



REPORT OF THE ADJUDICATOR

WASPA Member	Zed Mobile
Information Provider (IP) (if any)	n/a
Service Type	Subscription
Source of Complaints	Competitor
Complaint Number	5905
Date lodged	2 March 2009
Code of Conduct version	6.2

Complaint

This is a competitor complaint relating to allegations of non-compliance with provisions of the WASPA Code relating to opt-in and unsubscribe procedures. The complainant alleged that Zed Mobile, an affiliate member of WASPA, did not employ double opt-in procedures where signing customers up for its subscription services through its WAP site.

“Firstly, Zed does not adhere to double opt-in procedures. They don't even adhere to single opt-in procedures. Upon browsing their WAP site, I clicked a banner link advertising information for one of their gaming services. Upon clicking, I received a notification that I had been subscribed to Club Zed.

The second issue is that their unsubscription system works on USSD and they charge R0.20 for every few seconds while you're using it. This, with the above, is TOTAL abuse of MSISDN/number detection. In addition, I wasn't fully told which service I was subscribed to, so I had to unsubscribe from each of their 5 or 6 services. I eventually received an SMS saying I was not subscribed, but at 11pm that night I received a WAP link from them.”

The member, in its initial reply, noted that the complaint was vague and stressed that it had gone to great lengths to ensure that its subscription service sign-up procedure was compliant with the requirements of the WASPA Code of Conduct. The member set out, at length, the procedure which it employed, together with URLs showing how the sign-up worked in practice.

As regards the USSD component, the member stated that a USSD menu was offered to allow an alternative means for unsubscribing from its services and that it believed that this was a common practise in the industry. The member rejected the allegation regarding the pricing of this component, averring that this was a standard rate. According to the member the sending of Stop / End / Cancel / Unsubscribe / Quit would also lead to the service being stopped.

The Complainant was not satisfied with this response and reiterated statements regarding the sign-up procedure and that the member was automatically subscribing customers to its service. The Complainant further raised a new point regarding the display of the access price text:

“Just a note, I am a professional that works daily in the mobile industry. I understand subscription services, I know the WASPA code of conduct well, and despite this experience I do not think that "R4.99/day/10 items/50c" is a clear outline of pricing at all. It is confusing and hides hidden charges, namely the 50c it costs to download an item once you've already paid your R4.99/day.”

The final response from the WASPA member is reproduced in full below:

“Firstly, I believe that the complainant is confused between Zed Mobile's WAP site and Zed's WAP ordering process. As mentioned one can only access Zed's WAP site once they have subscribed to the Zed service. Zed Mobile does not offer any advertising on its WAP site. In order to access the Zed WAP site the complainant would have had to subscribe to the service.

As mentioned in our first response there is a specific procedure that needs to be followed before a consumer is subscribed to a Zed Mobile service:

In order to have landed on the landing page

<http://zed.miranetworks.net/lan=/zed?supplier=admob&product=hh2&banner=1> the complainant would have had to have clicked on a banner beforehand. This would have been the 1st request for a service. We are able to see the banner the complainant clicked on was the 'Hot Hits' music banner. This can be identified from the above url, at the end of the stream (=hh2&banner=1)

There is a distinct difference between

1)Banner - 1st request for a service

Consumer clicks on the WAP banner to request the service to

2)Landing Page - 2nd request for a service

Consumer is presented with a page 'Landing Page' which clearly outlines the following: Content offering, Price of the service, frequency of the service, Terms and Conditions of the service which displays the following, Outlining the conditions of joining a subscription service, users have to be 16 years or older and have the accounts holders consent to join the club and use the service, Pricing Information, How to Unsubscribe, Help, Click here for confirmation tab.

The complainant states that in the url there is a mention of AdMob. This is helpful because it enables us to explain the ordering mechanics and how the complainant subscribed to the service:

AdMob is a Mobile Advertising Agency and is one of many agencies whom Zed utilised to advertise its own services.

The mention of AdMob in the Landing Page URL

<http://zed.miranetworks.net/la=d/zed?supplier=admob&product=hh2&banner=1> is a reference string for Zed's own reporting requirement so that we can identify the following:

- 1) The banner the complainant clicked on (1st request =hh2&banner=1)
- 2) The Landing Page the complainant clicked on (2nd request <http://zed.miranetworks.net/land/zed?>)
- 3) The advertising partner network (supplier=admob) in which the request originated from. For the complainants reference this is not an advertising banner.

The complainant then states that when browsing the following url on a PC that the PC tried to detect a Cellphone number:

<http://zed.miranetworks.net/wapad.php/land/click/product/hh2/supplier/admob>

This again is helpful as it demonstrates that the complainant would have had to click on the 'CLICK HERE-Now' tab in order to receive the above message.

The automatic Cellphone detection is something that is Industry standard across all Networks in South Africa and can only work on Cellphones. With Zed Mobile's service the msisdn only detects the msisdn and does not automatically subscribe a consumer. The above message would have only appeared on the complainants PC after he had clicked to

confirm that he wanted the service.

Zed categorically states that it does not automatically subscribe consumers. This can be supported by MIRA networks and is very evident by the lower number of final subscribers (2nd request, actually subscribed) compared to the original requests (1st request on Zed Banner) which is reported on a daily basis.

Furthermore the pricing that Zed Mobile presents in its 'Landing Page' and terms and Conditions meets the WASPA requirements. The reference to R0.50c is the cost per item and not a cost to download an item. This cost is already within the R4.99 price point as we cannot promote a cost of R0.49.9 cents as we believe it would be clearer for the consumer if we promoted the service at R.50c per item.

