



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	15187
<b>WASPA member(s):</b>	Sprint Media
<b>Membership number(s):</b>	1168
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription service
<b>Date complaint was lodged:</b>	2011-10-12
<b>Date of the alleged offence:</b>	2011-08-28
<b>Relevant version of the Code:</b>	11.0
<b>Clauses considered:</b>	6.2.12, 11.2.2
<b>Relevant version of the Ad. Rules:</b>	Not applicable
<b>Clauses considered:</b>	Not applicable
<b>Related cases considered:</b>	11033, 1997, 12527,

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### Complaint

The complainant states that he was billed for a service that he never subscribed to and that he has been billed for two months at R7 per day for this service. The complainant further states that the mere browsing of a webpage on their site cannot be sufficient to subscribe to service and that legal registration requires the user to provide personal details and a click-activated response.

The complainant has received a refund from the service provider, but responded that a refund was insufficient redress for an illegal service that should be shut down.

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### Service provider's response

The WASP did not provide a formal response to the complaint other than uploading the proof of subscription logs. On 14 October 2011 the WASP indicated that they awaited the banking details of the complainant to effect the refund and on 21 October 2011 indicated that the refund was in process. On 16 November 2011 the WASP responded to the allegations by the complainant that the service was illegal, stating that the complainant was acting illegally by using the service and then requesting a refund.

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## Sections of the Code considered

Section 6 of the Code deals with advertising and pricing

*6.2.12. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:*

*(a) If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.*

*(b) If the transaction is billed at less than R10, the price for the transaction must be clearly indicated as part of, or immediately next to, the link or option that will initiate the transaction and must be visible on the same screen as the link.*

*(c) If the transaction is to initiate a subscription service, then the price and frequency of the service must be included directly in the text of the WAP link or immediately adjacent to it and must be visible on the same screen as the link.*

Section 11 of the Code deals with subscription services:

*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.*

*11.2.2. 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.*

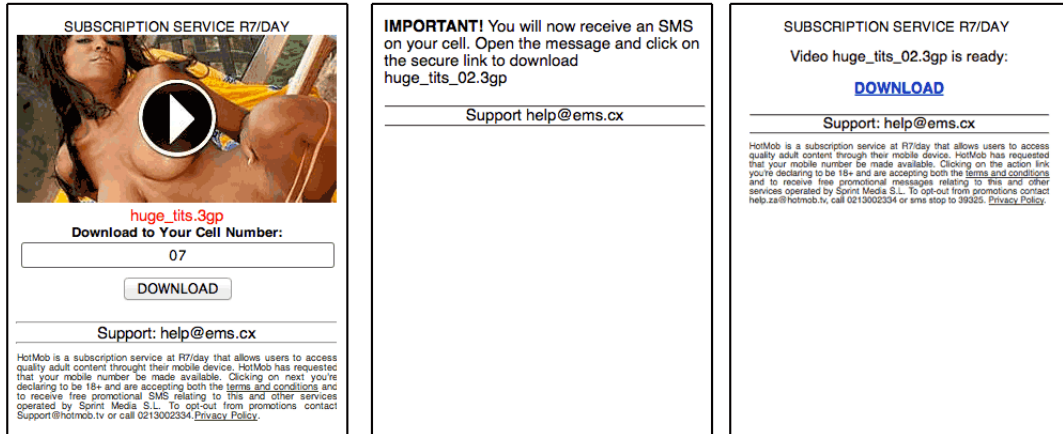
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## Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP and IP's formal response.

Although the Adjudicator does not imply that the Complainant in this matter is making false accusations, it cannot assume that the IP and SP's explanation of events is false either. However, in response to the complaint and the request by the WASPA secretariat to provide full information on the transaction, the WASP only provided the subscription logs.

On further request by the Adjudicator to the WASP to provide a full history of the subscription and welcome messages and reminder messages, screenshots of the landing page and subscription pages, and any record of the subscriber downloading material, the WASP provided copies of the landing pages and subscription pages:



It also provided only a general answer that the service is predominantly streaming, but that certain handsets can download content. The Adjudicator interprets this answer as meaning that the WASP has no record of the Complainant downloading any content.

The WASP has provided no direct information on how a subscriber becomes prescribed by clicking on the "Download" link on the pages provided above. It is assumed that clicking on the Download link above, the potential subscriber receives the messages in the second screen shot above and that the potential subscriber then receives the sms in the third picture.

The landing page advertising the service in the first picture does not comply with section 6.2.12(c) of the Code. Although it indicates that the service is a subscription service and the relevant pricing quite clearly at the top, it does not include the price and frequency of payment "directly in the text of the WAP link" or "immediately adjacent to it". I find therefore that the landing page advertising the service contravenes section 6.2.12(c) of the Code.

The same holds true for the sms in the third picture, where the opt-in link "DOWNLOAD" and the required notification that this is a subscription service is separated by the words "Video huge\_tits\_02.3gp". These page are also highly misleading in that they give no indication that clicking on "DOWNLOAD" initiates a subscription service. The word "download" creates the impression that a single item will be downloaded, namely "huge-tits.3gp", not that a subscription is being initiated.

The same holds true for the sms received by the potential subscriber in picture 3 above. There is no indication that the subscription is and independent transaction apart from the download of the specific item. This get-up is clearly aimed at deceiving potential customers by not clearly indicating that the customer is subscribing to the service by clicking on "DOWNLOAD". This is an infringement of section 11.2.2 which requires that the initiation of 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."

Here the impression is created that the customer is downloading a specific item, a video clip, whereas in fact it is the initiation of a subscription service. I accordingly hold that the WASP has also infringed section 11.2.2 of the Code.

## Sanctions

As the complainant has already received a full refund no order is made in regard to a refund. The Adjudicator takes into account that the WASP has been found guilty of a breach of section 11.2.2 previously in WASPA Complaint no 11997. The fine imposed

for the infringement of section 6.2.12(c) is similar to the fine imposed in Complaint no 11997. The fine imposed for the infringement of section 11.2.2 is double that fine as this is a repeat infringement of that section by the WASP.

The following sanctions are imposed

1. A fine of R20 000.00 is imposed on the IP for infringing section 6.2.12(c) of the Code, to be paid to the Secretariat within 10 working days of the date of delivery of this report failing which the WASP shall be suspended from WASPA; until such time as the fine has been paid in full.
2. A fine of R40 000.00 is imposed on the IP for infringing section 11.2.2 of the Code, to be paid to the Secretariat within 10 working days of the date of delivery of this report failing which the WASP shall be suspended from WASPA; until such time as the fine has been paid in full.
3. The WASP is directed to furnish to WASPA a list of all subscription services currently offered by it 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.”