



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	14252
<b>WASPA member(s):</b>	Mobile NOBO (IP) / Tanla Mobile (SP)
<b>Membership number(s):</b>	1091 (IP) / 0118 (SP)
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription Service
<b>Date complaint was lodged:</b>	2011-08-04
<b>Date of the alleged offence:</b>	2011-01-03
<b>Relevant version of the Code:</b>	10.0
<b>Clauses considered:</b>	3.1.1, 4.1.2, 11.2.1, 14.3.13
<b>Relevant version of the Ad. Rules:</b>	Not Applicable
<b>Clauses considered:</b>	Not Applicable
<b>Related cases considered:</b>	None

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### Complaint & Response

1. This complaint relates to an allegation of subscription without consent. The subscription service in question is operated by "Mobile NOBO" (the "IP"), which is an affiliate member of WASPA. Tanla Mobile (the "SP") acts as the aggregator for the IP's services, and is also a member of WASPA.
2. On 30 March 2011 the complainant, a member of the public, submitted an unsubscribe request to the unsubscribe facility operated by the WASPA Secretariat. The unsubscribe request took the form of a complaint that the complainant was being charged for services that she did not request. The complaint itself was initially directed at the SP.
3. On 5 April 2011 the complainant amplified her previous communication to the effect that she wanted an investigation conducted into how she was subscribed. She advised that she was not the only person who had been targeted by the SP in this regard and that apparently complaints have been made against the SP in other countries. She also demanded a refund.

4. The complainant sought clarity on whether WASPA would handle the complaint in an objective manner, which the adjudicator trusts will be demonstrated by the manner in which this complaint is handled.
5. According to the unsubscribe log provided by the WASPA Secretariat, the SP requested that the matter be handed over to the IP on 13 May 2011. The record also shows that on 15 July 2011 the IP confirmed that the complainant had been unsubscribed but that no refund had been offered.
6. The IP also provided "proof of subscription" on the 21<sup>st</sup> of May 2011, which takes the form of logs saved into an Excel spreadsheet. The following aspects are noteworthy:
  - 6.1. The record does not list any MSISDN, but the IP advises that this was contained in the name of the file sent to the WASPA Secretariat.
  - 6.2. There are no "MO" messages, and this fact is specifically admitted by the IP in the document.
  - 6.3. The heading of the record contains "start" and "stop" dates, being 3 January 2011 and 15 July 2011 respectively.
  - 6.4. The first message listed is dated 3 January 2011 and instructs the recipient to enter a code to effect subscription to "Gamesclub MobileNobo.com". It is not immediately clear where this code would be entered.
  - 6.5. The welcome message was also sent on 3 January, as was the first content link.
  - 6.6. The last content link was sent on 4 April 2011.
7. The complainant indicated her displeasure with the response to her complaint on 4 August 2011. She advised that she had still not been told on what basis she was charged for her services and that she had not received a refund yet.
8. The WASPA Secretariat sent the notice of complaint to the IP on 8 August 2011, and sent the aggregator's notice to the SP on the same date.
9. The complainant again e-mailed the Secretariat on 10 August and advised that she had received a telephone call on her landline from the IP (it is unclear how the IP obtained her landline number). During the course of this conversation the IP rejected the complainant's version that she had neither contacted the IP nor requested a subscription to the service. The IP advised that they would unsubscribe the complainant from the service but would not give her a refund.
10. The complainant also requested that WASPA should investigate Cell C as regards the allegedly fraudulent charges for this service. She advised that she had already "been to the police" who told that they are investigating the matter. It is unclear if anything came of the police's investigation.
11. The IP also e-mailed the WASPA Secretariat on 10 August, and enclosed logs as a response to the complaint. This document is substantially similar to

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that discussed above, with the same shortcomings, but with the following differences:

