



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	TIMw.e. New Media Entertainment South Africa
Information Provider (IP):	Not applicable
Service Type:	Unsubscribe Request
Complainants:	Mr Kruger
Complaint Number:	8467
Code Version:	7.4
Advertising Rules Version:	2.3

Complaint

The Complainant stated:

“He never downloaded the song as the terms and conditions where not to his liking and he received his password but he never used the password on the site to start the subscription. He is claiming fraud. He tried to down load a song but due to the terms and conditions he never went through with the download.”

The Complainant provided the following reason for escalation:

“The Complainant is not happy with the outcome of the informal investigation.”

The Complainant provided the following feedback:

“I have spoken to my staff and family and they confirm that they did not ever enter this site voluntary. I am a man of 62 years old and do not participate in such activities. I do not do internet banking as I do not trust the internet. I do not ever enter my credit card address on the internet. I am willing to take a lie detector test as I believe that I am being defrauded in this situation and I have no understanding of what these figures mean and am willing to submit my phone for investigation to prove my case. This type of activity is, in my opinion, open to abuse, and should be challenged. I still do not believe that my service provider has a legal right to charge monies for a third party without my writer authority.

This is most unsatisfactory and I do not accept this as being the truth as I control my phone at times.”

Service provider's response

The SP provided the following response:

“The client did subscribe by inserting the pin code. As proved in attachment. The client received applied for another password on Dec 10th but this time didn't insert the password (please see attached).”

Sections of the Code considered

3.3.1. Members will not offer or promise services that they are unable to provide.

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.

Decision

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.

The SP has provided proof of the fact that the Complainant in this matter has subscribed to its services.

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.

The Adjudicator can unfortunately only rule on the facts and evidence in front of him / her. At the same time, the Adjudicator cannot dismiss the allegations leveled by the Complainant, and it is obvious that somewhere something went wrong. Sufficient proof on behalf of the Complainant is however absent and for obvious reasons difficult or impossible to obtain. The Adjudicator only has hearsay evidence, which in itself is a difficult source for making an effective ruling.

The SP has however in Adjudication 8452 been instructed to provide a report on its processes which might provide better insight in the doings of the SP.

The Adjudicator however has no alternative but to dismiss the Complaint in this matter.

The Complaint is therefore dismissed.