



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	24294
<b>WASPA member(s):</b>	Why Play Interactiva SL (IP) (1387) / Mira Networks (Pty) Ltd (SP) (0011)
<b>Membership number(s):</b>	See above
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Spam and Automatic subscription
<b>Date complaint was lodged:</b>	2014-07-18
<b>Date of the alleged offence:</b>	
<b>Relevant version of the Code:</b>	12.4
<b>Clauses considered:</b>	5.2.1, 5.2.2, 5.2.3, 11.2.5, 11.2.6, 11.2.7-11.3 and 11.6
<b>Relevant version of the Ad. Rules:</b>	
<b>Related cases considered:</b>	23230

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Complaint 24294 is the escalation of unsubscribe request 5985437 regarding subscription service charges.

The formal complaint was sent to the WASP on 2014-07-18 and they responded on 2014-07-21.

The complainant responded on the on 2014-08-22.

The complainant refused resolution on the 2014-08-01.

The WASP provided additional information on 2014-08-06.

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### Initial Complaint

Premium Service charges have been deducted from the number above for a premium service called "Casually".

This service has never been used and not legitimate opt-in was accepted by ourselves for this service.

This is dishonest and it is theft.

Trying to contact Mira is an almost impossibility on their public number.

**WASP Response**

This morning we have received the escalation notification from WASPA with regards to the subscription activated on the cellphone number (hereinafter referred as "MSISDN").

We have run an accurate audit on the interaction history between the above mentioned MSISDN and our services.

After completing the audit, in order to clarify the scenario in which the subscription took place, the following has to be pointed out.

1) As stated by the WASPA Code of Practice (V 12.4 of the 26/06/2013) under article 5.2.1 letter (b): "Any direct marketing message is considered unsolicited (and hence spam) unless: (...) (b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications (...)".

The audit on the subscription in subject revealed that the MSISDN, as reflected by our system, had a previous interaction with the Landing page of one of our services (Bempix) on the 2nd of November 2013 at 10:50:30 approx. The screenshots of such prior interaction are provided...

As you can see, the MSISDN interacted with the Landing page of one of our services, without however completing the Opt-in process on the relevant Confirmation page. In this occasion the subscription process was not completed. On the Landing page (please check Doc. 1 attached), the MSISDN was provided with all the relevant information regarding the service, duly summarised in the disclaimer displayed right under the action button. In the disclaimer (please check Doc. 2 attached), it was clearly stated that by clicking on the action button displayed on the Landing page, the user accept to receive free promotional messages from our company relevant to the different services provided by the same. An extract of the cited disclaimer section is provided hereunder for your convenience. The customer actually accepted to receive "free promotional messages" clicking on the action button. The facility to allow the recipient to remove his or herself from the message originator's marketing database (Art. 5.1.2 and 5.2, (b) of the Code of Practice V. 12.4), was duly provided to the MSISDN user as proved by the disclaimer screenshot provided hereunder. That being said, the statement that our promotional message was a Spam is actually not correct being that a "commercial relationship" took place prior to the receipt of the promotional message.

2) With regards to the assertion at points 3), 4) and 5) of your e-mail of the 18/07/2014, the Proof of Subscription (hereinafter referred as "POS") sent to you by our customer service department, perfectly comply with the relevant requirement stated by the Code of Practice. The information provided in the proof of subscription is not merely a, citing literally, "blank piece of paper with a copy/paste response", but is the factual reflection of the relevant subscription process history, as per our internal records. The fact that the POS mentioned at the very beginning that the MSISDN was sent with promotional messages, demonstrate that our company had nothing to hide about the process followed by the MSISDN. The promotional message was sent because of an existing prior interaction with one of our services, as explained above, that legally allow WhyPlay to send such promotional adverts.

