



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	SMS-NET SA
<b>Information Provider (IP)</b> (if any)	n/a
<b>Service Type</b>	Subscription service
<b>Source of Complaints</b>	Mr S Naidoo
<b>Complaint Number</b>	6403
<b>Date received</b>	7 May 2009
<b>Code of Conduct version</b>	7.0

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### Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 24 April 2009. However, the complainant was not satisfied with the SP's response and a formal complaint was lodged.

The complainant states in his complaint that he picked up from his itemised billing statement that he had been billed an amount of R 35.00 and was still receiving SMS messages from the SP. The first SMS said he would be charged R15 weekly.

The complainant states that the only SMS he sent with a 5 digit number was to a radio phone-in where listeners were asked to identify a sound from a section of an animated movie.

The complainant was not aware of ever subscribing to any service and requested a refund of all charges made to his account.

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**SP's response**

The SP initially responded to the unsubscribe request by advising that the complainant had never been subscribed to any of its services.

The SP replied to the formal complaint on 12 May 2009 by stating that a single content item (i.e. a game) had been downloaded to the complainant's number on 3 April 2009 at a cost of R40.00.

No further information has been provided by the SP.

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**Additional response from complainant**

The complainant has denied that he ever downloaded a game and requested that the game be identified. The complainant believes that there is an error on the SP's system and the cost of the game has been incorrectly allocated to his account.

The complainant states that he was charged a further amount of R39.48 by the SP in May 2009 after he tried to "unsubscribe" in April 2009. The complainant has provided a breakdown of the charges levied. It appears that he was initially charged R35.09 and then three separate amounts of R13.16.

He has suggested that the data connection on the date the SP alleges the game was downloaded should be checked.

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**Sections of the Code considered****4.1. Provision of information to customers**

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.12. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

(a) If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.

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## **Decision**

The SP alleges that the complainant was charged R40.00 for a single download and was never subscribed to a subscription service. However the SP has not presented any proof that it obtained specific confirmation from the complainant in terms of section 6.2.12(a) of the WASPA Code of Conduct.

From the billing information provided by the complainant, there is no record of a R40.00 charge. However the complainant was charged an initial amount of R35.00 and then three further amounts of R13.16, which suggests that the complainant was subscribed to some or other subscription service.

I am not satisfied with the SP's response to this complaint and find that there has been a contravention of sections 4.1.1 and 6.2.12 of the WASPA Code.

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## **Sanction**

The SP is ordered to:

1. provide written confirmation to the WASPA Secretariat within 7 (seven) days of receipt of notification of this report that the complainant's number has been blocked on all of the SP's databases;

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2. refund the complainant for all amounts charged to his account and to provide the WASPA Secretariat with proof of such refund within 7 (seven) days of receipt of notification of this report; and

The SP is formally warned to comply with section 6.2.12 of the WASPA Code when offering content downloads to users.