



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Integrat
<b>Information Provider (IP)</b> (if any)	Heylife
<b>Service Type</b>	Subscription
<b>Source of Complaints</b>	Competitor
<b>Complaint Number</b>	#1324
<b>Date received</b>	14 May 2007
<b>Code of Conduct version</b>	4.92

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### Complaint

The Complaint alleges breaches of, *inter alia*, sections 11.1.4, 11.1.7, 11.1.8 and 3.1.2 of the WASPA Code of Conduct.

The wording in which the Complaint is couched leaves little doubt that it is a competitor complaint, remarkable in this respect both for its vagueness and its clumsy vindictiveness.

The vagueness of the Complaint makes it difficult to establish its exact terms and there is little factual detail provided to substantiate it. The Complainant alleges that the SP is subscribing users without their knowledge and that he has been the subject of this behaviour on four separate numbers (it is not clear whether it is alleged that all or merely some of the four events are attributed to the SP) at a cost of R500.

The detail provided, with gratuitous vitriol stripped out, is as follows:

“Some Numbers subscribed: 0822935298 was unknowingly subscribed to a R4.99 per day service for taokin.net wallpapers, ringtones and backgrounds. Was subscribed from 29 November 06 - End 01 April 07 when he ran out of airtime. (A person is subscribed and an SMS is sent through advising so in some difficult to

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understand language and because it seems an error, one tends to delete the SMS.

0793226222 (Subscribed to R3 service and hasn't recharged since first billing on 25 April 07.”

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### **SP Response**

The SP provided a detailed response with supporting logs.

The SP was unable to find records of two of the numbers specified in the Complaint and expressed the opinion that the onus to prove its involvement in the services represented by these numbers should lie on the Complainant.

With regard to the specific breaches raised in respect of the service identified as being provided by the IP, the SP responded as follows:

#### **Automatic subscription to service – Clause 11.1.4;**

“We confirm that the number **082 293 xxxx** was subscribed via webspot on 29 November 2006 (See attached logs). The message transmitted to the complainant's mobile clearly prompted him to enter the password he requested by entering his mobile number and network provider id on the webspot home page.

This was duly done and a further message was forwarded to complainant's number advising him that he was now subscribed and how to unsubscribe. So, far from being subscribed without his knowledge, the complainant was an active participant in the entire process. (See attached logs).

The webspot home page clearly states above the right hand corner “subscription”, and then indicates the price and frequency of billing.

At the bottom of the home page the following words are clearly displayed;

*“TAOKIN is a daily subscription service with an offer....”*

Hereunder we have provided the URL link to the clients' webspot where the subscription was activated;

<http://www.unlimitedmobiledownloads.com/>

In light of the foregoing we submit that it is untenable for the complainant to hold that he was unaware that what was offered by the client was subscription service.”

**A notification message must be sent to the customer - Clause 11.1.7;**

“On reviewing the logs we can confirm that an initial confirmation message was sent to the complainant informing him that he had been subscribed as well as the conditions thereof. The complainant then received a link (since the content is ‘push content’). It is unclear what the complainant may have been referring to, when he stated “..an sms is sent through advising so, in some difficult to understand language...”

This is clearly not the case as the client’s welcome message log is in plain English. This may have been the case with one of the other services the complainant grouped as belonging to Integrat.

Had the complainant then accessed the content *via* wap, he would have been able to access the full terms and conditions as required by clause 11.1.7. Subsequently the complainant received marketing messages which also function to renew his subscription to the service.

Since the lodging of this complaint, the client now sends the terms and conditions as required by clause 11.1.7 directly which no longer requires the customer to access them *via* wap.

In light of the submission with regards to the full terms and conditions, it is not necessary to address the charge covering clause 11.1.8.”

**Subscription service without a request: Clauses 2.12, 2.22**

“This charge has been sufficiently answered to and we believe the client has demonstrated that the messages sent to the complainants number could not have been “spam” or unsolicited.

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The inclusion of clause 2.20 is unclear to us and we require elaboration on what this aspect of the charge involves.”

The SP further addressed the alleged breach of section 3.1.2 but there is no need to record the detail as this aspect of the Complaint is clearly devoid of any merit.

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

The following sections of version 4.92 of the WASPA Code of Conduct were considered:

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:

- (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.

11.1.8. A monthly reminder SMS must be sent to all content subscription service customers containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

2.12. 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.

**Decision**

In its Response the SP identified what it regards as a “discomforting trend that incomplete, generalized and vague complaints are forwarded to the [the SP’s] complaints handling staff”. The Adjudicator agrees and believes it to be correct when faced with a vague set of largely unsubstantiated allegations to adopt a restrictive interpretation of the Complaint. It is certainly not the Adjudicator’s role to assist Competitors to engage properly with the Code of Conduct or Advertising Rules; nor is it the role of the Secretariat to involve itself in protracted correspondence with a competitor to elicit the detail necessary to make sense of a complaint.

In the current matter the vagueness of the Complaint makes elements thereof impossible to adjudicate. Furthermore the manner in which the Complaint is phrased may of itself constitute unprofessional conduct constituting a breach of the Code of Conduct.

The version of the SP and the logs submitted in support thereof are accepted. This serves to dispose of the alleged breaches of sections 11.1.4 and 11.1.7. Any allegations in respect of numbers not linked to the SP have been disregarded.

In response to the alleged breach of section 11.1.8 the SP states, somewhat cryptically, that “[I]n light of the submission with regards to the full terms and conditions, it is not necessary to address the charge covering clause 11.1.8”. The Adjudicator cannot agree. Section 11.1.8 places an independent obligation on the SP to send a monthly reminder SMS bearing the required information and it is evident from the logs provided that this was not done. It appears that the SP has misunderstood the requirement set out by section 11.1.8 - reference to terms and conditions set out on a website does not assist the SP to comply with this section. Such terms and conditions establish the initial awareness that the service is a subscription one and the follow-up messages under section 11.1.8 serve to remind the subscriber of the subscription.

Accordingly the following order is made:

- The Complaint in respect of section 11.1.8 of the WASPA Code of Conduct is upheld

- All other alleged breaches of the Code are dismissed.

The SP is issued with a formal reprimand and a fine of Seven Thousand Five Hundred Rand (R7 500.00), payable to the WASPA Secretariat within five (5) days of date of notification of this Adjudication.