In summary the steps that the complainant followed to become a member of Club Zed via his Cellphone is as follows:

1st request

Complainant clicked on 'HOT HITS' banner which was advertised through AdMob's (Mobile Advertising Agency) blind network.

2nd request

Complainant clicked on 'CLICK HERE-Now' within the Hot Hits Landing Page confirming that he wanted to subscribe to the following service-R4.99/day/10 items/50c

Only after the above 2 confirmations the complainant would then be given access to Club Zed's WAP site.

It must be pointed out that the complainant is attempting to demonstrate the end to end process via a PC and not via his Cellphone. He is therefore not able to fully demonstrate the true Cellphone experience. This is due to the fact that he is not clicking (1st request) on a banner, such as Hot Hits.

I would like to summarise that Zed Mobile has taken every effort to ensure the above WAP service is fully compliant with the industry guidelines in South Africa. I would also like to state that Zed Mobile takes the Mobile Industry very seriously and treats the guidelines and WASPA with the utmost respect. Having been global leaders in the Mobile Industry for over 12 years—and operational in South Africa for the last four years I believe it is a true testament that Zed Mobile has not had one WASPA sanction or fine against us.

In view of the above Zed Mobile has taken the decision to change the 'Click=Here - Now'

tab to read 'Click to Confirm' which we believe will be less confusing.

To enforce our position on this matter above please see the following statement from Sean Conde, CEO of MIRA Networks, who is our local aggregator:

Further to the Complaint Ref 5905

Dear WASPA Secretariat

Further to consultation with Zed Mobile regarding complaint Ref 5905 I can confirm that Zed Mobile offers its consumers a double opt-in process for WA= customers.

The double opt-in process is something that was discussed in detail with Zed Mobile and MIRA as we developed this mechanism for them. Additionally, we continue to handle the WAP ordering process for Zed Mobile and confirm that the double-opt in requirement for WAP continues to be met.

With reference to the USSD menu this is also something that we designed for=Zed Mobile. The USSD facility offers the consumers the ability to unsubscribe from any of the individual services they may be subscribed or alternatively all of the services at a standard rate cost of R0.20 per 20 seconds. This ensures that consumers can stop a service at a minimal cost.

As pointed out by Zed Mobile this has been seen to be common practice in the market.

Furthermore, there are other services utilising the same Opt in and USSD opt out mechanics with in the South African market.

Regards

Sean Conde

Ceo Mira Networks”

Sections of the Code considered

The following sections of version 6.2 of the WASPA Code of Conduct were considered:

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a

choice of service to terminate. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent.

11.1. Manner of subscription

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services".

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.

11.1.11. The format of the both the initial notification message and the monthly reminder should comply with the relevant section of the WASPA Advertising Rules.

11.2. Termination of a service

11.2.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.2.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.2.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times.

11.2.5. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

Decision

1. There is considerable precedent in the WASPA adjudications for treating competitor complaints more restrictively than consumer complaints. This is particularly so where the competitor making the complaint does not provide any concrete evidence of the alleged breaches and where it fails to specify the provisions of the Code and/or Advertising Rules which it believes have been breached. The logic for such a restrictive approach flows from the potential for the WASPA complaints procedure to be abused as a means for gaining some form of competitive advantage.
2. The Adjudicator is of the view that the complaint as submitted is vague and, to an extent, misleading as regards the subscription procedure employed by the WASPA member. For example: "I clicked a banner link advertising information for one of their gaming services.

Upon clicking, I received a notification that I had been subscribed to Zed Mobile". This gives the impression that the Complainant was subscribed after clicking on the banner advertisement, which the Adjudicator is satisfied was not the case.

3. The version of the WASPA member, as supported by their aggregator, is accepted. The complaint relating to an improper subscription sign-up procedure is dismissed. The Adjudicator supports the view expressed by the member that the Complainant has become confused between the WAP site and WAP ordering process employed by the member. The Adjudicator cannot identify any provision of the Code or Advertising Rules breached by the member within the context of this complaint.
4. The aspect of the complaint relating to USSD charges is dismissed as this is a standard cost for services of this nature.
5. The Complainant further alleges that he was not told which service he was subscribed to, so he "had to unsubscribe from each of their 5 or 6 services". According to the Complainant he "eventually" received confirmation of unsubscription, but later that evening received another WAP link from the member.
6. This is simply too vague and the Adjudicator is not prepared to entertain these allegations. It would be open to the Complainant to resubmit the complaint with supporting proof of the alleged breaches, but until such time as this occurs, this aspect of the complaint is dismissed.
7. As regards the pricing display the Adjudicator notes that the member has subsequently amended this to reflect R4.99/day/10 items. i.e. the reference to the "50c" has been dropped. The Adjudicator does not view the manner of display as being in breach of the Advertising Rules. It may well be confusing but any confusion would act to the detriment of the member in that potential customers might believe the service to be more expensive than it is.
8. The member should be aware that the dismissal of the complaint does not constitute an unequivocal statement that its procedures and displays are fully compliant with the Code and Advertising Rules. The Adjudicator has reviewed the sign-up procedure for the service and, noting the member's statement that it had made some changes to improve the procedure employed, wishes to make the following comments, which comments are not intended to indicate breaches of the Code:
 - a. The Adjudicator is of the view that the landing page provided should more explicitly indicate that the service is a subscription service;
 - b. Pricing for the service should be clearer in the sense of distinguishing between the subscription cost and any per item cost (although the 50 cents per item now appears to have been removed); and
 - c. The Adjudicator is of the view that text to the effect of "SUBSCRIBE NOW" or "CLICK TO CONFIRM SUBSCRIPTION" would be even less confusing for consumers.
9. The complaint is dismissed.

