

REPORT OF THE ADJUDICATOR

Complaint reference number:	12465
WASPA member(s):	Sprint Media S.L. (the Information Provider or "IP") and Mira Networks (the Service Provider or "SP")
Membership number(s):	1168 and 0011
Complainant:	Public
Type of complaint:	Subscription service – refund requested
Date complaint was lodged:	2011-02-28
Date of the alleged offence:	2010-06-26 until 2011-03-23
Relevant version of the Code:	9.0
Clauses considered:	11.2.2, 11.5.1, 11.5.2, 11.5.4
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	Not applicable
Related cases considered:	#11033, #12527

Complaint

Complaint #12465 is the escalation of unsubscribe request #1186728, logged on the WASPA unsubscribe system on 28 February 2011. This complaint concerns the alleged subscription to a service by the Complainant's wife, which the Complainant alleges she was completely unaware of for a number of months. The Complainant is dissatisfied with the IP's proof of subscription, and wants a full refund of the debited subscription charges.

On 23 March 2011, the Complainant wrote to WASPA as follows:

"Hi, My wife has recently found out that she was being billed a daily rate of R7.50 for something she unknowingly signed up for on the 26th June 2010 at around 17h30. We have cancelled the service via her service provider (MTN), and I traced the information via the un-subscription email from Mira.co.za who then identified the perpetrator as www.pointforge.com. Firstly, my wife never signs up for any paid services on the internet and so the only way she would have used her phone number would have been in a contact request form. Secondly, regardless of the form of input, how the hell do they verify that she has authorised the billing on her number, and what stops anybody else from subscribing her to a service she doesn't want. That being the case,

what can we do to claim losses for this, and how does one prevent it in future short of not using correct contact information?"

The Complainant also wrote later on the same day: **"I will also have to recalculate the interest they owe us (and my time spent on the issue since the last discussion)."**

The unsubscribe request document generated by WASPA shows that the SP referred the matter to the IP on 23 March 2011 and the IP confirmed on the same day that the relevant number had been unsubscribed and blocked. A confirmation SMS was sent to the Complainant, but no refund was offered, as the IP stated that **"the information regarding the subscription was made clearly available to the customer and reminder messages were sent."**

On 28 March 2011 the Complainant wrote, in support of escalating the matter to formal adjudication:

"You see the irony in all of this – if there is even such a thing as a Privacy Act, then how is it possible that one of two things happened: 1.This fraudulent company got my wife's personal number and invited her to an obviously fraudulent money making scheme which she unwittingly accepted. 2. This fraudulent company subscribed her without her knowledge (i.e. no invitation was even sent)."

The formal complaint notification was sent to the IP by WASPA on 30 March 2011. The IP is an Affiliate member of WASPA and thus directly bound by the Code. WASPA also sent the formal complaint notification to the SP on the same day, due to the fact that the SP's infrastructure was being made use of to provide the service complained of.

Information provider's response

An undated log was provided by the IP in response to the Secretariat's request on 30 March 2011 for logs of proof of subscription, and an accompanying explanatory email was received from the IP on 31 March 2011.

The log shows the following:

[This number was subscribed to a service called Mobmatic (Pointforge), a service where the customer can accumulate points and exchange it for products at www.pointforge.com

The service was activated on the 26th of June, 2010 at 5:24pm via the Pointforge mobile internet (WAP) landing page: <http://m.pointforge.com/ads/wpmtn/>

<<	2010-06-26 17:24:58	Optin	1/1	39856 Mobmatic	CLAIM Code:4765 IP Address: 41.208.50.193 Page: http://m.pointforge.com/ads/wpmtn/ User Agent: Mozilla/5.0 (SymbianOS/9.2; U; Series60/3.1 1.0/SamsungSGHi560/I560JAHD2 Profile/MIDP-2.0 Configuration/CLDC-1.1) AppleWebKit/413 (KHTML, like Gecko) Safari/413
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The following message with their password was delivered to the customer's cell phone after the WAP subscription. This message was confirmed delivered.