3) With regards to your assertion under point 1) of your e-mail of the 18/07/2014, citing literally "Neither myself , my staff, or any family member, never requested any form of

message from Mira Networks or Cazually”, please being informed that the consent to receive such promotional messages in this case doesn't need to be expressed verbally or in writing. An Online Contract is defined as “a contract created wholly or in part through communications over computer networks, by e-mail, through web sites, via electronic data interchange and other electronic combinations”. Internationally, Online Contract have been described as “an oral contract evidenced by written terms”. That being said, arguing by analogy, there is no reason to believe that an electronically concluded contract should be any less effective than an oral or written contract. In respect of “click-wrap” type contracts, the consent is signified by technological means such as clicking on an icon (action button displaying “confirm”, “next”, “Join”, etc. wording). It is our understanding that a number of person, citing literally “(...) my staff or any of my family member (...)”, were in the position to use the relevant handset, so it is possible that the subject that subscribed to this service did that without the owner being aware of the same. Should this be the case, as stated by the relevant terms and conditions regulating the service, the service provider (WhyPlay) cannot be held liable for the misuse of the handset; the only person responsible for the handset is the owner of the same.

4) With regards to your assertion, citing literally “(...) the .pdf document that attached contains no company information, no registration numbers, no contact numbers, no physical address.”, please be informed that as stated by the article 11.10.2 of the WASPA Code of Practice (V. 12.4). As you can see, the layout of our POS perfectly comply with the requirements of the Code of Practice. No information about the company has to be specified in the body of the POS, being that this document is specifically intended for the purpose of providing clear logs for any subscription service customer. However, the POS was sent via e-mail on the 16th of July 2014. In the footer of the e-mail the link to the Cazually web page was duly provided (<http://www.cazually.com/start>). Clicking on the link, the user is immediately redirected to the service webpage, and on the footer of the first page is provided with the relevant General Terms and Conditions and Privacy Policy active links in which all the data relevant to our company are clearly provided.

We would like to reiterate that our company is a registered member of WASPA and that we do not have nothing to hide from, being that our services and procedures totally comply with the provisions of the WASPA Code of practice.

5) With regards to your assertion, citing literally "Firstly, I would like to categorically state that we never opted in for any R7/day Cazually service. Nor can this fact be reasonably proved.", please be informed that as per our internal system the MSISDN went through the double opt-in subscription process and subscribed to our social entertainment service “Cazually” on the 16th of November 2013 at 08:43:22 hours approx. as per logs.

The MSISDN was sent with the relevant Welcome and monthly Reminders messages as required by the WASPA Code of practice (Art. 11.5 and 11.6 Code V. 12.4). Please check the logs provided.

The last point that we think worth to be clarified is the one pointed out in your e-mail of the 16th of July 2014 at 15:52 hours, about the <http://one-xtra.com/> domain. As you have correctly spotted, "one-xtra.com" is one of our blogs on which users can share opinions about different subjects, in this particular case about “Home&Living”. The reason why the URL related with the service contains the "one-xtra.com" reference is due to the fact that at this time probably the relevant publicity banner was hosted on this specific blog.

We assume that you were running the search on July or June 2014 and it is correct that at this point of time no premium service publicity banners were displayed on the page, however the subscription in subject was initiated in November 2013.

The Opt-in process to our services, in general, starts from a related publicity banner and not from the blog page on which the banner is hosted. Our blogs are free spaces where users can share useful informations and are not intended to be the origin of subscriptions, however is not illegal that a free web site hosts publicity banners that lead to premium services passing through the relevant double opt-in process required by the applicable regulation.

In conclusion, as per all the information provided above, we consider that the subscription process involved in this matter was a fully compliant one. However, we take customer satisfaction very seriously and we are more than happy to offer you a full refund of R 1596 as a full and final resolution to the matter. Should you decide to accept the above mentioned full refund, please kindly provide us with the following bank details:

This refund offer does not in any way or form constitute an acknowledgement of liability. Upon acceptance of this offer this matter will be deemed successfully resolved.

"Welcome:Cazually Private Albums <http://bzm.tv/s/acc46eaf99> Pass26913371  
help@cazually.com subscription R7/sms 28sms/mth unsub sms stop to 37918  
help0105002341"

"Reminder ur subscribed to Cazually. 1 New updates waiting. Click  
<http://bzm.tv/s/1839512102> to read cost R7/day help?0105002341. To unsub sms stop to  
37918

The number provided was unsubscribed from our service on the 15th of July 2014.

