



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Mira Networks
Information Provider (IP) (if any)	Zed Mobile
Service Type	Subscription service
Source of Complaints	Mr D Lewis-Enright
Complaint Number	7210
Date received	30 July 2009
Code of Conduct version	7.4

Complaint

The complainant states that he was browsing the internet on his mobile phone in the evening in search of java games. He came across the following link via a google search and clicked on it:

[Ad] Game Downloads - Play now - zed.miranetworks.net

The page displayed had a big button in the center of the page stating “**Confirm Subscription**” or something similar. The complainant states that he inadvertently clicked the subscription button in the browser and was subscribed to the Club Zed subscription service.

The complainant subsequently received a confirmation message stating that he had joined the service and would be charged R4.99 per day. He was also concerned about how the IP got his mobile number as he was never requested to give this information.

The basis of the complaint is that the only page that was presented was the landing page with the button. The complainant states that his mobile number and consent to the services offered was not requested.

He was also not requested to state his age and after looking at the content provided, he found some questionable adult downloads that are available.

The complainant states further that by accidentally clicking a single button and without any confirmation, his mobile number was obtained by the website and he was automatically subscribed to a perpetual R4.99 p/day service. If there was any additional text on the page, it certainly was not easily visible, and he feels that he has been "totally scammed".

The complainant also believes that the unsubscribe process was very cumbersome and it took several attempts to unsubscribe successfully. He sent an email to the IP via a link provided on the www.clubzed.com website. He then received a call from a representative from the IP, who he believes had a bad attitude and constantly implied that he must have consciously clicked the button.

The complainant expressed concern again that the IP knew that he had accessed their wap site via google.

He was offered a refund by the IP but did not want to provide any additional private information, including his bank account details.

IP's response

The IP responded to the complaint by stating that it advertises its services via 3rd party networks. In this case, the service was advertised with Google.

In order for a customer to subscribe to the IP's services, they have to go through a "2 click process" by first clicking on the advertising banner and then clicking on the "***click here to confirm***" banner on the IP's landing page. This landing site outlines the price of the service and that it is a subscription service.

Only when a consumer has clicked on both WAP pages are they then subscribed to a service and the relevant welcome messages are then sent.

In order for a subscription service to be initiated with the IP, a consumer has to physically click on a WAP banner and then click to confirm the service on a WAP landing page by “Clicking” on the “click here to confirm” button.

This process was tested by the WASPA monitor (complaint number 6924). The Monitor made recommendations for changes to the services that were implemented. The Media Monitor has confirmed that she is happy with the changes made to the IP’s service.

With regards to this particular complaint, the IP enclosed logs that reflect that the complainant has never been billed by the IP. (see below)

Service	Content	Content Type	Partner	M.Type	Op	SC	Pr	Sts	Sen
clubzed	You have left Club zed, no fur		Lanetrozed	OFF	MTN	31933	0	DELIVRD	29/07/20
daily club zed 4.99	Welcome to Club Zed! In a mome		google	WELCOME	MTN	31933	0	DELIVRD	28/07/20
TOTALS									

He was sent a confirmation message stating that he had left Club Zed and that no further charges apply. The IP offered to refund the complainant the charge of R4.99 which he stated he was billed. However, the complainant declined to supply his banking details in order for the refund to be processed.

The IP believes that the landing page clearly displays the fact that Club Zed is a subscription service and that users are charged at a cost of R4.99 per day. The terms and conditions of the service are also accessible from the page.

The IP denies that it offers any adult services at all and as such an age verification process is not required to activate its service.

The IP reiterated its offer to refund the complainant the charge of R4.99 that he says he was billed and are happy to provide him with a prepaid voucher for this amount or transfer the amount of R4.99 into his bank account.

Complainant's reply

The complainant was not satisfied with the IP's response and believes it is skirting the real issue. He states further that although he cannot pursue any additional action against the IP since they have now stated that he was not billed at all, he does wish to continue with his "campaign" to have these types of unscrupulous business practices stopped in South Africa.

The complainant believes the IP is abusing the "two click" requirement, by including a click on a link from Google in their count. He also has a serious problem with the fact that the IP managed to get his personal mobile phone number via either a gateway interface to the network operators or some illegal arrangement with the network operator.

The complainant states that by the IP's own admission, it has received complaints in the past about exactly the same issue. A WASPA monitor apparently checked their changes and found it acceptable. The complainant finds this laughable.

Sections of the Code considered

2.11. A "**content subscription service**" includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a "club" or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.

2.20. A “**premium-rated service**” is any service charged at a higher rate than the standard rate set by the network operator for that particular service.

3.6. Data protection

3.6.1. Members will take all reasonable measures to prevent unauthorised or unlawful access to, interception of, or interference with any data.

4.1. Provision of information to customers

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

4.1.4. Members must make the terms and conditions of any of their services available to customers and potential customers, on request.

4.1.6. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

4.2. Privacy and confidentiality

4.2.1. WASPA and its members must respect the constitutional right of consumers to personal privacy and privacy of communications.

4.2.2. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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.

11.1.11. If a subscription service can be initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.

11.4.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.2.2 or the the following format must be used:

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, click here [WAP link].

11.4.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

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

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.

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

11.5.4. For services where the primary means of interacting with the service is via USSD or WAP, and for which the reminder message set out in clause 11.3.1. or 11.4.1. is used, clause 11.5.2. does not apply.

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

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:

You've been unsubscribed from [service name]. or You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. U'll then b resubscribed @ [cost of service and frequency of billing].

Decision

The IP's Club Zed subscription service was inadvertently accessed by the complainant by clicking on a link provided on a mobile web page advertisement. The complainant had arrived at the web page via a banner link from the Google search website. In other words, the service was accessed after the complainant clicked through to 2 seperate web links.

The complainant did not intend to subscribe to the IP's service. However, the IP cannot be held responsible for the complainant's error in this regard. In any event, the IP has confirmed that no amounts were charged to the complainant.

I have perused the screenshot of the relevant web page which was provided by the IP in its response. I am satisfied that the web page clearly states that the service is a subscription service and that it provides the necessary pricing information and access to the terms and conditions for the service.

The complainant's concerns around his privacy and in particular, the manner in which the IP obtained his cell number has been noted. However the collection of the complainant's cell number, network operator and link from which the service was

accessed took place in the normal course of the operation of the service after it had been accessed by the complainant. There is nothing untoward or illegal about this.

There is no evidence before me that the IP is providing adult content and I therefore cannot take this allegation any further.

Based on the foregoing, the complaint is accordingly dismissed.