



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	TIMw.e. New Media Entertainment South Africa
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainant:	Member of the public
Complaint Number:	6611
Code Version:	7.0 (consideration also given to version 7.4)
Advertising Rules Version:	2.3

Complaint

The complainant is a member of the public who has complained that he was subscribed to the SP's subscription service despite not recalling entering an activation code after taking a quiz on the Internet. He has also complained that his effort to unsubscribe to the service was not implemented.

The logs (annexed to this report, marked Annexure "A" - the complainant's phone number has been redacted to protect his privacy) indicate that after receiving three messages inviting him to enter a code the complainant appears to have been subscribed to the service. The messages read as follows and were sent on 6 March 2009:

*Insert your password lainif and receive 3 Games and 1 Truetone every week.
Please check T&C at www.za.natta.com/web/za/tac.*

He then attempted to unsubscribe from the service and received a notification that appears to confirm that he unsubscribed from the service on the same day. The unsubscription notification read as follows:

*U cancelled GamesClub!Get 100Credits 2 download all u want!SMS TOP to 33535, R4,99/day.Stop?Dial *120*33535# & follow the menu(1c/sec).Helpline: (0)11 4470357*

The complainant then appears to have received a further invitation message with the same content and password as the message quoted above on the same day. A series of reminder messages and invitations to download content followed for almost a month notwithstanding his apparent effort to unsubscribe from the service.

The complainant further commented to WASPA that he did not “recall entering a pin number after taking a quiz on the internet”. This suggests that he was involuntarily subscribed to the service.

Service provider's response

The SP responded to the complaint as follows:

Hello Lorraine,

The client must recall entering the pin, canceling the service and then entering again the pin activating again the service.

Pls see the attached file. The client inserted the mobile phone 3 times and received the pin 3 times, then entered the pin thus receiving the results and activating the service, then canceled the service. After cancelling the service the client inserted again the mobile number and entered the pin received activating again the service.

There is no right for a refund the client had all the information and was aware of the all charges and the way to cancel the service.

Pls let me know if you need more information.

Thanks

Regards,

Nuno Machado

Channel Manager

TIM w.e.

The complainant responded to the SP's reply on 9 June 2009 stating, inter alia, the following:

I have never requested such a service and therefore am not legally required to respond. The risk of a third party shall not be imposed upon myself involuntarily.

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 7.0 and 7.4 for the purposes of this report in order to determine compliance with the Code (referencing version 7.0) 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 7.0	Version 7.4
<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 and may not be an entry into a competition or quiz.</p>
<p>11.5.2: Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.</p>	<p>11.5.2: Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. 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>
<p>11.5.5: 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>

Version 7.0	Version 7.4
	<p>11.5.6: When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:</p> <p style="padding-left: 40px;">You've been unsubscribed from [service name].</p> <p style="padding-left: 40px;">or</p> <p style="padding-left: 40px;">You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. U'll then b resubscribed @ [cost of service and frequency of billing].</p>

Sections of the Advertising Rules considered

Not applicable to this complaint.

Decision

There are two areas of concern in this matter. The first is that people are being involuntarily subscribed to the SP's subscription service and the activation code mechanism is a ruse. The second is that the SP's mechanism to enable subscribers to unsubscribe does not appear to be working properly.

The SP contends that the complainant must have entered the activation code sent to him and the complainant insists that he did not "request" such a service. WASPA asked the SP to indicate how the complainant came to be subscribed to the service and the SP failed to respond to almost 60 reminders over the course of almost four months to respond to WASPA's question and the complainant's comments. This neglect demonstrates a certain degree of disregard for WASPA that is troubling.

The SP has been unable to explain how the complainant could have been involuntarily subscribed to the service and why the complainant's attempt to unsubscribe from the service was unsuccessful.

I also find it curious that the same password was sent to the complainant prior to his attempt to unsubscribe and again afterwards as part of what the SP suggests is a

new subscription request. Using the same password suggests the activation mechanism is flawed and doesn't distinguish between different subscription requests or may even be superfluous to the subscription process.

Taking the information and evidence before me into consideration, the SP's subscription mechanism appears to operate independently of prospective subscribers' desire or intention to subscribe and while it may certainly allow people to become subscribers should they respond positively to the invitations to subscribe, it also appears to subscribe people who have no intention subscribing in the first place.