>>	2010-06-26 17:25:26	77957160 Delivered On	1/1	39856 Mobmatic	Streaming	You have 40000 points. Visit www.pointforge.com password 74997. Collect points and trade for products. SubscriptionR7/day stop? txt stop 39856 Help0861106472
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As evidenced by the log, the user was subscribed to a service called Mobmatic, a service where a subscriber can accumulate points and exchange them for products at www.pointforge.com. The log shows the following information: (i) that the user landed on the WAP landing page <http://m.pointforge.co./ads/wpmtn/> on 26 June 2010; (ii) a record of a "claim code" (4765) having been submitted from a Samsung SGHi560/I560JAHD2 handset on 26 June at 17:24; and (iii) a record of a message having subsequently been sent by the IP to the user, stating as follows: **"You have 40000 points. Visit www.pointforge.com password 74997. Collect points and trade for products. SubscriptionR7/day stop? Txt stop 39856 Help 0861106472"**.

In addition, the IP's written response dated 31 March 2011 explains that the charges on the MTN account are associated with the SP, a mobile entertainment enabler providing mobile content services to customers across various territories. The IP explains further that:

"Any customer using our services must be opted-in to the services in order for their mobile account to be billed. [...] in South Africa in order for our systems to verify an opt-in, we operate a "Call to Action" process whereby the consumer will respond using specific keywords or codes. In this case, our logs show the customer responded to an online marketing campaign on the 26th June, 2010 via our WAP mobile internet landing page. The service was activated with the Opt-in code, in this instance the CLAIM code 4765 was sent to our systems on the 26th June, 2010. We activate the billing process on a service once the opt-in is received from the mobile number, in this case the 26th June, 2010. Once an opt-in is received, our systems send out a welcome message with a password. We advertise the price of the subscription service as well as detailing the customer care number within the body of the opt-in messages. As a gesture of goodwill, we will offer a three month refund of R588 based on the fact that they have received monthly Reminder

Messages prompting them if they so wished to Stop the service.”
(emphasis added).

The IP goes on to state that it cannot simply re-apply credit to the cell phone account, but it can arrange for the SP to make a bank transfer if it is furnished with certain banking details for the user / Complainant.

WASPA passed on the IP's response to the Complainant on 1 April 2011, and the Complainant replied on the same day as follows:

“So all you are doing is wasting my time by repeating the same old drivel which I'm already aware of. Quoting, *“In this case, our logs show the customer responded to an online marketing campaign on the 26th of June, 2010 via our WAP mobile internet landing page.”* Prove it – is there any signed contract stating that my wife agreed to the service. Are there MTN audits indicating this, etc? As long as you cannot prove that my wife signed up, then it is not a contractual agreement, and money is still owing to my wife. Furthermore, I find it a violation of the Privacy Act to send out, quote *“an online marketing campaign on the 26th of June, 2010”* using contact details that my wife did not supply them with. Anyway, this matter is not closed, and you will follow up to get necessary PROOF that my WIFE signed up for the service.”

In relation to the offer of a refund, the Complainant also responded to WASPA on 4 April 2011, passing on account details and enquiring how the IP had calculated the due amount. The IP replied on 5 April that it would be issuing a three month refund of R588.00 as previously stated. The Complainant replied to this correspondence on 5 April, stating that the amount was unacceptable, and listed a number of content charges amounting to a total of R1338.52 (excluding interest, which he said he was prepared to waive). He again stated that the IP had not provided any proof of subscription, and that he viewed the money as stolen.

The IP replied to this on 8 April, re-stating its case and referring to the provided screen shots of opt-in details (this refers to the information in the logs set out above). It also restated that the user was in receipt of monthly reminders of the subscription, and that no opt-out had ever been received (until the complaint was logged with WASPA). It also stated that the account holder (being the Complainant's wife) would have received monthly bills from her network operator if she had a contract, showing her to be a member of the service since June 2010. Lastly, the IP expressed some discomfort with providing information to a third party (i.e. the Complainant), who is not the user or account holder in terms of the complaint.

The Complainant replied on 11 April 2011. He passed on the contact details of the account user, being his wife, and restated his position, responding: ***“As for my wife finding [out] about this after 6-8 months of use – a listing of “Content Charge” on the invoice doesn't say anything, and I personally find it subversive that they DON'T put a more accurate invoice line item description that one would question immediately.”***

Subsequent to the matter having been referred for adjudication, and having considered the foregoing information, I directed WASPA on 21 June 2011 to request the following information from the IP, within 5 working days:

1. A copy of the online marketing campaign materials (i.e. web pages, advertisements, banners, etc.) that the IP states the Complainant responded to on 26th June 2010.
2. A copy of the WAP mobile internet landing page (in the form that it would have appeared to the Complainant on 26th June 2010).
3. A copy of any WAP confirmation page displayed to the Complainant.
4. Copies of any and all welcome messages and monthly reminder messages sent to the Complainant in log format showing MO/MT numbers, date and time of sending, delivery status and detailed message content.