#### CONCLUSION:

- The complainant subscribed to Cazually subscription service through a double opt-in process.
  - The terms and conditions of the service were clearly displayed on the Landing Page as well as the Confirmation Page.
  - A Welcome message was sent to the Complainant, which contained all the required information.
  - A monthly Reminder Message was sent to the Complainant, which contained all the required information.
  - An unsubscribe request was received, which request was honored.
  - The billing structure/subscription fees can be as follow:  
R 7.00 per day for access to the Cazually service;  
R 7.00 per SMS, 28 SMS per month for access to the Cazually service.
- It is irrelevant whether the service is utilized and whether content is downloaded or not.

#### Further Complaint

I would like you to take this complaint and escalate it to a formal complaint procedure. Firstly, I would like to categorically state that we never opted in for any R7/day Cazually service. Nor can this fact be reasonably proved.

I have been in email and/or telephonic conversation with both perpetrators. (Mira Networks and Cazually) they blithely provide evidence that we opted in for a service that we do not use nor ever have used.

Next I would like to draw your attention to the following section of your own Code of Conduct. This is from version 12.4 and was the ruling version when the offence took place.

## 5.2. Identification of spam

5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications
  - (i) at the time when the information was collected; and
  - (ii) on the occasion of each communication with the recipient; or
- (c) the organisation supplying the originator with the recipients contact information has the recipients explicit consent to do so.

5.2.2. Any commercial message is considered unsolicited after a valid opt-out request.

5.2.3. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

Herewith my notes on the above portion of your own Code of Conduct.

- 1) Neither myself , my staff, or any family member, never requested any form of message from Mira Networks or Cazually.
- 2) I attach the response from Cazually above and you will clearly note that NO PRIOR COMMERCIAL relationship existed between ourselves and Cazually or Mira Networks.
- 3) You will note that in their own response they state that the user responded to a promotional message advertising the social entertainment service. This in itself is a clear admission on their own part that they sent spam. So by their own admission, this is 100% blatant SPAM and I request that this matter be taken further.
- 4) In addition I'd like further penalties applied to Mira Networks where they are fraudulently masking their true contact details on UniformSA, at the expense of innocent members of the public.

All of the points above conclusively prove that both Mira Networks and Cazually are involved in a spamming scheme that is designed to trick cellular users out of their hard-earned cash. Next, the .pdf document that attached contains no company information, no registration numbers, no contact numbers, no physical address. Basically it's a blank piece of paper with a copy/paste response. If this is the kind of company that is allowed to arbitrarily charge for premium services without any tangible form of consent.

It speaks volumes for the actual legitimacy of Mira Networks and Cazually. Finally, I have now invested in excess of 10 hours of my own personal time to research and prove my own innocence in this matter.

Please, I beg you good office to now take this matter and start formal proceedings.

### **WASP Response**

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On the Landing page (please check Doc. 1 attached), the MSISDN was provided with all the relevant information regarding the service, duly summarised in the disclaimer displayed right under the action button.

In the disclaimer (please check Doc. 2 attached), it was clearly stated that by clicking on the action button displayed on the Landing page, the user accepted to receive free promotional messages from our company relevant to the different services provided by the same.

An extract of the cited disclaimer section is provided hereunder for your convenience: The customer actually accepted to receive "free promotional messages" clicking on the action button.

The facility to allow the recipient to remove his or herself from the message originator's marketing database (Art. 5.1.2 and 5.2, (b) of the Code of Practice V. 12.4), was duly provided to the MSISDN user as proved by the disclaimer screenshot provided hereunder: That being said, the statement that our promotional message was a Spam is actually not correct being that a "commercial relationship" took place prior to the receipt of the promotional message.

