



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	TIMw.e. New Media Entertainment South Africa
<b>Information Provider (IP):</b>	Not applicable
<b>Service Type:</b>	Subscription service
<b>Complainant:</b>	Member of the public
<b>Complaint Number:</b>	6103
<b>Code Version:</b>	6.2 (consideration also given to version 7.4)
<b>Advertising Rules Version:</b>	2.3

### Complaint

The complainant is a member of the public who has complained that she was subscribed to one of the SP's subscription services without her consent. WASPA received a number of communications from the complainant which included the following:

*Complainant writes: would like to state categorically that I did not subscribe to your network, neither have I used any service for which I have been billed in my February billing records. On enquiry from Vodacom, customer care has informed me that your network would need to reimburse me the amounts of money that have been billed to me. I would also go as far as requesting proof that transactions did indeed take place, as I am the exclusive user of the phone and I was not even aware of who or what Mira networks was or what services you provide, until my enquiry this evening. Unless I am credited within the next week, I intend to take this matter to the consumer council and proceed legally, with a charge against either Vodacom or Mira networks for FRAUD.*

...

*Email received from complainant: I state categorically that i did not activate or use any password to register for any service. So i urge that i be refunded as i do not have any downloads on my phone. if i do spend money to now investigate this legally, I will be suing the relevant culprits*

The WASPA member responsible was identified as the SP. The logs I was briefed with indicate that the complainant was sent an initial message on 3 February 2009 reading

*Insert your password pasert and receive 3 Games and 1 Truetone every week. Please check T&C at [www.za.natta.com/web/za/tac](http://www.za.natta.com/web/za/tac).*

The complainant was sent two further messages on the same day:

*Click to get the coolest games now! [www.za.natta.com](http://www.za.natta.com)*

...

*Welcome! U have joined Games Club. 3 Games + 1 Tune per week, R4,99/day.Stop?Dial \*120\*33535# and follow the menu(1c/sec). Helpline:(0)11 4470357. Total TIM*

The complainant was then apparently sent a series of messages including the following repeated message:

*Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial \*120\*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim*

The complainant submitted a request that she be unsubscribed from the SP's subscription service on or about 17 March 2009 and subsequently sent a further email to WASPA which explains her response to the initial messages from the SP:

*I have really exhausted my emails explaining that I DID NOT SUBSCRIBE< NOR DID I PUNCH IN ANY PASSWORD ONTO MY PHONE.I clearly received a text message with a password, which i regarded as scam sms and deleted it immediately from my phone ...*

According to information I was briefed with, the complainant appears to have been unsubscribed to the subscription service concerned since the complaint was first lodged.

**Service provider's response**

The SP responded to the complaint as follows:

*Hello,*

*Attached you will find the logs proving the subscriptions.*

*Although this campaign is compliant with the code of conduct, we are stopping it because of the high number of complaints. We want to avoid any bad PR. TIM we is a very responsible company and operates in different markets and provides different services and do not want to be associated with any service that the public feels to be misleading.*

*Let me know if you need any more information.*

*Thank you.*

*Best regards,*

*Nuno Machado*

*Channel Manager*

*TIM w.e.*

The SP enclosed fairly detailed logs with its response to WASPA. It is not clear to me how the complainant came to receive the initial message from the SP or whether a password was, in fact, submitted to the SP, activating the subscription. On the other hand the complainant has repeatedly stated that she did not respond to the message or make use of any password or otherwise activate the subscription. In response to the SP's email (quoted above), the complainant advised WASPA as follows:

*Your email with attached log from Timwe refers. To my knowledge, I did not request the service, all i am aware of is that I received a text message on the recorded date inviting me to receive services, with a password. I deleted the message.*

*As a consumer, I should not be forced to receive services I did not request and then get charged for receiving text messages inviting me to go to*

*websites. As a matter of information, I do not browse the net from my cellphone, except for using the mixit service.*

*Could the service have been activated automatically?*

*Either way I am not satisfied with paying for services I did not activate or request. I insist on a refund of the charges made to my account.*

### **Sections of the Code considered**

This complaint was filed prior to the most recent update to the Code to version 7.4. I have accordingly considered versions 6.2 and 7.4 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 7.4). Having regard to the issues raised in this complaint, I have also considered other sections of the Code which are pertinent.

I have therefore considered the following sections of the Code:

Version 6.2	Version 7.4
<p><b>11.1.2:</b> 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><b>11.1.2:</b> 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.</p>
<p><b>11.2.2:</b> Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.</p>	<p><b>11.5.2:</b> Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be '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.</p>

### **Sections of the Advertising Rules considered**

Not applicable to this complaint.

### **Decision**

The central issue in this matter is that the complainant was apparently subscribed for a subscription service involuntarily. She received an initial message inviting her to activate her subscription using a password and, according to her account, she instead deleted the message and took no steps to respond positively to the invitation.

She subsequently discovered that she had been subscribed to the SP's subscription service nonetheless and was billed accordingly. Aside from furnishing its logs, the SP has not given any indication how the complaint may come to be subscribed to the subscription service without responding positively to the invitation. There is also no indication how the complainant came to receive the initial message in the first place.

What is clear is that the Code requires that a subscription to a subscription service must be "*an independent transaction, with the specific intention of subscribing to a service*". There is no evidence of this "independent transaction" or the complainant's requisite and "specific intention" to subscribe to the SP's subscription service. The SP's subscription mechanism is clearly problematic and, in the absence of information from the SP suggesting an error, I find the subscription service to be a breach of the Code.

This complaint raises a concern that the complainant may not be the only person to have been subscribed to this (or similar) subscription services. It is therefore vital that other subscribers be notified of their current subscription/s in the event that there may be other involuntary or unwitting subscribers.

Having regard to the initial invitation message sent to the complainant, there is no termination mechanism employing the word "STOP" as required by the Code. Instead there is what appears to be an IVR process of some kind. While the mechanism may ordinarily be effective, the termination mechanism does not comply with section 11.2.2 of version 6.2 or 11.5.2 of the current version of the Code.

**Sanctions**

1. The SP is ordered to refund all amounts charged to the complainant as a result of her subscription to the SP's subscription service in question;
2. To the extent the complainant's subscription to the subscription service was not terminated as the documentation before me indicates, the SP shall unsubscribe the complainant from the subscription service.
3. The SP shall send an sms notification to all existing subscribers of the campaign in the format prescribed in 11.4 of the current Code;
4. The SP is fined -
  - 4.1. R25 000 for its non-compliance with 11.1.2 of the Code; and
  - 4.2. R75 000 for its non-compliance with 11.2.2 of version 6.2 of Code.

The fine must be paid to the WASPA Secretariat within five (5) days of notification of this report's findings.