



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Mira Networks
Information Provider (IP): (if applicable)	EarlyMoon Trading
Service Type:	Subscription
Complainant:	Public
Complaint Number:	9069 & 9071
Code version:	Code v8.0 and Ad Rules v2.3
Date of Report:	9 May 2010

Complaint and Response

1. Complaint numbers 9069 and 9071 pertain to the same SP and IP, and while two separate complainants are involved, the facts are so nearly identical that it is appropriate to treat them together. No complaint was lodged against the SP in either matter.

Complaint 9069

2. On the 16th of February 2010 the Complainant logged an unsubscribe request on WASPA's unsubscribe request system. This system provides consumers with a facility to request any WASPA member to remove him/her from a subscription service. The facility is offered via the WASPA website at www.waspa.org.za.
3. It appears from the documents provided to me that EarlyMoon Trading is an IP which uses the infrastructure of Mira Networks (the SP) to provide the subscription service in question. Mira Networks is a full member of WASPA, while the IP is an affiliate member.
4. On the 17th of February 2010 WASPA sent the IP an automated request to unsubscribe the Complainant from a certain subscription service, and these notifications were sent daily until the record ends on 9 April 2010. No response was received from the IP.
5. On the 23rd of February the SP was added to the daily unsubscribe requests, which continued until the matter was handed over by the SP to Zed Mobile on the 25th,

from which point the reminders were sent to Zed Mobile. On this date WASPA's log also shows the unsubscribe response status as changing from "none" to "unsubscribed and blocked". This means that the SP updated the record to reflect the status of the unsubscribe request as being unsubscribed and blocked. The log shows that the same status change was made on the 3rd of March in respect of Zed Mobile.

6. Zed Mobile is an IP of Mira Networks; its involvement in this matter is unclear but as no complaint has been made against either it or the SP, it is not necessary to deal with its involvement further.
7. The matter was escalated to a formal complaint on the 18th of March and WASPA sent a formal notice per email to the IP. The email advised the IP of the complaint and advised that an unsubscribe request had not been responded to as described above.
8. WASPA also notified the SP of the complaint per email on the same day, giving it the option to respond. WASPA received no response from either party to these notices.
9. On the 31st of March WASPA sent a further email to The IP reminding it that it should respond to the complaint. The notice went unanswered.

Complaint 9071

10. The same SP and IP were involved in complaint 9071, whose facts are similar to those of 9069.
11. The Complainant was also a member of the public, and the unsubscribe request was logged on the WASPA website on the 17th of February 2010.
12. The first automated unsubscribe request was sent to both the SP and the IP on the 18th of February 2010. WASPA's log again shows the unsubscribe response status as changing from "none" to "unsubscribed and blocked" in respect of the SP on the 19th of February, whereafter requests to the SP cease; requests to the IP continue until the record ends on the 9th of April 2010.
13. A formal notice of the complaint was sent to the IP on the 18th of February by email, and a reminder was sent on the 31st. No response was ever received from The IP.
- 14.

Portion of the Code Considered

15. No specific clauses of the Code of Conduct were cited in either complaint, and it is thus for me to determine what clauses have been *prima facie* infringed by the IP, if any.
16. The complaints are silent on whether either Complainant attempted to unsubscribe from the services in question directly with the IP first before resorting to WASPA's unsubscribe facility. It is similarly unclear whether appropriate unsubscribe

instructions, were furnished to the Complainants by the IP, or if the IP's unsubscribe mechanism was working. Consequently the only conduct that can be made the subject of this complaint is the failure of the IP to respond to WASPA's request to unsubscribe the Complainants.

17. Section 7.3 of the WASPA constitution is relevant:

7.4. Affiliate membership to WASPA will be provided to entities that provide mobile services in South Africa as contemplated in Section 2, but which do not have a direct connection to any of the mobile network operators in South Africa.

18. The following clauses of the Code of Conduct are relevant to these complaints:

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.

3.9.2. Where any service provider that is not a WASPA member conducts any activity governed by the provisions of this Code, and makes use of the facilities of a WASPA member to do so, that member must ensure that the service provider is made fully aware of all relevant provisions of the Code and the member shall remain responsible and vicariously liable for any breach of the Code resulting from the actions or omissions of any such service provider.

3.10.1. Each member must supply WASPA with contact information (including at least a telephone number and an email address) for a primary and a secondary Code of Conduct representative.

3.9.3. The member may suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

3.9.4. The member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

11.5.12 If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA. The clause was introduced in version 7.0. It was renumbered to 11.5.12 in version 8.0.

Decision

19. The IP is an affiliate member of WASPA. While the constitution of WASPA deals with affiliate members in section 7.3 thereof, the Code of Conduct makes no distinction between affiliate and full members in respect of application of the Code. There is accordingly no reason to found the IP's liability under the Code of Conduct through its relationship with the SP.

20. It is clear from the record that WASPA requested that the IP should unsubscribe the Complainants. In both cases the WASPA Secretariat has confirmed that the request was sent by email to the address specified by the IP in terms of clause

3.10.1, but no response at all was forthcoming from the IP. Accordingly the IP has breached clause 11.5.12 of the Code of Conduct.

21. No complaint has been made against the SP: in complaint 9069 an automated unsubscribe request was sent to the SP on the 23rd of February, and the log reflects an “unsubscribed and blocked” status on the 25th. The corresponding dates for complaint 9071 are the 18th and 19th respectively. Accordingly, the required time limit of 48 hours was met and no breach of this clause would have taken place.

Sanction

22. The Member has been the subject of no previous complaints, and this acted as a mitigating factor. However, the seriousness of the infringement cannot be ignored: the potential for abuse of consumers offered by the subscription method of WASP service provision is immense, and the Code of Conduct must be rigorously enforced in this regard. Accordingly the following sanction is imposed:

22.1. The IP is issued with a formal reprimand; and

22.2. The IP is to pay a fine of R10 000 in respect of both complaints together within 5 days of notification of the outcome of this adjudication.

23. These complaints deal only with the IP’s failure to respond to an unsubscribe request from WASPA per email, but I am concerned that this is symptomatic of a wider weakness in the IP’s systems. Accordingly the WASPA Monitor is requested to undertake a comprehensive test of the IP’s compliance with the unsubscribe requirements of clause 11 of the Code of Conduct and to lodge a further complaint against the IP should any failure be found.

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