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Welcome:Cazually Private Albums <http://bzm.tv/s/acc46eaf99> Pass26913371  
help@cazually.com subscription R7/sms 28sms/mth unsub sms stop to 37918  
help0105002341  
Reminder ur subscribed to Cazually. 1 New updates waiting. Click <http://bzm.tv/s/1839512102> to read cost R7/day help?0105002341. To unsub sms stop to 37918

The last point that we think worth to be clarified is the one pointed out in your e-mail of the 16th of July 2014 at 15:52 hours, about the <http://one-xtra.com/> domain. As you have correctly spotted, "one-xtra.com" is one of our blogs on which users can share opinions about different subjects, in this particular case about "Home&Living". The reason why the URL related with the service contains the "one-xtra.com" reference is due to the fact that at this time probably the relevant publicity banner was hosted on this specific blog. We assume that you were running the search on July or June 2014 and it is correct that at this point of time no premium service publicity banners were displayed on the page, however the subscription in subject was initiated in November 2013.

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In conclusion, as per all the information provided above, we consider that the subscription process involved in this matter was a fully compliant one. However, we take customer satisfaction very seriously and we are more than happy to offer you a full refund of R 1596 as a full and final resolution to the matter.

### **Complainant Further Response**

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."

You are adamant that the MSISDN in question "interacted with the Landing page of one of our services". You then furnish proof in the form of the following graphic.

The IP addy above (197.78.146.26) is for an MTN server in Durban. The phone in question has never been to Durban. EVER!



However, let me give you your next argument: "Well it could just be where the internet connection broke out." Mmmm yes, it's possible. But for a Gauteng based handset, highly improbable.

However, that's not all.

The MSISDN is, and always has been installed in a Blackberry device. So now, let me explain the intricacies of how Blackberry devices work.

You see, Dear Mr Parks, Blackberry devices are connected to the internet through a special encryption process via one of their international servers. Typically when a BB device 'breaks-out' onto the internet the device will 'assume' for want of a better word, the BB Servers IP address. So in effect the device is 'masked' with a BB Server address.

Maybe you would like to explain to me how a permanently internet connected BB device used the above MTN server and therefore by inference, the MTN packet switched data network to access your "landing page".

I have taken the liberty to attach the relevant portion of this cell phones bill. And you will see that there are NO, as in NONE, or alternatively ZERO, NOUGHT, ZILCH and NADA, packet switched data connections charged on said account for the month of November.

Now, this is where I have an issue with you, and the false information that you are proffering as evidence that we had a prior commercial relationship.

You see Mr Parks, either you yourself are a liar, or you have some pretty incompetent people working for your organisation that do not understand the way that Blackberry devices work.

Either way, you and your organisation are, and I quote: "knowingly disseminate(ing) information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission."

Next the image above proves nothing, bar an IP addy and a URL at set date and time, not which MSISDN made the connection. Try again Mr Parks.

Mr Parks, I call your evidence false, deceptive and a blatant lie.

The balance of your email where you set up a straw-man argument with regards to the quality of your responses re the cut and paste and that you are abiding by WASPA requirements is actually just pathetic.

Any real business and company that is offering a legitimate service would be proud of their company, and would not hesitate to give direct phone numbers or physical addresses.

I note that you had the audacity to have one of your stooges call me last week and ask if I was happy with your response. Mr Parks, don't do that. I have not asked your company to phone me.

If YOU want to call me on MY personal cellphone, then do it from YOUR personal cellphone, that way we will be on an even footing.

Next, a legitimate business would not hide behind a faceless international corporation, when in fact they are owned and run by South Africans in South Africa, and they would not hide behind an anonymous domain registration service.

What all of that shows Mr Parks is that you are hiding, because the last thing you would like is 1000's of unhappy victims rocking up on your doorstep.

So Mr Park, don't try and get all holier than though hiding behind minimum WASPA requirements.

My last point with you Mr Parks. Is that as above, I reject your offer of a refund. However, with the blatant lack of ethics that you have displayed (and I'm being kind here) do you really expect me to give you my banking details? Please Mr Parks.

Finally.

WASPA

Charles, please note that this complaint is NOT resolved. I would still like this issue escalated into the formal complaints process.

1) The first complaint is that monies have been stolen from my account by Why Play and or Cazually enabled via MIRA Networks. These monies were never authorised and this is 100% pure theft.