This request was sent to the IP by WASPA on 21 June 2011, and the IP responded on 27 June 2011. According to the IP's response, the user would have seen the following Mobile Banner Advert when browsing the mobile internet:

Appendix 1 – Mobile Banner Advert



Collect **40,000** Store
Points Guaranteed!

Upon clicking the advert, the user would have been directed to the “service landing page” as follows:

Appendix 2 – Mobile Internet Landing Page

(1/4) Your mobile
number has
received **40,000**
Value Points.
Claim now to
exchange for
products.

Next step:

**Enter your
mobile number**

Activate

Join Pointforge
subscription service
for just R7 a day.
Pointforge has
requested that your
mobile number be
made available. To
cancel service send
stop to 39856. For
support call
0213002334 or
email help@ems.cx

Support:
help@ems.cx

The IP explained that it runs a 4-page subscription process, and that once a user has entered a number on the above page, a further 3 pages are displayed as the user interacts with the service. Each page is dependent on a section in the previous page being completed fully (these pages are shown below). The IP cited all the appendices as an explanation for how the subscription process is completed and seemed to imply that the user (being the Complainant's wife) completed this process herself. Appendices 3, 4 and 5 show the following pages that were allegedly displayed to the user.

Appendix 3 – Mobile Internet 2nd Process Page

(2/4)

IMPORTANT!

You will now receive an activation SMS to your mobile. You must open the message and click on the link to complete the activation.

Subscription Service
Join Pointforge for just R7 a day.
Pointforge has requested that your mobile number be made available. To cancel service send stop to 39856. For support call 0213002334 or email help@ems.cx

**Support
0213002334**

Appendix 4 – Mobile Internet Confirmation Page

Exchange Your
40,000
Value Points
for products now:
CONFIRM
and join the fun

Subscription Service
Join Pointforge for
just R7 a day.
Pointforge has
requested that your
mobile number be
made available. To
cancel service send
stop to 39856. For
support call
0213002334 or
email help@ems.cx

Support
0213002334

Appendix 5 – Mobile Internet Final Page

Thank you and
enjoy your points.
Your request is
being processed
and your login
details will be
sent to you
shortly.

[Close Window](#)

The IP explained that the user would have inputted her mobile number in order to see Appendix 3. At the same time as being able to view this page, the system would send out a service SMS, otherwise known as the Optin – that contains the link to the WAP Confirmation Page (Appendix 4). The final WAP page (Appendix 5) is only shown when the user clicks on the Confirm in Appendix 4. This prompts a welcome message to be sent by SMS.

The “Optin” and welcome message referred to above are set out in the IP’s response as Appendix 6 and Appendix 7 respectively:

Appendix 6 – SMS OptIn Receipt

Date	Time	Action	Short Code	Message
26/06/2010	17:24:58	OPTIN	39856	CLAIM Code:4765 IP Address: 41.208.50.193 Page: http://m.pointforge.com/ads/wpmtr/ User Agent: Mozilla/5.0 (SymbianOS/9.2; U; Series60/3.1
26/06/2010	17:25:04	Sent	39856	10/SamsungSGH550/1560IAHD2 Profile/MIDP-2.0 Configuration/CLDC-1.1) AppleWebKit/413 (KHTML, like Gecko) Safari/413 service msg.

Appendix 7 – Welcome Message

Date	Time	Action	Short Code	Message
26/06/2010	17:25:05	Sent	39856	Welcome: You have 40000 points. Visit www.pointforge.com password 74997. Collect points and trade for products. SubscriptionR7/day stop? txt stop 39856 Help0861106472
26/06/2010	17:25:26	Delivered	39856	Welcome: You have 40000 points. Visit www.pointforge.com password 74997. Collect points and trade for products. SubscriptionR7/day stop? txt stop 39856 Help0861106472

Finally, the IP produced a log of all reminder messages sent. This is Appendix 8:

Appendix 8 – Reminder Messages

Date	Time	Action	Short Code	Message
30/07/2010	19:40:01	Sent	39856	Reminder: Exchange points for products www.pointforge.com. Password 74997. Subscription R7/day. Support 0861106472. stop? txt stop
30/07/2010	19:56:28	Delivered	39856	Reminder: Exchange points for products www.pointforge.com. Password 74997. Subscription R7/day. Support 0861106472. stop? txt stop
27/08/2010	19:37:45	Sent	39856	Reminder: Exchange points for products www.pointforge.com. Password 74997. Subscription R7/day. Support 0861106472. stop? txt stop
27/08/2010	20:00:45	Delivered	39856	Reminder: Exchange points for products www.pointforge.com. Password 74997. Subscription R7/day. Support 0861106472. stop? txt stop
24/09/2010	20:58:00	Sent	39856	Reminder: Redeem points for products www.pointforge.com. Password 74997. Subscription R7/day. Support 0861106472 or support@pointforge.com. 2stop txt stop
24/09/2010	22:16:08	Delivered	39856	Reminder: Redeem points for products www.pointforge.com. Password 74997. Subscription R7/day. Support 0861106472 or support@pointforge.com. 2stop txt stop
26/10/2010	17:23:44	Sent	39856	reminder INFO TXT: u r subscribed to Sprint Media MOBOMATIC! COLLECT POINTS & USE IN STORE!!! Help 0861106472 cost R7/day to unsub txt stop 39856 free msg.
26/10/2010	17:31:21	Delivered	39856	reminder INFO TXT: u r subscribed to Sprint Media MOBOMATIC! COLLECT POINTS & USE IN STORE!!! Help 0861106472 cost R7/day to unsub txt stop 39856 free msg.
26/11/2010	19:48:21	Sent	39856	.reminder INFO TXT: u r subscribed to Sprint Media MOBOMATIC! COLLECT POINTS & USE IN STORE!!! Help 0861106472 cost R7/day to unsub txt stop 39856 free msg.
26/11/2010	23:59:28	Delivered	39856	.reminder INFO TXT: u r subscribed to Sprint Media MOBOMATIC! COLLECT POINTS & USE IN STORE!!! Help 0861106472 cost R7/day to unsub txt stop 39856 free msg.
26/12/2010	17:39:32	Sent	39856	Reminder: Redeem ur points 4 products or they'll expire.u r subscribed to Sprint Media MOBOMATIC.elp 0861106472 cost R7/day to unsub, dial stop 39856 free msg
26/12/2010	18:22:17	Delivered	39856	Reminder: Redeem ur points 4 products or they'll expire.u r subscribed to Sprint Media MOBOMATIC.elp 0861106472 cost R7/day to unsub, dial stop 39856 free msg
24/01/2011	15:59:44	Sent	39856	REMINDER: 2SEE UR NEW ONLINE STORE PRODUCTS @ MOBOMATIC.COM Help:0861106472/ ur subscribed 2 S/Media MOBOMATIC/ cost R7/day 2 unsub, sms stop 33533 free msg
24/01/2011	16:03:10	Delivered	39856	REMINDER: 2SEE UR NEW ONLINE STORE PRODUCTS @ MOBOMATIC.COM Help:0861106472/ ur subscribed 2 S/Media MOBOMATIC/ cost R7/day 2 unsub, sms stop 33533 free msg
21/02/2011	15:09:23	Delivered	39856	REMINDER: 2 SEE UR NEW ONLINE STORE PRODUCTS @ MOBOMATIC.COM Help:0861106472/ ur subscribed 2 SM MOBOMATIC/ cost R7/day 2 unsub, sms stop 39856 free msg 28plus
21/02/2011	15:12:16	Sent	39856	REMINDER: 2 SEE UR NEW ONLINE STORE PRODUCTS @ MOBOMATIC.COM Help:0861106472/ ur subscribed 2 SM MOBOMATIC/ cost R7/day 2 unsub, sms stop 39856 free msg 28plus

The IP reiterated that as is evident from the logs, the user was fully aware of the service. It confirmed that the Complainant was refunded “**a total of 3 months as a gesture of goodwill**”.

In relation to this further information provided by the IP, I directed WASPA on 4 July 2011 to forward same to the Complainant and user for their consideration and further response. In particular, I asked that the user please confirm the display of the banner advert, the landing page and all other pages that the IP alleges would have been displayed to her, and asked for a response to the specific allegation that the user would have entered her mobile number before activating the service, that she would have received an activation SMS on her cellphone and that she would have clicked on “CONFIRM” on the confirmation page before the subscription was activated.

