



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP):** Cointel (Pty) Ltd  
**Information Provider**  
**(IP):** Fresh Mobile  
(if applicable)  
**Service Type:** Subscription service  
**Complainant:** Member of the public  
**Complaint Number:** 6121  
**Adjudicator:** Kerron Edmunson  
**Code/Ad Rules version:** 7.0 and 2.3

### Introduction

Two points are relevant:

1. The information received from the complainant does not include details of when the complainant first noticed a deduction, nor how much is sought by way of refund. In the circumstances the complaint must be adjudicated on the assumption that the complainant does not have a specific amount in mind. Given the question mark around dates, we have also used the code in force at the time the complaint was made, rather than when the alleged offence might have taken place.
2. In our view, the issues are not limited to those raised by the complainant, but include the format, frequency, and content of the messages sent to her, and we have considered these additional matters as well in the context of the most recent version of the Code.

---

### Complaint

The complainant submitted a complaint to WASPA as follows: I am charged by Cointel for ringtones an amount of about R10.00 per day. 1. I would like to know as to who authorised the transaction. 2. I need to be refunded the money which has been deducted without my consent. 3. Unsubscribe me with immediate effect”.

Therefore the complainant does not appear to have sent a text message to the WASP to “unsubscribe” but has used the WASPA process to unsubscribe.

The SP responded by unsubscribing the complainant who then asked also what was to take place regarding the refund and authorisation issues. The SP furnished a log in response but no refund has been made.

---

### SP Response

The SP has not furnished WASPA with any written explanation of the issues, and has merely confirmed by email that they unsubscribed the complainant about 2 weeks after her request.

They also furnished WASPA with a log dating back to 25/12/2005 which we have ignored as it seemed to have been followed almost immediately by an "unsubscribe" message on the same date, but with effect from 25/05/2007 there are approximately 47 reminder messages sent to the complainant's phone until 14/03/2009. Each reminder is charged at R7.00 and billing frequency is without any logic, random and ad hoc, and most recently, is sometimes twice a day even though the message text as set out on the log states that the cost is R7.00 per week.

Each message follows the same format: "Reminder: ur a member of Fresh weekly car wallpaper. Go 2 : [http://fresh2.36444.co.za/index.php?ref=16773&mpid=43&tid=\[number\]](http://fresh2.36444.co.za/index.php?ref=16773&mpid=43&tid=[number]) Only R7.00/wk. 2unsub SMS stop to [number]"

Without an explanation by the SP as to what the charges are for, we must assume they are for the subscription and reminders, not for downloads by the complainant.

We also assume that the complainant's reference to R10.00 a day might be a reference to these later charges of R7.00 per day.

---

### **Consideration of the WASPA Code**

This dispute is clearly about subscription services and could be about spam as well since the complainant is querying authority to deduct and proof of subscription. In view of the lengthy period of time during which the complainant appears to have been receiving texts from the SP and being charged for them without complaint, we will consider sections 5 (sending of commercial communications) and 11 (subscription services) of the Code in part only:

**Section 5.1.7:** Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.

**Section 5.2.1:** Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

**Section 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.

**Section 11.1.8:** Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;

- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

**Section 11.1.9:** Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

**Section 11.2.1:** 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.

**Section 11.2.2:** The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

**Section 11.2.4:** The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

**Section 11.2.5:** The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

**Section 11.2.6:** The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

---

## Decision

In the absence of an explanation from the SP as to how the complainant was subscribed to the service, it would appear that the SP is in contravention of section 5.2 in that the original subscribe message dated 2005 was negated by the immediate "unsubscribe" message and there is no indication of a subscription request in 2007, nor in light of the long period for which the reminder messages were sent, is there a clear indication of a relationship between the parties in the 6-month period prior to the complaint.

The log provided by the SP does not confirm that sections 11.1.2 and 11.1.8 were complied with and the SP has not otherwise provided information to this effect despite request.

Section 11.1.9 was breached in that it would appear that the billing frequency was increased dramatically particularly in the last few months, without authority.

Reminder messages were sent more frequently than the required once every month in terms of section 11.2.1, sometimes almost daily, and charges appear to be linked to the reminder messages rather than the subscription, being debited with the message – or at least this is how it appears from the log and the SP has not explained it otherwise.

The reminder message fails to conform to the format set out in section 11.2.2.

It is unclear if 11.2.4 has been complied with but the messages sent to the subscriber do not conform to 11.2.5 in that “wk” has been used instead of “week” as required.

There is no indication as to whether or not the numbers are VAS rated as required by section 11.2.6 so we make no finding in this regard.

The WASPA Secretariat wrote to the SP no fewer than 3 times requesting information and relaying the complaint. Logs were only provided after the third request but the SP has declined the opportunity to provide any explanation as to the subscription of the subscriber or subsequent entries on the logs, or even subscriber activity justifying the retention of the subscriber and charges levied against her. In the circumstances, our finding must be that the subscriber did not request subscription but was subscribed in any event, and charged regularly – more regularly than permitted under the Code. The other breaches of the Code by the SP are also serious, in relation to formatting, frequency of messaging, and content of messages. There is no evidence of a commercial relationship between the parties in the 6 months prior to the complaint (or at all).

---

**Sanction**

1. In relation to the request for a refund and breach of section 5.2.1, the SP is directed to refund to the complainant all charges debited to her account in the 6 months preceding the complaint, as this is the only measurement we can use without more information from the complainant, who seems only to have noticed deductions taking place over a 3-year period, very recently. The refund must be made immediately and proof provided to WASPA.
2. The SP is further directed to pay a fine in relation to the failure to provide adequate information under section 5.1.7, in an amount of R5,000.
3. The SP is directed to pay a fine in relation to the breaches of each of sections 11.1 and 11.2 set out above, in the amount of R25,000.

Payments under 2 and 3 must be made to WASPA within 10 days of the date of notice of the finding of this adjudication.