2) The second complaint is that Why Play and or Cazually sent out SPAM as defined by the WASPA Code of Practice (V 12.4 of the 26/06/2013) under article 5.2.1

3) The third complaint is that Why Paly and or Cazually wilfully presented false evidence in an attempt to mislead both myself and WASPA as defined by the WASPA Code of Practice (V 12.4 of the 26/06/2013) under article 4.1.2

4) Please be so kind as to add in the additional complaints and keep me informed on the process.

I take umbrage at the very notion that Why Play / Cazually represent themselves as a legitimate business, I find it concerning that they have used WASPA to hide behind while all the time submitting to be above board.

Charles, I beg you to please look into the disgraceful attempt at deception as presented by Mr Parks, and take the harshest possible action that your good office is allowed.

Like I said in my original email to MIRA Networks... I'm NOT going away!

### **Wasp Further Response**

Firstly, with regards to the matter in subject, we would like to point out that, from a technical and procedural point of view, we are actually discussing about two different issues that need to be separated in order to have a clearer picture of the facts.

First, we are arguing the complainant subscription to our service. Several parties guard this and secure we cannot and could not sign the complainant up without his consent.

Automated signups are actually not even possible due to the double Opt-in subscription process currently in place.

Please check our e-mail of the 21st of July herewith attached describing the double opt-in process and the interaction prior to the sending of the commercial message.

Second, the complainant is discussing the procedure of gathering opt-in information for mailing lists. As with every opt-in process, the recipient of the opt-in can never know whether the data provided is accurate or not.

The procedure to verify the opt-in in general consists of a message to the requesting party – be that via email, normal postal mail or SMS, at which point the requesting party either has to confirm or decline further messages. Since SMS are generally costing money to send, it is industry practice to send the opt-out information together with the first commercial message – and it is indeed codified that every message contains information on how to unsubscribe from a mailing list free of charge.

At the time the mobile phone number is entered, we do not have any information as to where the customer is physically located. All we know is the data sent voluntarily or involuntarily to the webserver in use. That includes the IP address and the user agent of the browser as the most obvious data points.

The complainant is correct that RIM provides a proxy to Blackberry users; it is however also correct that most, if not all Blackberry devices, by default, come with different Internet connections of which at least one bypasses the RIM proxy. That might or might not be true for the complainant device.

We do not maintain a test database on which Blackberry devices use which Internet connection how and it is a mystery on how this is selected to ourselves. We also do not see a need to maintain or produce such a database since there does not seem to be any value in knowing the details.

We have no option but to trust the complainant has never been in Durban – we do not have any data showing either he were or weren't.

We personally don't doubt he is correct and honest.

However, it does not change how opt-in data is gathered and verified and that the complainant receiving the marketing message with the opt-out information is a valid verification of the entered number. We accept the complainant hasn't entered the number himself and apologize for the inconvenience caused, but from the information we possessed at the time, the SMS we sent wasn't unsolicited.

While we understand the frustration, the marketing does not invalidate the complainant responsibility for the subscription itself.

We did not force this onto the complainant, we merely encouraged the same, and it was the user who completed the required double opt-in process.

The complainant received and chose to ignore the required welcome and reminder messages we sent following the applicable regulation.

We would like to reiterate that we have already offered the complainant with a full refund, however we understand that the complainant is sceptical towards our attitude and reluctant to close the case.

As an industry, the service providers are in an inconvenient situation. We do not directly control either the subscriptions or the billing – at least in recent history and in our and this case even prior to the network controlled double opt-in model. The method we use to charge the users is theoretically perfectly suited for micro payments, but devalued by the fact that we receive less than 50% of the payments the users made. The effective return we receive is quite low on a per customer basis and we are expected to carry all cost or refunds ourselves.

Additionally and independent of the product or country we operate in, customers tend to start negotiations with negating their subscription.

So as a company – and since there is third party proof – we usually tend to be sceptical towards such claims.

The cost of individual complaints however quickly exceeds what we can reasonably spend on dealing with each case, and in all of these we tend to offer a full refund to keep the cost under control. This case certainly by far exceeded the refund offered. Obviously, we have a strong motivation to close cases as fast as possible.

