



## REPORT OF THE ADJUDICATOR

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<b>Complaint reference number:</b>	#12421
<b>WASPA member(s):</b>	TIMw.e. <b>New Media Entertainment South Africa</b> <b>(Information Provider)</b> Integrat (Service Provider)
<b>Membership number(s):</b>	1067 / 0030
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription Service
<b>Date complaint was lodged:</b>	2011 – 03 – 23
<b>Date of the alleged offence:</b>	Not Applicable
<b>Relevant version of the Code:</b>	10.0
<b>Clauses considered:</b>	2.11, 2.24, 5.1.3, 5.1.5, 5.1.6, 11.2.1, 11.9.2 & 11.10.1
<b>Relevant version of the Ad. Rules:</b>	Not Applicable
<b>Clauses considered:</b>	Not Applicable
<b>Related cases considered:</b>	#11035, #11339, #11361

## Complaint

The complaint is the escalation of the unsubscribe request #12486 logged by the complainant on the 06th of March 2011 via the WASPA unsubscribe facility. The complainant alleged that he received an sms message containing a request to subscribe to a service to download “super tones”. The complainant sent an sms to the Information Provider (IP) with the words “stop music”. The complainant proceeded to delete the message. Notwithstanding, according to the complainant, an amount of R4,99.00 per day was deducted from the complainant’s airtime until the eventual date of termination of the service.

The Service Provider on 08 March was requested to attend to the following:

- To unsubscribe the customer (complainant);
- To send an SMS communication to the complainant confirming that the complainant has been unsubscribed;
- To provide proof of subscription; and
- To contact the complainant regarding the refund requested by the complainant.

The Service Provider on 08 March 2011 confirmed that (i) the complainant was unsubscribed; (ii) and that a confirmation sms to such effect was sent to the complainant. The Service Provider handed the complaint over to the IP. The IP further reflected in its records that the complainant was unsubscribed.

The formal complaint issued by WASPA to the IP, dated 24 March 2011 provided that the complainant was not satisfied with the response more especially that the complainant’s request for a refund had not been fulfilled.

The IP responded on 24 and 25 March 2011 as follows:

- The complainant was unsubscribed on 07 March 2011;
- The subscription and termination of services was not irregular in that the communications from the WASP to complainant and vice versa and the records of termination of service did not indicate any irregularity and submitted that the complainant had subscribed to the service via a web facility; and
- Denied that a refund was in order due to the complainant's unsubscribe request containing the words "stop music" which were the unsubscribe request command for another service, the Music Club and that the sms communications sent to the complainant provided the instructions to unsubscribe to the complainant. On receipt of the sms "stop music" from the complainant, the IP responded to the complainant that the complainant was not in the Music Club and provided instructions and details of such subscription service.

(The logs provided substantiate the IP's contentions above and show that subsequent to last mentioned communication, the IP continued to send messages to the complainant until the complainant was unsubscribed on 07 March 2011.)

(The logs of exchanged messages further reveal a Service ID and Service Name on all communications exchanged between the IP and the complainant being 299 and SAF ITG.)

Sections of the Code considered

## 2. Definitions

**2.11. A "content subscription service" includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones,**

**wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a "club" or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.**

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

## 5. Commercial Communications

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

5.1.5. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

5.1.6. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

## 11.2 Subscription process

**11.2.1 Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.**

11.9 Termination of a service

11.9.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.10 Subscription service directory and logs

**11.10.1 When requested to do so by WASPA, a member must provide logs for any subscription service customer which include the following information:**

- (a) proof that the customer has opted in to a service or services;**
- (b) proof that all required reminder messages have been sent to that customer;**
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and**
- (d) any record of successful or unsuccessful unsubscribe requests.**

## Decision

I find that the issue of whether the complainant did in fact subscribe to the service has not been evidenced (to my satisfaction) by the IP or disproved (to my satisfaction) by the complainant.

Notwithstanding the origin of such subscription, on the information submitted to me, with due regard and reference to (i) the complaint, (ii) the SP's response to the complaint, (iii) the complainant's reply and (iv) the sections of the Code considered, I find as follows:

***I find that the IP has contravened the following sections of the WASPA Code of Conduct:***

Clause	Basis of Finding
<p>11.9.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.</p>	<p>In that the use of the word "stop", as evidenced in the logs, in the sms sent by the complainant, on the date of receipt of the first communication regarding the subscription service - should have warranted as per 11.9.2 of the Code the IP to terminate all services or provide the complainant with the choice of service to terminate.</p>
<p><b>11.10.1 When requested to do so by WASPA, a member must provide logs for any subscription service customer which include the following information:</b></p> <p><b>(a) proof that the customer has opted in to a service or services;</b></p>	<p><b>The IP did not satisfy the request to provide the logs that evidence the complainant's opting in to the subscription service.</b></p>

Furthermore, I drew inference from the following:

Notwithstanding the complainant's failure to unsubscribe again following messages requesting the complainant to download the content offered in the service, between the time of the alleged subscription and the second stop sms message the complainant did not initiate any downloads which leads me to believe that the complainant did not want to make use of this service and may have been unclear as to whether the complainant was in fact unsubscribed. The sms sent by the IP to the complainant did not indicate a failed unsubscribe request.

**The complaint is accordingly upheld.**

(For the purposes of this adjudication and in the discretion of the Adjudicator, the issue of the complainant's subscription in 2008 falls outside the scope of this complaint.)

#### Sanctions

In determining the appropriate sanctions and considering the factors in mitigation (and aggravation) of the sanctions, the Adjudicator orders the following sanctions:

The IP is:

- Fined the sum of R25 000.00 payable to the WASPA Secretariat within ten (10) days of date of notification of this Adjudication;
- Ordered to refund the Complainant within seven (7) days of date of notification of this Adjudication all amounts paid over by the Complainant to the IP as from 08 February 2011 as per the logs provided.