following page and selected "Download Now!".



I received a WAP link message and followed it:



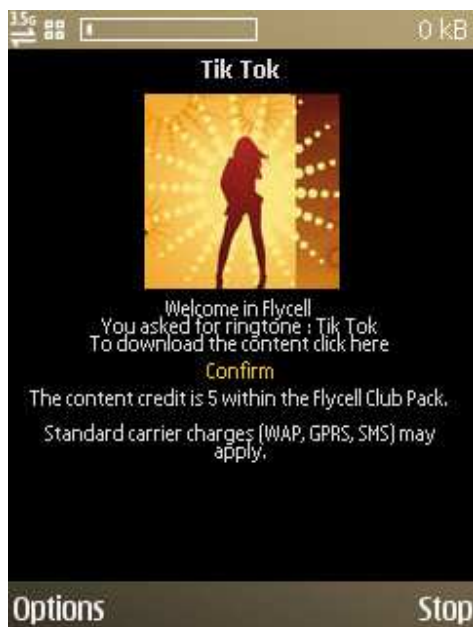
I clicked on the TICK and was directed to the following page:



I was redirected to the following page



I selected CONFIRM and the bar on the top left (see below) starts to attempt download and it says Okb, but then they both disappear and the song is not downloaded.



I retried this 3 times.

**Conclusion:**

Service does not work as it should.

**Breaches in the Code:**

3.3.1. Members will not offer or promise services that they are unable to provide.