- 11.1. The document lists an IP address.
  - 11.2. The date given on the document is 10 August 2011.
  - 11.3. The following comment is listed: "spoken to customer and informed we have unsubscribed the service and she will not be charged any more. She was ok with it."
  12. Secretariat forwarded the IP's response to the complainant, who denied receiving any SMS offering a subscription service or subscribing to the service itself.
  13. The complainant also said that she had taken her SIM card out of her handset in mid-March 2011, had put it in an envelope in the presence of the police "signed and witnessed!" I requested further particulars from the complainant and obtained an affidavit that she had deposed to at the Somerset West police department. According to the affidavit the complainant removed the SIM card from her handset "... and sealed it in an envelope on 23 March 2011, sealed on 30 Marsh 2011."
  14. I also requested and received further particulars from the IP:
    - 14.1. The complainant's MSISDN was contained in the file name of the log file submitted to WASPA.
    - 14.2. According to the IP the complainant did not download any content using their service (though she was of course charged for the facility to do so).
    - 14.3. The IP address specified in the IP's logs was, according to the IP, the IP address of the device that the complainant used to access its website, and constituted proof that she in fact did so.
    - 14.4. The code mentioned above was entered into the IP's website as a subscription confirmation.
  15. The SP advised on 15 August that it was looking into the complaint and would revert to the WASPA Secretariat. On 30 August, after some prodding, the SP informed the Secretariat that it had contacted the IP on 16 August and requested that the matter be dealt with urgently. In a subsequent telephone call, the IP advised the SP that its customer support team was handing and would resolve the matter. The SP did not receive any further feedback.
  16. While this process of consultation was ongoing, the SP on 15 August sent a "Letter of Verification" to the IP noting the increased numbers of WASPA complaints against the IP and requesting that the IP take appropriate steps within five days of the letter. The SP provided a copy of the letter in its submission to WASPA. No response was forthcoming, and the SP advises that it consequently suspended all billing services to the IP across all South African networks on 23 August.
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**Sections of the Code considered**

17. The conduct complained of took place between January and May 2011. As a result, version 10.0 of the WASPA Code of Conduct is applicable. The following sections of the Code have relevance:

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.

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.

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.

14.3.13. Providing incorrect or fraudulent information in response to a complaint, or in response to any other request to provide information is itself a breach of this Code.

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**Decision**

18. I am once again faced with the prospect of reaching a decision on insufficient evidence. I have summarised what evidence there is below.
19. The complainant is adamant that she did not contact the IP, and certainly did not subscribe to the service complained of. She further states that she removed her SIM card during at least part of the period during which she was subscribed, and accordingly could not have used the service during that period. Unfortunately charges for the service are made according to the period during which a consumer is subscribed to it, and not according to the use made of the service. In this case the complainant's version that her SIM card was removed from her handset during a period and that accordingly she could not have made use of the service is of no assistance to her as it accords with the IP's version that she made no content downloads using the service. If the IP had submitted that the complainant had indeed made downloads during this period then the complainant's removal of her SIM card would have been of assistance, but that was not the version put forward by the IP.
20. The IP on the other hand produced logs that prove, according to the IP at least, that the complainant did indeed subscribe to its service. The contents of the logs themselves do not arouse suspicion.
21. I nonetheless investigated the IP address (as in "Internet Protocol", not "Information Provider") given in the log. According to the IP, this is the IP address used by the complainant to confirm its subscription on the IP's website. The given IP address seems to be assigned to the ISP "Cybersmart", but the original complaint was lodged from another IP address, and the complainant's email headers indicate a third IP address. This result however does nothing to shake the plausibility of the IP's version, because the

complainant could have accessed the IP's website using one connection and sent her complaint using another.

22. The SP is apparently of the view that the IP's conduct is such that it can no longer provide a WASP service to it, but I do not have the benefit of whatever information is in the possession of the SP, and cannot allow this view to influence my finding.
23. I simply do not have sufficient evidence to find that the IP subscribed the complainant to its subscription service against her will. To do so would be to find that the IP has falsified its logs. While I would have no hesitation in doing so when armed with sufficient evidence, in this case that evidence is lacking.
24. The complainant is referred to the outcome of complaint 14369 which was adjudicated at the same time as this complaint.
25. This is precisely the situation that the double-opt-in system being introduced by Vodacom is designed to prevent, and the sooner the other networks roll it out, the better.
26. The complaint against the IP is dismissed.