



## 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>Complainants:</b>              | Reuben Pillay                                |
| <b>Complaint Number:</b>          | 7816                                         |
| <b>Code Version:</b>              | 7.4                                          |
| <b>Advertising Rules Version:</b> | N/A                                          |

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### Complaint

This is a formal complaint.  
The Complainant stated the following:

"I am taking the time to make a formal complaint as something needs to be done about this situation. I was on the internet on Saturday 3rd October and looked at a site offering FREE ring tones for my phone 083#####. I then got directed to a site [za.natta.com](http://za.natta.com) and when I check my history I got directed to [www.mymobilehits.com/ws/acSpotSubmitPassword.do](http://www.mymobilehits.com/ws/acSpotSubmitPassword.do) I was instructed to key in the number of the phone that I wished to receive the free ring tone which I duly did. Immediately I received a message on my phone indicating that this was my password for the FREE Ring tone and that I can unsubscribe by going to [www.za.natta.com](http://www.za.natta.com). On the web page I was requested to key in the password to download the FREE ring tone to my phone. When I keyed that into my PC, it took me to another page AND ONLY THEN do you see that it refers to a charge of R4.99 per day. I DID NOT ACCEPT that and DID NOT DOWNLOAD THE RINGTONE. To my surprise I then received a message congratulating me on becoming a member (well done you have joined Top Music Club) followed by another invitation to click and subscribe to Games on my phone saying that I was subscribed to the service. I IMMEDIATELY followed the procedure to UNSUBSCRIBE by dialling \*120\*33535£ (mean hash) and it did not give an acknowledgement. I repeated the process and it still did not give me acknowledgement that it was unsubscribed. The help line telephone number 011 4470357 and the web page [www.za.natta.com](http://www.za.natta.com) did not work. I immediately realised that I was duped. I then received a scam message that my cell phone number has won a R2.8 million prize and I should contact Mrs Price on [mrsrp01@yahoo.com](mailto:mrsrp01@yahoo.com). I firmly believed that if the Police investigate this they will find a link associated with

this Tim We and these fraudulent sites. This is a concern and warrants a FULL FORENSIC investigation. On examining my statement I notice that the charges are coming through everyday. I appealed to MTN staff to resolve this and they claim that they have no control over it. The telephone number that they gave me to call (011 4767710) goes to a voice message system. Surely, MTN receives a commission from these transactions and it is my perception that they are reluctant to stop it as they will lose revenue. I must also state that this whole set up is so deviously created that even if you do not agree to the conditions you are hooked. I demand a full refund as I did not agree to subscribe to this service and the unsubscribe facility does not work. I did not use the facility and allege that I have been cheated.

I would like to pursue this matter with criminal charges against Mira Networks and Tim We for the unauthorised subscription of this music service. I would definitely want hefty fines imposed on these companies as it is not the first time that they have been found guilty of this offence. If you need help with the forensic investigation please call me."

The Complainant provided the following reply to the SP's response:

"No, my problem has not been resolved. While I have confirmation that the subscription has been stopped I have not had agreement that the deviously debited subscriptions will be refunded.

I see the mail below and am annoyed by the comment that I am full of lies.

The person responding is most likely operating with half a brain. In the sms flow it clearly shows [natta.com](http://natta.com) yet she talks of the site being suspended??? And it is too easy to claim that a website was down or that a telephone did not work. That is THE PROBLEM. These things have to work. Why is it impossible to have the "subscription" suspended? That is the question the regulator needs to ask. Why are people duped?

I am prepared to prove at an enquiry how I was cheated and definitely want to see these fraudsters charged."

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### **Service provider's response**

The SP provided the following response:

"I took some time to respond to this complaint because we find this very strange. This complaint is full of lies and incorrect information about our service. Please ask the person who filled this complaint to prove these allegations.

Please provide proof of a website that offers free ring tones, we do not have such offer or campaign. In fact, [za.natta.com](http://za.natta.com) was suspended at that time due to a complaint from WASPA. We have no campaigns directing to [za.natta.com](http://za.natta.com) and the site never directs to other websites, and is also strange that on this day the website was suspended. *"I was instructed to key in the number of the phone that I wished to receive the free ring tone which I duly did."*

Please inform and proof on how he was instructed to "key in" and receive the free ring tone. This is impossible!

*"Immediately I received a message on my phone indicating that this was my password for the FREE Ring tone and that I can unsubscribe by going to [www.za.natta.com](http://www.za.natta.com)"*

Again... Please inform and proof on how he was instructed to go to [www.za.natta.com](http://www.za.natta.com), please have him show the message received! Please check sms flow attached, no such messages.

