



## ADJUDICATOR'S REPORT

**Complaint reference number:** #18140

**WASPA member(s):** EMMU Trading

**Membership number(s):** 0149

**Complainant:** Public

**Type of complaint:** Adult content subscription service

**Date complaint was lodged:** 2012-08-10

**Date of the alleged offence:** 2012-06-24

**Relevant version of the Code:** 12.0

**Clauses considered:** 2.25, 4.1.7, 11.2.1, 11.5, 11.6, 11.10.2

**Relevant version of the Ad. Rules:** Not applicable

**Clauses considered:** Not applicable

**Related cases considered:** No additional adjudications considered

### Complaint

This complaint concerns a subscription service which the complainant contends he never subscribed to. The complainant further requires that he be fully refunded and that "action needs to be taken against this wasp". Furthermore, he requested information about where his cell phone number was "acquired" and did not receive this information. The complainant therefore elected to escalate the complaint to a formal adjudication.

The subscription service appears to be an adult content subscription service which carries a daily charge of five Rand. The complainant contends that he was “auto subscribed” and argues that this is an infringement of the Code.

When referring the complaint to the service provider, the WASPA Secretariat advised as follows using a fairly standard referral template:

*Dear WASPA member,*

*The appended unsubscribe request was logged on the WASPA unsubscribe system on 2012–07–31, but the complainant has indicated that they are not satisfied with your response.*

*Therefore, the WASPA Secretariat has no choice but to escalate this query to a formal complaint against EMMU TRADING.*

*Accordingly:*

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.*
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.*
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.*
- Your response, and any other correspondence relating to this complaint, must be sent to [complaints@waspa.org.za](mailto:complaints@waspa.org.za).*

*Correspondence sent to any other address may not be deemed to constitute a formal response.*

- The WASPA Secretariat will confirm receipt of your response. It is recommended that your response should include as much as possible of the following information that is relevant to this complaint:*
- Logs as stipulated in clause 11.10.2. of the Code of Conduct*
- Information on how this service was or is advertised e.g.: TV, WAP, Internet, SMS, radio*
- A copy of the advertisement/marketing material*
- In the case of a TV advert please provide flight times and codes*
- Statistics on the number of entries/users of this service*

*If you have any questions regarding the Code of Conduct or the complaints procedure,*

please address your queries to [complaints@waspa.org.za](mailto:complaints@waspa.org.za).

Please confirm your receipt of this message.

Warm regards, WASPA Secretariat

## Service provider's response

The service provider furnished WASPA with a set of logs and confirmation that the complainant was refunded R185 by way of a deposit into his bank account. The logs indicate that the complainant's subscription commenced on 24 June 2012 and the complainant was unsubscribed on 31 July 2012. The only detail the service provider furnished WASPA with in relation to the service, aside from details of the dates and times of the charges, were the following messages:

### *Welcome message on 24 June 2012:*

*Welcome to wanga.mobi .You are subscribed to Download Unlimited Adult Content for R5 every day. To unsubscribe please call 0123645010 or SMS "STOP" to 45230 (R1/sms).*

### *Reminder message on 24 July 2012:*

*Reminder: You are subscribed to wanga.mobi to Download Unlimited Adult Content for R5 every day. To unsubscribe please call 0123645010 or SMS "STOP" to 45230 (R1/sms).*

The service provider did not furnish any further information to WASPA.

## Sections of the Code considered

Version 12.0 of the Code applies to this complaint. In assessing this complaint, I had regard to the following sections of the Code:

*2.25. A "subscription service" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.*

*4.1.7. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.*

*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.*

### **11.5. Welcome message**

*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.*

*11.5.2. The welcome message must start with the text “Welcome: ” and must also be a clear notification of the following information, in the following order:*

- (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.*

#### **11.6. Reminder messages**

*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.*

*11.6.4. 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.*

*11.6.5. The cost of service and frequency of billing must use the format “RX/day”, “RX/week” or “RX/month” (or RX.XX if the price includes cents). No abbreviations of “day”, “week” or “month” may be used.*

*11.6.6. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format “RX every [time period]”.*

*11.6.7. The text “(VAS)” must be included after any VAS-rated phone number. It does not*

*need to be included after phone numbers which are not VAS-rated.*

*11.6.8. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.*

*11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:*

- (a) proof that the customer has opted in to a service or services;*
- (b) proof that all required reminder messages have been sent to that customer;*
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and*
- (d) any record of successful or unsuccessful unsubscribe requests.*

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

Not considered.

## **Decision**

### *Information disclosure*

At the outset, the service provider was invited to submit information to WASPA relevant to the complaint. Section 11.10.2 states that members “must provide clear logs for any subscription service customer which include the following information” (quoting section 11.10.2):

- proof that the customer has opted in to a service or services;
- proof that the reminder messages have been sent to that customer;
- a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- any record of successful or unsuccessful unsubscribe requests.

Of this information, the service provided a transaction history indicating the charges levied and the wording of welcome and reminder messages. The service provider supplied the Secretariat with information about the “service or content item applicable for each charge” in that the service provider identified three content items by code references and their category “Movie Sets” along with the dates and times the content items were apparently downloaded (all three were apparently downloaded on

24 June 2012 between 17:58 and 18:22).

The service provider did not provide any proof that the customer opted in to its wanga.mobi service or proof that the reminder message was actually sent to the customer. The service provider also apparently failed to respond to the complainant's requests for information about how it obtained his mobile phone number.

The service provider failed to comply with section 11.10.2's requirements.

### *Reminder message*

The reminder message the service provider purportedly set to the complainant does not satisfy the Code's exacting requirements. It is essentially a replica of the welcome message which does appear to comply with section 11.5's information disclosure requirements. It does not, however, meet section 11.6's specific format and wording requirements.

I find the service provider to have infringed section 11.6 in that the reminder message's format did not conform with the Code's requirements.

### *Response to the complainant's concerns*

Section 4.1.7 requires members to respond to complaints. The service provider failed to respond adequately to the complainant's information requests, particularly the manner in which the service provider obtained his mobile phone number.

### *Subscription*

Related to the previous issue is the matter of the complainant's apparent subscription to the service in the first place. Subscription is a voluntary process and section 11.2.1 specifically prohibits automatic subscriptions. The service provider has not furnished any information that substantiates the complainant's subscription. The logs do not shed any light on the manner in which the complainant became subscribed to the service. As I mentioned above, the service provider did not furnish any information about the service itself, its subscription mechanism or how the complainant came to be subscribed. I do not have sufficient evidence before me to make a determination in this regard.

## **Sanctions**

In light of the above, I sanction the service provider as follows:

- In respect of section 4.1.7, the service provider is fined R5 000;
- In respect of section 11.10.2, the service provider is fined R10 000;
- In respect of section 11.6, the service provider is fined R10 000.

These fines are payable on demand by the WASPA Secretariat.