



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Mira Networks
Information Provider (IP):	TIMw.e. New Media Entertainment South Africa
Service Type:	Subscription service
Complainant:	Member of the public
Complaint Number:	5853
Code Version:	6.2 (consideration also given to version 7.0)
Advertising Rules Version:	2.3

Complaint

The complainant was subscribed to a service described as “IQ-WORLD Test” (“the service”) on the Web. The complainant contended that he was incorrectly billed for use of or access to the service in December 2008 and January 2009. He was under the impression he was being charged for sms messages he did not send.

He has alleged that he requested that he be unsubscribed from the service and refunded the amounts he paid for the service. The complainant alleges further that he sent a request to the unsubscribed in December 2008. The documentation I was briefed with indicates that the SP received the unsubscrition request on or about 22 January 2009.

The complainant appears to have been unsubscribed on or about 19 February 2009 (the date on which the complainant was unsubscribed is unclear although it does appear clear that he was, at some point, unsubscribed).

Service provider’s response

The SP confirms that the complainant was subscribed to the service on or about 12 December 2008. It confirms that the complainant has been unsubscribed (the IP contends that no request to unsubscribe was submitted or received) and further that

the complainant has not been refunded (although it is unclear what, specifically, the complainant wishes to be refunded for).

Sections of the Code considered

This complaint was filed prior to an update to the Code. I have accordingly considered versions 6.2 and 7.0 for the purposes of this report in order to determine compliance with the Code (referencing version 6.2) and the remedy for non-compliance (referencing version 7.0). I have considered the following sections of the Code:

Version 6.2	Version 7.0
<p>4.1.3: Each Member must provide their full contact details on the Member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.</p>	<p>4.1.3: Each Member must provide their full contact details on the Member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.</p>
<p>11.1.2: 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.</p>	<p>11.1.2: 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.</p>
<p>11.2.4: Members must ensure that the termination mechanism is functional and accessible at all times.</p>	<p>11.5.5: Members must ensure that the termination mechanism is functional and accessible at all times.</p>

Sections of the Advertising Rules considered

Rule 9.2 generally.

Decision

The service is somewhat misleading. A screenshot of the service is annexed to this report and is marked Annexure "A". On the face of it the purpose of the service is to test a site visitor's intelligence but there are a number of other indicators on the site that reveal that the service is, in fact, a subscription service through which a subscriber receives "3 games + 1 truetone for only R4,99 per day." This is a violation of 11.1.2 of both versions of the Code and appears to be an example of bundling is not permitted.

The terms of use are deficient in that they do not contain necessary information about the SP including "full contact details on the Member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address". This is a requirement of 4.1.3 of both versions of the Code.

Having regard to the specifics of the complaint, there does not appear to be any reason for the IP (or the SP for that matter) to believe that the complainant did not provide his mobile phone number and consent to access to an online service (whether it be the subscription service in question or an intelligence test as advertised). There does appear to have been a failure to unsubscribe the complainant when he expressed a desire to unsubscribe from the service.

As I mentioned above, there also appears to have been a delay between the receipt of a request to unsubscribe and the date on which the complainant was, in fact, unsubscribed, if not a complete failure of the unsubscription mechanism. It therefore appears that this mechanism was not functioning properly and there is a breach of 11.2.4 of the old Code.

Furthermore the text of the terms of use, such as they are, does not appear to be compliant with the provisions of Rule 9.2 of the Advertising Rules which address the formatting of terms of use on a website.

I note that a similar issue was raised with the IP in complaint 5094. The adjudicator in that matter did not find the IP to be in breach of 11.1.2 on the facts of that matter. I note complaint 5094 because of its apparent similarities to this complaint although I have reached a different conclusion regarding a breach of 11.1.2 of the Code in this matter.

Sanctions

1. The IP is required to suspend the service and the site it is hosted on until such time as it complies with the orders set out below. The IP may not initiate any new or existing billing transactions for any of the IP's subscription services during such period of suspension, however it may process any unsubscription requests;
2. The IP shall send an sms notification to all existing subscribers of the service in the format prescribed in 11.4 of the current Code;
3. The IP shall ensure that its terms of use are amended in accordance with 4.1.3 of the Code and Rule 9.2 of the Advertising Rules;

4. The IP shall ensure that any reference to the availability of single items is removed from the service's site such that the site only makes reference to its subscription content in clear and unequivocal terms;
5. The IP shall refund any amounts deducted from the complainant during the period 22 January 2009 to and including 19 February 2009 as a result of his initial subscription to the service;
6. The IP is fined -
 - 6.1. R5 000 for its non-compliance with 4.1.3 of the Code;
 - 6.2. R20 000 for its non-compliance with 11.1.2 in that it bundled a single item with a subscription service; and
 - 6.3. R20 000 for its failure to carry out a request to unsubscribe from the service within a reasonable time period in apparent violation of 11.2.4 of the Code.



IQ-WORLD Test



Subscription Service, R4.99/day

LOGIN

E-MAIL ADDRESS

If you already played, login and check the ranking.
Check your friends IQ.

DAILY RANKING!

CHECK

TIME

240 SECONDS

TEST YOUR IQ

AGE F M

START TEST!

yes! I want the best contents ever for only r4.99/day.

Have you measured your intelligence?

[KNOW MORE](#)

- Intelligence is the mental capacity to reason, plan, solve problems, and understand abstract ideas, using language and learning.
- The IQ - intelligence quotient - is an index calculated from the scores obtained in tests that comprise the intelligence related capabilities.
- 100 is the average IQ value, considered "normal intelligence".
- The IQ test takes into account the person's age, gender, right and wrong answers and the time needed to respond.

Take the opportunity to find out your IQ score and invite your friends to compare results!

Terms of use

Games Club! This is a weekly subscription service. Every week you get 3 games + 1 truelone for only R4.99 per day! To cancel the service just send stop games to 33535 or contact support.za@tmwv.com. This service requires WAP. VAS rates apply. No free minutes apply. Network WAP/GPRS rates apply. Failed requests billed. Displayed items are only examples of content. We have contents for all mobile models available in the market, e.g. Samsung SGH-E250, SGH-E370, SGH-I750, SGH-D900, Motorola V360, W375, V3, V220V220ENS, C650, Nokia 2760, N70, N73, E65, 5200, 6085, 6101, LG KG290, etc.