The Complainant responded on 25 July 2011. In relation to all the screenshots provided by the IP, the Complainant states “**NONE – no such material was received.**” In addition to expressing further frustration, the Complainant states:

“Again, I trust that SPRINT MEDIA will pay back the arrears with immediate effect; taking into account interest and time on our part. Further to this, I will start charging an hourly rate of R650.00 to SPRINT MEDIA for any further consultancy on matters I have already forwarded to yourselves and them.”

Sections of the Code considered

“11.2.2. 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 a request for a specific content item and may not be an entry into a competition or quiz.”

“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.”

“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].”

“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.”

Decision

There are matters where it is difficult for an adjudicator to determine the veracity of one party's allegations over another's. This matter is such a matter. I am not in a position to determine whether or not the Complainant's wife followed the specific subscription activation steps that the IP alleges she did, and which the Complainant and his wife, on the other hand, deny. There is clearly a dispute of facts in this matter that cannot be resolved on the face of the information put up by the parties to this complaint. The screen shots provided by the IP are illustrative of its subscription activation process, but cannot amount to proof that the screens were viewed by the user in this matter.

However, when adjudicating on any alleged breach of the Code of Conduct that entails a disputed set of facts, where the disputed facts are not capable of clear resolution on the evidence placed before the adjudicator, the adjudicator is entitled, in appropriate circumstances, to determine whether any breach of the Code has occurred on the evidence that is put up by the respondent.

With this principle in mind, I have considered the subscription process that the IP has shown that it uses for this service, as well as the message logs adduced by the IP in this complaint, with reference to the IP's obligations under the Code of Conduct.

Section 11.2.2 is quoted below:

"11.2.2. 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 a request for a specific content item and may not be an entry into a competition or quiz."

The banner advert which the IP states that the user would have clicked on reads as follows: **"Collect 40,000 Store Points Guaranteed!"**, followed by an invitation: **"Your mobile number has received 40,000 Value Points. Claim now to exchange for products"**, which is in turn followed by the instruction: **"Exchange Your 40,000 Value Points for products now: CONFIRM and join the fun"**.

It is very feasible that a user receiving these communications would believe that by following the instructions, she is claiming points to exchange for products, and not necessarily subscribing to an ongoing service.

The word "independent" in section 11.2.2 has a clear and unambiguous meaning as the opposite of the word "dependent", which in turn means to be reliant upon something else. It follows that if a request to join a subscription service *is dependent on any other request*, it would not be an "independent" request. In the present matter, the subscription request is dependent on a consumer initiating and completing a request for "40,000 points", i.e. the subscription request is not an independent transaction request but is wholly dependent on the consumer claiming points for the purpose of exchanging such points for products in the IP's online store.

The service accordingly breaches section 11.2.2 of the Code.

Section 11.5.1 provides as follows:

"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."

It is accordingly peremptory to send reminder messages as contemplated by the Code. Section 11.5.2 goes on to provide:

"11.5.2. The reminder messages specified in 11.5.1 must adhere exactly to the following format, flow, wording and spacing (emphasis added):

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]."

Appendix 8, as included above, shows the content of all reminder messages sent to the user. The first 3 messages follow a similar format, as follows:

“Reminder: Exchange points for products www.pointforge.com. Password 74997. Subscription R7/day. Support 0861106472. stop? txt stop”

This does not adhere exactly to the format, flow, wording and spacing as set out in section 11.5.2 of the Code. Significantly, it does not commence with the words “**You are subscribed to...**”, nor does it contain these words anywhere in the message. It again simply notifies the user that she can exchange points for products, which does not necessarily imply an existing subscription to the service, for which she is currently being charged. It also does not state “**For help**” anywhere, nor does it make the steps for unsubscription clear, by stating “**To unsubscribe, sms STOP to...**”, as prescribed. The word “unsubscribe” is not used at all, and the word “stop” is not capitalized as required.

Whilst the reminder messages do seem to change their format in October 2010, the first 3 are nevertheless materially non-compliant, and the first reminder messages are the most important – because if the user had understood at this early stage what the message actually meant, she (or the Complainant) may have taken much earlier action. Without having to analyse the later reminder messages here in depth, it is clear to me that they also do not adhere exactly to the requirements of section 11.5.2. Amongst other problems, the word STOP is still not capitalized as required, and the word “unsubscribe” is abbreviated, which is not a permitted abbreviation in terms of section 11.1.8 of the Code.

