



REPORT OF THE ADJUDICATOR

WASPA Member:	US Cellcom LLC / Mira Networks (Pty) Ltd
Service Type:	Subscription
Complainant:	WASPA Monitor
Complaint Number:	21537
Code Version:	12.4
Advertising Rules Version:	2.3

Complaint

This complaint was lodged by the WASPA Media Monitor, and covers an array of alleged misdemeanours.

The complaint identifies 4 areas of complaint, being:

1. TEST RESULT: Commercial SMS campaign
2. TEST RESULT: Subscription Process
3. Current URL's used by the Service
4. Competition Component within main service

I will discuss each issue in detail below.

The matter went to an Emergency Panel which found, in essence, that while there did appear to be prima facie breaches, none were urgent in nature.

Service provider's response

The WASP responded to each allegation, the details of which I will cover below.

In addition, following the emergency panel procedure, the WASP confirmed that action had been taken on each issue.

Sections of the Code considered

- 3.3.1. Members will not offer or promise services that they are unable to provide.
- 4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.
- 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.
- 6.2.4. Pricing contained in an advertisement must not be misleading.
- 6.5.2. Marketing material may not require that a customer join (or rejoin) a subscription service to redeem “credits”, “points” or other benefits of a loyalty program that the customer has already been awarded.
- 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.
- 11.2.2. 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.
- 11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, all marketing and promotional material must make it reasonably clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.
- 11.2.6. The confirmation message sent in response to a subscription request (such as that described in 11.2.5, or triggered by entering a mobile number on a web site) must include the subscription service information in the following format, flow and wording:
[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

Sections of the Advertising Rules considered [if applicable]

9.2.1 Cost OF ACCESS DISPLAY

9.2.1.1 Formatting Of Access Cost Text:

Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif font.

Decision**Timing of rulings and complaints**

Before I canvas each particular issue and its merits, it is necessary to look at the big picture surrounding this matter. It appears to me that the WASPA Monitor is particularly incensed by this matter because she perceives that there is an ongoing series of breaches of a similar nature committed by this WASP. She refers in particular to matter 17908.

The WASP too perceives the breaches as inter-related and, particularly in the recent communication of 26 September, appears frustrated that matters that have been addressed are now being raised again.

I myself have previously adjudicated matter 20470, and find myself frustrated because similar issues are raised.

I therefore first had to determine: was the Monitor's frustration valid in that the same breaches keep occurring, or was the WASP's frustration valid because too many similar complaints were lodged simultaneously.

Of the similar matters that I am aware of:

Matter	Date of complaint	Date of Ruling
17908	19 July 2012	30 September 2013
18262	23 August 2012	31 May 2013
18419	11 September 2012	2 September 2013
20470	9 May 2013	August 2013

The complaint in the matter at hand was lodged on 29 August 2013. On one hand, one can see the Monitor's frustration: the WASP is aware of issues that have been raised on complaints since July 2012. On the other hand, the WASP received the bulk of the rulings around the same time as the new complaint. While a WASP may choose to follow the Monitor's advice, and indeed often do, they are under no

obligation to do so until a ruling is issued upholding the breach. They can not be formally penalised for a failure to agree with the monitor.

Commercial SMS campaign

The complaint in this regard reads:

The following is an example of an **auto subscription**.

The customer (083 309 6321) received the following non-compliant message:

"Congrats 0833096321, U are THE WINNER! Claim your R1200 Voucher Reward Today. Click

<link> mvou.me/subscription@r7/day/optout?txtstop"

The link was not clicked and then a few hours later, in the middle of the night the customer

received the following message:

"Congrats, Ur Mobile Voucher Reward is ready! Keep your Account active and visit www.mobvoucher.com,

your username is 833096321, password 544726.

and

"Welcome: Your Mob Voucher subscription has been activated. R7/day, Support: 0119668141.

To unsubscribe smstio to 43450. www.mob-voucher.com"

The above was received from:

+27 83921007543450

The above is in breach of:

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.

The Emergency panel said:

An auto subscription would certainly be a substantial breach of the Code which would justify an urgent remedy. In this matter, however, there was insufficient evidence to make a finding that an urgent remedy was required. The SP appears to have logs, although they failed to attach them. It was also unclear whose number the auto subscription had been sent to, and how the Monitor came to be in possession of the relevant information. If the Monitor herself was the relevant party, then the Panel may have had sufficient evidence of auto subscription. In the circumstances however the Panel was not able to make a determination on hearsay evidence.

It appears from subsequent communication that "The service in question was pulled and all promotions stopped when the Waspa complaint was received".

There has been lengthy communication on whether or not the WASP can start marketing again, and WASPA has pointed out that they were never asked to stop, nor was a finding made by the emergency panel.

I am frustrated by the same issues that frustrated the Emergency Panel – I am loathe to make a finding of auto subscription in the absence of a clear history and explanation of how the Monitor came to this information. As pointed out by the panel – if the numbers involved were hers, then I can accept that she did not subscribe. However, if the numbers belong to someone else, I need more information. On the other hand, the WASP's failure to supply logs in the face of the extremely serious allegation is worrying.

The fact that this service appears to have been suspended is irrelevant. Auto subscription is a serious breach that can not be resolved with a simple suspension of service, as it should never have occurred in the first place.