*"On the web page I was requested to key in the password to download the FREE ring tone to my phone"*

Again... where did this person see anything free?! Today we have been talking about this website and the media monitor has been testing it this month.

*"To my surprise I then received a msg congratulating me on becoming a member (well done you have joined Top Music Club)"*

It's kind of odd that he subscribes to Top Music Club and the Natta website has only one active club "Natta Club". Again it's very strange.

*"Followed by another invitation to click and subscribe to Games on my phone saying that I was subscribed to the service"*

Please show us and the media monitor the message received to prove this.

*"I IMMEDIATELY followed the procedure to UNSUSCRIBE by dialling \*120\*33535£ (mean hash) and it did not give an acknowledgement. I repeated the process and it still did not give me acknowledgement that it was unsubscribed. The help line telephone number 011 4470357 and the web page [www.za.natta.com](http://www.za.natta.com) did not work."*

On the messages exchanged with the client we can't see any procedure to unsubscribe. The helpline should be working fine; the website was down, but wasn't on this website that he subscribed? Strange.

*"I then received a scam message that my cell phone number has won a R2.8 million prize and I should contact Mrs Price on [mrsrp01@yahoo.com](mailto:mrsrp01@yahoo.com). I firmly believed that if the Police investigate this they will find a link associated with this Tim We and these fraudulent sites. This is a concern and warrants a FULL FORENSIC investigation. On examining my statement I notice that the charges are coming through everyday. I appealed to MTN staff to resolve this and they claim that they have no control over it. The telephone number that they gave me to call goes to a voice message system. Surely, MTN receives a commission from these transactions and it is my perception that they are reluctant to stop it as they will lose revenue. I must also state that this whole set up is so deviously created that even if you do not agree to the conditions*

*you are hooked. I demand a full refund as I did not agree to subscribe to this service and the unsubscribe facility does not work. I did not use the facility and allege that I have been cheated. I would like to pursue this matter with criminal charges against Mira Networks and Tim We for the unauthorised subscription of this music service. I would definitely want hefty fines imposed on these companies as it is not the first time that they have been found guilty of this offence. If you need help with the forensic investigation please call me."*

Where is such message?! And what is Mrs Price?! We don't have such service.

Conclusion: We believe either this is someone trying to annoy and bring trouble to TIMwe or the client subscribed to different services from different companies. Please see attached the sms flow exchanged with this client. Please advise us on how to proceed."

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

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

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.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

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.

11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.5. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

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.

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

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### **Decision**

First of all, the Adjudicator finds it unacceptable that the SP stated: "This complaint is full of lies and incorrect information about our service."

This is a clear breach of section 3.1.1 of the Code and the Adjudicator does not feel that the SP handled itself in a professional manner by alleging the public is full of lies.

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent response.

These facts read together with the logs provided reflect contradictory evidence and boils down to the typical scenario of I said this you said that.

It is however strange that the SP in this matter speaks about the fact that the website was suspended but the logs clearly indicates the contrary.

The SP's inference that: " it's kind of odd that he subscribes to Top Music Club and the Natta website has only one active club "Natta Club". Again it's very strange" also makes no sense to the Adjudicator since the logs provided by the SP shows what is alleged by the Complainant.

The Adjudicator is also not fully convinced by the following statement of the SP: "On the messages exchanged with the client we can't see any procedure to unsubscribe. The helpline should be working fine; the website was down, but wasn't on this website that he subscribed? Strange".

If the SP aligned itself with section 11.5.2 of the Code of Conduct, then the Complainant would have probably had the opportunity to unsubscribe. To expect a user to dial a number is unacceptable and the Adjudicator is of the opinion that the SP is in breach of section 11.5.2. The fact that Complainant was unable to contact the SP or unsubscribe, is a further indication that the system did not function correctly, which indicates a further breach of section 11.5.5.

The Adjudicator therefore finds the SP in breach of sections 11.5.2 and 11.5.5.

Not enough proof was provided to make a ruling on any of the other sections.

The Complaint is upheld.

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### **Sanctions**

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;
- The SP's subsequent actions.

The SP is instructed to refund the Complainant in full plus interest accumulated until date of receiving notice hereof.

The SP is reprimanded over its breach of section 3.1.1.

In addition, the SP is instructed to align its services with section 11.5.2 of the Code of Conduct and ensure its helpline is functional and accessible, at all times.