



REPORT OF THE ADJUDICATOR

Complaint reference number:	17710
WASPA member(s):	TIMw.e. New Media Entertainment South Africa (IP) / Mira Networks (SP)
Membership number(s):	1067 (IP) / 0011 (SP)
Complainant:	Public
Type of complaint:	Subscription Services
Date complaint was lodged:	2012-07-03
Date of the alleged offence:	N/A
Relevant version of the Code:	12
Clauses considered:	11.2.1, 11.2.5, 11.5.1, 11.6.1, 11.6.2, 11.6.3 & 14.3.14
Relevant version of the Ad. Rules:	2.3
Clauses considered:	12
Related cases considered:	N/A

Complaint

The Complainant in this matter alleged that he never subscribed to the service.

He further alleged that he could not have accessed the internet via his cellphone as his phone did not have such capability at the time.

He also alleged that he did not unsubscribe from the service as he did not have sufficient time during the six months to view his accounts.

Information provider's response

The IP provided a response whereby it furnished the Complainant with a detailed explanation as to how the subscription confirmation and double opt-in procedure work. This was further evidenced by logs which illustrated the Complainant's interaction with the IP.

The IP in its response to the Complainant's further reply stated the following:

"The initial web portal access was not performed on a mobile phone, but using a computer. The complainant (or someone with access to his phone acting without his knowledge) inserted his MSISDN in the web portal, received a unique PIN number via SMS on his mobile, and inserted the unique PIN number back in the web portal, which completed the subscription process. The customer's allegation that he could not have performed these actions because of inability to access the internet on his phone is hence not valid.

During the six months of subscription, the costumer received a number of reminder SMS messages on his mobile such as the following:

FreeMsg: You are subscribed to Top Music Club. Cost R4.99/day. To Stop Subscription, SMS STOP to 33535. Helpline (0) 861106472 (VAS Rates). Total Tim.

The message clearly states that the customer has a subscription service active, the cost of the service, the method of cancellation, and a helpline contact. The customer, at any time upon the receipt of these messages could have initiated a cancellation or contacted the appropriate services, and he did not until six months of active subscription had gone by."

Sections of the Code considered

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.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.6.1. 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. The customer may not be charged for these reminder messages.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

Reminder: You are subscribed to [name of service provider] [content/service description].

Cost [cost of service and frequency of billing]. SMS HELP [optional keyword] to [short code]/call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

or

Reminder: 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 unsub, sms STOP [service keyword] to [short code].

11.6.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.6.2.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

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 IP's subsequent reply.

The Complainant has failed to provide any sufficient content or any material for that matter to provide the Adjudicator with any sufficient information assisting him to render his subscription invalid.

The Adjudicator is also not of the opinion that the Complainant's busy schedule could render a refund justifiable.

The Adjudicator therefore concurs with the IP's response in as far as it contended the actual subscription of the Complainant by way of logs provided, which, if read with the subsequent and additional information provided, is deemed by the Adjudicator, to be sufficient evidence to justify and confirm the Complainant's subscription, subsequent deductions and frequency of reminder messages.

Therefore, on the basis of evidence **submitted** and therefore **presented**, there is no proof to establish any non-compliance by the IP with sections 11.2.1, 11.2.5, 11.5.1, 11.6.1, 11.6.2 and 11.6.3.

The Complaint is dismissed.