The IP is therefore in breach of section 11.5.2 of the Code in several respects, on its own version.

Lastly, section 11.5.4 of the Code, also pertaining to the reminder messages, states as follows:

“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.”

Other than the reminder messages which do contain the words “**U r subscribed to Sprint Media MOBMATIC!**”, the others (including the first 3, as mentioned above), are certainly ambiguous in that a user could easily be misled by the message, and accordingly not understand the purpose of the message, which is to inform the user that she is subscribed to an existing service that is currently being charged for (as required by section 11.5.4). The messages in question begin with the words: “**Exchange points for products**” or “**Redeem points for products**”, which are phrased as instructions, and not as a clear description and reminder of an existing service to which the user is already subscribed. In addition, as already illustrated, the messages do not follow the wording and formatting prescribed in 11.5.1. They are, to my mind, confusingly worded, and could easily deceive or mislead the customer in that they do not act as “subscription reminder” messages at all, which is the key purpose behind section 11.5.4.

The IP is accordingly in breach of section 11.5.4 of the Code.

While the complaint of involuntary subscription to the IP's service cannot be upheld on the available evidence, breaches of section 11.2.2, 11.5.2 and 11.5.4 of the Code have been established on the IP's own version.

Sanctions

The primary purpose of the WASPA Code of Conduct is to ensure that consumers can use wireless application services with confidence. Given that claims of inadvertent subscription are frequent, non-compliance with sections 11.2.2 and 11.5.2 are significant. The provisions of 11.5.2 particularly, are very clear. There can be no justification for non-compliance. Even on the IP's own version of events, it is possible that had the first reminder message been sent to the Complainant using the appropriate wording and the specific format that is required by the Code of Conduct, the Complainant / user may have simply availed him or herself of the un-subscription mechanism at a much earlier opportunity and the complaint may have been avoided.

The conduct of the IP in this matter amounts to a very significant breach of the Code. The confusing advert can lull an unsuspecting web user into becoming inadvertently subscribed to a commercial service. The vague reminder messages then serve to perpetuate this inadvertent subscription. Wireless application services that interface with mobile service providers' billing systems need to be operated with a great degree of good faith and trust. The IP's conduct in this matter undermines a consumer's confidence in the wireless application industry as a whole and therefore prejudices not only consumers but potentially every other wireless application service provider in the market place.

There are two other upheld adjudications against the same IP, for complaints of exactly the same nature – indeed, concerning the same service, in one complaint. These appear to be recent and as such the complaint at hand may have originated before the IP had the benefit of the two adjudications mentioned. However, non-compliance by the IP with provisions of the Code dealing with subscription services on a repetitive basis cannot be ignored as their repeated non-compliance impacts negatively on the reputation and standing of the wireless application services industry as a whole. In addition, sanctions that have previously been imposed but have clearly not had the necessary deterrent effect, need to be increased.

I note that in report #11033, a fine of R20 000.00 was imposed on the IP, in addition to the obligation to refund the complainant and compensate him a further amount of R500.00. Similarly, in respect of report #12527, the IP was fined R20 000.00 in addition to being ordered to refund the complainant, and both the SP (also the SP in this case) and the IP were directed to furnish to WASPA a list of all subscription services currently offered by the IP in conjunction with the SP and all such further information as may be required so as to enable the WASPA Monitor to assess the subscription initiation processes utilised by such services for compliance with the Code.

Having considered this, I now impose the following sanctions in this matter:

1. The IP shall refund the user all sums debited against her account plus interest thereon at the rate of 15,5% per annum calculated daily and compounded monthly in arrears from date of debit until date of refund, less any refunds already paid to the Complainant.

2. In addition to the refund in paragraph 1, the IP shall further compensate the user / Complainant in the amount of R1,000.00.
3. A fine of R60 000.00 is imposed on the IP, to be paid to the Secretariat within 10 working days of the date of delivery of this report failing which:
 - 3.1 the IP shall be suspended from WASPA; and
 - 3.2 the SP, Mira Networks, shall suspend all subscription services to the IP,
until such time as the fine has been paid in full.