Secondly, that being said on the technical and procedural aspects of this issue, we would like now to analyse the formal aspects of the complainant response that actually reveal a confused perception of several facts regarding our business, the regulatory

structure/procedures and the content formalities of the response we sent on the 21st of July 2014.

The aptitude of the complainant as of the beginning of his response was highly offensive and aggressive. The complainant was using an undue sarcasm and was continuously treating all the information he was provided with as, citing literally, "lies and false information" and "false, deceptive and a blatant lie".

We would like to reiterate that the e-mail sent on the 21st of July 2014 (please see file attached), was structured in order to comply with the need of information shown by the complainant and in no way can be defined as aggressive at all. We have provided the complainant with all the relevant information regarding the subscription occurred and the commercial message sent to the same due to the previous interaction occurred with one of our advertising spaces.

That being said, the aggressive current attitude of the complainant is not, has pointed out by the same, citing literally, "a direct result of the way that you have treated me" but an unjustifiable and unacceptable behaviour against a company that has merely tried to find an amicable solution to a situation that actually wasn't neither illegal nor in conflict with the regulatory statements currently in place.

As an example of the complainant attitude, please check point 5) in the very beginning of his e-mail. Why should our company apologize "right upfront" and refund "the money without any run around" to a complainant before running an accurate audit on the case in order to evaluate the matter? It is clear that the complainant was looking only for the money and that did not accept the complaint procedure currently stated by the WASPA code of practice, which we actually abide to. In fact, we have provided the due POS within the relevant time, we have always attended the requests of information of the complainant and we have provided the same with all the relevant data once requested, even if such a process costs money to our company, as stated above: much more money compared with the actual value of the matter.

Please check the following complainant assertions:

"The balance of your email where you set up a straw-man argument with regards to the quality of your responses re the cut and paste and that you are abiding by WASPA requirements is actually just pathetic" and "I note that you had the audacity to have one of your stooges call me last week and ask if I was happy with your response. Mr Parks, don't do that. I have not asked your company to phone me. If YOU want to call me on MY personal cellphone, then do it from YOUR personal cellphone, that way we will be on an even footing."

Both sentences clearly reveal the confusion regarding the procedure in place in case of complaint resolution.

With regards to the first sentence, we would like to reiterate that our POS is a clear reflection of the subscription process followed by the user and, as already stated in the e-mail sent to the complainant on the 21st of July 2014, perfectly complies with the Code of practice requirements. The document cannot be defined as "pathetic" and of course it is merely a subjective opinion of the complainant.

With regards to the second sentence, again the complainant is confusing a professional attitude with an attempt to damage his position. The "stooge" in this case was our Customer Service Manager, who called the complainant to make sure that he received our e-mail of the 21st of July 2014, being that till the 23rd no feedback on the same was received. We do not need to be asked to follow up on a case: it was our intention to project a professional attitude to the query and to ensure the correct flow of information.

Moving forward in the complainant response analysis, please check the following sentence: "Next, a legitimate business would not hide behind a faceless international corporation, when in fact they are owned and run by South Africans in South Africa, and they would not hide behind an anonymous domain registration service" and "What all of that shows Mr Parks is that you are hiding, because the last thing you would like is 1000's of unhappy victims rocking up on your doorstep."

Again, as you can see, the complainant is randomly attacking our company without considering the reality. As a member of WASPA our company has been registered to the WASPA organization and has provided WASPA with all the relevant company information. It is a fact that WhyPlay Interactiva S.L. is a company with registered office and operative venues in Spain that operates in the South African market, as well as others. Should the complainant have visited the general terms and conditions section of our website or landing page, he had found the relevant information about physical address, contact details, registration number, VAT number, etc. regarding our company.

We are not hiding our company also because it wouldn't be possible due to the regulatory requirement currently applicable in order to run services in the South African market. Please check the screenshot provided...Moreover, just for complainant information, confident that WASPA will corroborate the following, the figure of the complaints open against our company since the beginning of the operations in South Africa (Beginning of October 2013) shows that our company received up to today a total of 1060 "WASPA tickets" of which only 12 escalated (including the matter in subject) and only 2 arrived to adjudication (one of those being the matter in subject). That means that actually only two users were not satisfied with the outcome of their query.