I find in the circumstances that the absence of logs in the face of a serious allegation points to a *prima facie* breach of 11.2.1. The WASP has 7 days from receipt hereof to provide proof of subscription of number 083 309 6321. Failure to provide such logs will result in the immediate imposition of a fine of R100 000. The WASP is also advised to revisit decision 18262 regarding the nature of acceptable logs.

The second part of this complaint, which frankly is completely unrelated to anything that goes before it, states:

A second non-compliant commercial message delivered to another customer (084 595 8949) below:

"Congrats! Ur Number 0845958949 has been picked to receive a R750 Voucher in August. Click to Claim www.m2u.me/v.php
vou.net/subscription@r7/day/optout?txtstop"

Both messages above are in breach of:

6.5.2. Marketing material may not require that a customer join (or rejoin) a subscription service to redeem "credits", "points" or other benefits of a loyalty program that the customer has already been awarded.

The Monitor has provided no background, and I see no evidence in the wording of the SMS itself that this relates to the redemption of points from a loyalty programme already subscribed to. **I therefore see no basis for a finding of breach of Clause 6.5.2.**

Subscription process

The complaint in this regard has several issues:

An allegation of breach of 11.2.6 in that billing information was not present and the SP not listed at

http://www.mobilevoucher.info/wap/nonmsisdn_mvo.php?product=MVO34.

That the link led to a broken URL in breach of Clause 3.3.1

That the Monitor felt that the free SMS's should be the marketing hook.

I will disregard the last point – the Monitor can not dictate the marketing strategy of a WASP, and no clause has been identified.

The Monitor entered a subscription request and received the following sms:

“Your Reward is ready and waiting to be collected, click here <link>.”

Clause 11.2.6 states: The confirmation message sent in response to a subscription request (such as that described in 11.2.5, or triggered by entering a mobile number on a web site) must include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

The WASP has indicated that this problem has been remedied.

There is no doubt, nor does the WASP deny, that the format of the message breached Clause 11.2.6.

In regard to the non-functioning URL, I am loathe to make a finding as many factors could be at play here. The fact that the Monitor managed to access the service through another link indicates to me that the failure of the URL was not *mala fides*.

There is not enough evidence before me to make a finding in terms of Clause 3.3.1.

Current URLs used by the service

The first complaint under this section is:

The service makes use of WASPA's logo in an attempt to imply that WASPA endorses their marketing.

This is misleading as WASPA does not endorse this service.

Code breach:

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.

The WASP state that they misunderstood the WASPA regulations and that this was the subject of a recent meeting. They state that they removed the logo as soon as they received the relevant information – although it is unclear to me whether this was on receipt of the complaint or after the meeting referred to.

I think it is very important that members do not use the WASPA logo to create an impression of endorsement. The logo should therefore be used in the context of “A member of WASPA”, or similar. On the other hand, I am not convinced that the use complained of would lead the reasonable reader to conclude that WASPA endorsed the service. A consumer who is familiar with WASPA would understand that this is very unlikely, and that members display the logo to show membership, so that consumers know that they can complain.

In any event, the issue seems to have been addressed and a formal finding is unnecessary.

The next issue raised was that the “subscription” information was not correctly displayed so that it would be immediately visible. In particular, it was not visible on a blackberry screen.

The Emergency panel said: In this matter, the issue is around the communication of the subscription information, which is there, although the positioning and size is certainly questionable. This too is not considered to be worth of an urgent remedy.

The WASP stated that it has modified the website. It appears to accept that the placement of the subscription service was insufficient, which indeed reflects my opinion. It is unclear whether this amendment is in response to the complaint or a previous ruling, and when it occurred. The decision in matter 18262, which is the only matter where I am comfortable that the WASP was aware of the decision prior to the investigations in this matter, was not related to this clause.

This issue was addressed in matter 20470. **I will give the WASP the benefit of the doubt and conclude that the relevant amendments were made in reaction to that decision.** I remind the WASP of the suspended fine in that matter, but am reluctant to make a finding of breach in this matter as I suspect it would amount to a case of “double jeopardy”.

This aspect of the complaint goes on to show that the WASP owns several other domain names, and that this is indicative of an intention to continue its misleading activities in other domains – or that is my understanding of the complaint. **This is pure speculation and not the basis for a complaint.**

Competition pages within their main service

The complaint states:

The subscription club is, for a consumer, a club of being able to send unlimited SMS's. However, the service does not advertise using this hook of “get enough points and you can get unlimited SMS's” or “get free phonecalls for a month”.

These above examples are the type of content hooks that the service should have used, first and foremost, with the competition/giveaway aspect ancillary.

This aspect of the complaint fails to identify a clause, and appears once again to be dictating the WASP's marketing strategy. **I am not clear what the basis for complaint is and can make no finding.**

Sanctions

The following sanctions apply:

In respect of the *prima facie* breach of 11.2.1: The WASP has 7 days from receipt hereof to provide proof of subscription of number 083 309 6321.

Failure to provide such logs will result in the immediate imposition of a fine of **R100 000**.

In addition, in terms of ruling 18262, a suspended fine of **R30 000** will be triggered should satisfactory logs not be supplied in respect of the matter at hand.

In respect of the breach of 11.2.6, I impose a fine of **R5000**.