Based on the information I was briefed with, the service infringes 11.1.2, 11.2.2 and 11.5.5 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 is ordered to cease the service giving rise to this complaint until such time as the service complies fully with the Code and sections 11.1.2, 11.2.2 and 11.5.5 in particular;
4. 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;
5. The SP is fined -
 - 5.1. R25 000 for its non-compliance with 11.1.2 of the Code;
 - 5.2. R75 000 for its non-compliance with 11.2.2 of the Code; and
 - 5.3. R75 000 for its non-compliance with 11.5.5 of the Code.

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

Annexure "A"



Time	Origin	Destination	Message
2009-03-06	133535	[REDACTED]	Insert your password lainif and receive 3 Games and 1 Truetone every week. Please check T&C at www.za.natta.com/web/za/tac .
2009-03-06	133535	[REDACTED]	Insert your password lainif and receive 3 Games and 1 Truetone every week. Please check T&C at www.za.natta.com/web/za/tac .
2009-03-06	133535	[REDACTED]	Insert your password lainif and receive 3 Games and 1 Truetone every week. Please check T&C at www.za.natta.com/web/za/tac .
2009-03-06	133535	[REDACTED]	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
2009-03-06	33535	[REDACTED]	Click to get the coolest games now! www.za.natta.com
2009-03-06	133535	[REDACTED]	U cancelled GamesClub!Get 100Credits 2 download all u want!SMS TOP to 33535, R4,99/day.Stop?Dial *120*33535# & follow the menu(1c/sec).Helpline:(0)11 4470357
2009-03-06	[REDACTED]	33535	USSDSTOP
2009-03-06	133535	[REDACTED]	Insert your password lainif and receive 3 Games and 1 Truetone every week. Please check T&C at www.za.natta.com/web/za/tac .
2009-03-06	133535	[REDACTED]	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
2009-03-06	33535	[REDACTED]	Click to get the coolest games now! www.za.natta.com
2009-03-06	133535	[REDACTED]	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
2009-03-06	33535	[REDACTED]	Click to get the coolest games now! www.za.natta.com
2009-03-07	33535	[REDACTED]	Download now
2009-03-08	33535	[REDACTED]	Download now
2009-03-09	33535	[REDACTED]	Download now
2009-03-10	33535	[REDACTED]	Download now
2009-03-11	33535	[REDACTED]	Download now
2009-03-12	33535	[REDACTED]	Download now
2009-03-13	33535	[REDACTED]	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
2009-03-13	133535	[REDACTED]	Click 2 get the coolest games now! www.za.natta.com
2009-03-14	33535	[REDACTED]	Download now
2009-03-15	33535	[REDACTED]	Download now
2009-03-16	33535	[REDACTED]	Download now

2009-03-17	33535		Download now
2009-03-18	33535		Download now
2009-03-19	33535		Download now
2009-03-20	33535		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
2009-03-20	133535		Click 2 get the coolest games now! www.za.natta.com
2009-03-21	33535		Download now
2009-03-22	33535		Download now
2009-03-23	33535		Download now
2009-03-24	33535		Download now
2009-03-25	33535		Download now
2009-03-26	33535		Download now
2009-03-27	33535		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
2009-03-28	33535		Download now
2009-03-28	133535		Click 2 get the coolest games now! www.za.natta.com
2009-03-28	133535		Click 2 get the coolest games now! www.za.natta.com
2009-03-28	133535		Click 2 get the coolest games now! www.za.natta.com
2009-03-29	33535		Download now
2009-03-30	33535		Download now
2009-03-31	33535		Download now
2009-04-01	33535		Download now
2009-04-02	33535		Download now
2009-04-03	33535		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
2009-04-03	133535		Click 2 get the coolest games now! www.za.natta.com
2009-04-03	133535		Click 2 get the coolest games now! www.za.natta.com
2009-04-04	33535		Download now
2009-04-05	33535		Download now
2009-04-05	133535		FreeMsg: You are subscribed to Games Club.Cost R4,99/day. To Stop Subscription, SMS STOP to 33535. Helpline: (0)11 4470357 (VAS Rates). Total Tim
2009-04-05		33535	Stop

2009-04-05	133535	[REDACTED]	U cancelled GamesClub!Get 100Credits 2 download all u want!SMS TOP to 33535, R4,99/day.Stop?Dial *120*33535# & follow the menu(1c/sec).Helpline:(0)11 4470357
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