Please be advised that the majority of the initial "WASPA tickets" are actually unsubscribing requests and not actual complaints.

Comparing the number of issues provided above with the number of subscriber currently joining our services (Users currently subscribed to WhyPlay services: 145,298) it is evident the fact that the complainant assertion, citing literally "1000's of unhappy victims rocking up on your doorstep" is at least not accurate, if not "false and deceptive", using the complainant wording.

That being said, in conclusion, we would like to point out the following:

No money has been stolen from the complainant, being that, as already stated above, he completed a double opt-in subscription process before subscribing to our service; A full refund was offered to the complainant as an amicable resolution to the matter, and was turned down; WhyPlay Interactiva S.L. never sent SPAM to its users. Commercial messages can only be sent to numbers that have had a previous interaction with one of our services and have accepted to receive such promotional messages; The evidence provided are not false. As already said, the logs provided are the actual reflection of the interaction occurred between the complainant handset and our system; WhyPlay Interactiva S.L. is a registered member of WASPA and all our services comply with the requirements of the applicable Code of Practice.

We trust that the Adjudicator will consider all elements of this escalation and return with a fair verdict on the matter.

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## Sections of the Code considered

5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications
  - (i) at the time when the information was collected; and
  - (ii) on the occasion of each communication with the recipient; or
- (c) the organisation supplying the originator with the recipients contact information has the recipients explicit consent to do so.

5.2.2. Any commercial message is considered unsolicited after a valid opt-out request.

5.2.3. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

## 11.2. Subscription process

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.

11.2.6. 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].

11.2.7. If the network is already undertaking any of the verification steps required in this chapter of the Code, then it is not necessary for members to repeat those particular steps again.

## 11.3. Subscription initiated via a browser (web or WAP)

11.3.1. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- contain a PIN which is then confirmed or validated on the web page, or
- contain the name of the service, an explanation of the confirmation process, and a URL with a unique identifier, which, when clicked, validates the handset number.

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.

11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:

The name of the service and an indication that it is a subscription service

The price and frequency of billing

A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:

[Application name] has requested that your mobile number be made available.

11.3.5. The information listed 11.3.3 and 11.3.4 must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

## 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.

## Decision

5.2.1, 5.2.2 and 5.2.3: Without alleging fraud and manufacturing of records I find no breach.

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:

The name of the subscription service;  
 The cost of the subscription service and the frequency of the charges;  
 Clear and concise instructions for unsubscribing from the service;  
 The service provider's telephone number.

"Welcome:Cazually Private Albums <http://bzm.tv/s/acc46eaf99> Pass26913371  
 help@cazually.com subscription R7/sms 28sms/mth unsub sms stop to 37918  
 help0105002341"

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.

"Reminder ur subscribed to Cazually. 1 New updates waiting. Click <http://bzm.tv/s/1839512102> to read cost R7/day help?0105002341. To unsub sms stop to 37918."

In my view, and due to the exacting requirements of 11.6.3 the reminder message does not comply with the Code in that it has this text between the name of the service and the cost: 1 New updates waiting. Click <http://bzm.tv/s/1839512102> to read.

It also breaches 11.1 of the Advertising Rules which sets out this as the template for the reminder messages and states that no other characters may be included:

You'r<space>subscribed<space>to<space><SERVICE NAME><space><inclusive cost of service & the frequency of billing><space>from<name of content provider><period>To<space>stop<space>service,sms<space>STOP<space><insert service name><space> to<space><insert number><space><open bracket><cost of MO><close bracket><period>Help?Call <space>0xy1234567<open



bracket>VAS<close bracket>

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### **Sanctions**

I find the IP in breach of the Code and Rules and request them to refund all monies deducted (if not done so already).

A fine of R10 000 must be paid immediately on receipt of this ruling.

A further R5000 is held in abeyance until such time as the reminder message is corrected and a corrected version provide to the WASPA Secretariat. This needs to be done within 7 (seven) days of this ruling.