



## REPORT OF THE ADJUDICATOR

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| <b>WASPA Member (SP):</b>         | Mira Networks (Pty) Ltd   |
| <b>Information Provider (IP):</b> | DoubleMT Interactive S.L. |
| <b>Service Type:</b>              | Subscription              |
| <b>Complainant:</b>               | Consumers                 |
| <b>Complaint Number:</b>          | 19498 and 19637           |
| <b>Code Version:</b>              | 12.1                      |
| <b>Advertising Rules Version:</b> | Not applicable            |

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### Complaint

This adjudication deals with two matters that I have found to be linked in nature, and have therefore considered together.

In both matters consumers complained that they found themselves subscribed to a subscription service without having, to their knowledge, signed up for same.

In both matters, the complainants were given refunds, but were not satisfied with same. In both matters the complainants were extremely suspicious about what had occurred and suspected fraud.

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### Information provider's response

In matter 19498 the IP submitted, after a number of queries, that their investigation had shown a fault in the encryption process and that the complainant had been subscribed in error.

In matter 19637, the IP maintained that process had been followed, and that the consumer had used the double opt-in process. It provided records of same.

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**Sections of the Code considered**

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

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**Decision**

I start by noting that I have recently considered a complaint lodged by the Media Monitor against this service (matter 19473) where I noted:

As a broad comment, providing background to my thinking on the remaining issues, I note the nature of the service offered, which is a subscription that offers subscribers access to WhatsApp; or the ability to contact WhatsApp users. What is pivotal is that WhatsApp is an application that is usually available at no cost. This service is therefore different from, for example, a subscription to music content, which consumers reasonably expect to relate to some sort of subscription service. WhatsApp, in contrast, is an application that consumers are likely to expect to be freely available.

While I find the existence of a service that charges consumers for access to a freely available service somewhat confusing, I will presume for the purposes of this adjudication that it is legal and that relevant permissions have been obtained.

In that matter I found that the communication that this “WhatsApp” service was a subscription service was not sufficiently clearly communicated and I sanctioned the IP accordingly.

In the matters before me, I found myself most disturbed by the allegation of fraud, and I attempted to communicate with both the complainants and the IP to explore the issues completely. While the IP appeared to co-operate with my requests, the complainant in matter 19637 essentially refused to supply further information, which has to a point hampered my finding.

In matter 19473, the IP submitted that an error had indeed occurred, and provided two other names in respect of which the same error occurred.

While I thank the IP for its response and for its transparency in this regard, I am also disturbed by the fact that they had previously provided what appeared to be *bona fide* records of the double opt-in process for this matter. This raises concerns for me in relation to matter 19637 where I am relying on a similar submission, and the complainant is adamant that the subscription did not occur.

**In any event, the subscription in matter 19473 is, at the IP’s admission, without consent and therefore in breach of Clause 11.2.1.**

I am, in effect, making no finding as to matter 19637. However, the sanction will, I believe, address the complainant’s concerns.

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## **Sanctions**

In the matter of 19473, I regard the IP’s eventual transparency as mitigating, and fine **R5000** for the breach.

I remain concerned about other subscriptions to this service and I therefore order the IP to conduct a **full audit** of every subscription to this service to ensure that the encryption process did not fail and that each subscription is a bona fide subscription. This audit should be verified by the MIRA aggregator, which should provide a report to WASPA, and an assurance that the contents of the audit are correct. This audit should be completed and provided to WASPA within 20 working days.

In the event that, subsequent to the audit, another incident of error is found, that was not reported by the audit, the IP will immediately become liable for a **suspended** fine of R50 000,00 in respect of each incident discovered. The same suspended fine will apply to any error of the same nature arising after the audit from the same service.

In the event that it is found in the audit that the matter of **19637** was also an error, a fine of R10 000 in that matter will immediately be imposed.

It is emphasised that this audit is in effect a “get out of jail free” card, allowing the IP a chance to clean up their systems, and report transparently on any faults. A failure to take advantage of this opportunity could result in far more serious sanctions down the line.