



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Mira Networks
Information Provider (IP) (if any)	www.sms.ac
Service Type	Free SMS service
Source of Complaints	Mr E Mbevi
Complaint Number	1005
Date received	8 February 2007
Code of Conduct version	4.8

Complaint

The complainant lodged a complaint via the WASPA website on 8 February 2007 regarding the IP's free SMS offer. It appears that the complainant signed up for the service unaware that he would be charged for incoming SMS's and/or would be charged a weekly subscription fee.

He alleges that he has received several confirmatory messages on the same day which are worded as follows:

Confirmation: You have joined the SMS.ac Complete Package. ZAR 7.50/20 message/week. To opt-out reply STOP. For help www.SMS.ac.

The complainant has picked up from his monthly Vodacom statement that he has been charged R7.50 for each confirmatory SMS received from the IP. The complainant has requested a refund.

SP Response

The SP has responded to the complaint by forwarding a direct response from the IP.

The IP has stated that:

1. All its users have access to a 24/7 Customer Care team;
 2. It makes its service absolutely clear to its customers;
 3. If there is ever any confusion about its services, it offers a 100% refund;
 4. It is in full compliance and has strictly followed the Code of Conduct;
 5. All applicable charges are clearly communicated to its customers;
 6. It has worked on a number of revisions to present the information correctly to its customers; and
 7. Its messages carry a "Mobile Nutrition Label" which presents the price, frequency and terms of the service and the stop command to allow customers to easily cancel services if they desire.
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Sections of the Code considered

I have considered the following sections of the Code:

Section 3 (3.1; 3.3; 3.9);

Section 4;

Section 5;

Section 6.2.3; and

Section 11.

Decision

The complainant has admitted that he voluntarily signed up for the service offered by the IP. It is not clear how he signed up for the service and whether he did so pursuant to viewing, hearing or reading any of the IP's promotion material. In particular, there is nothing before me to indicate whether:

- a) the pricing of the service was disclosed to him;
- b) the service was identified as a subscription service; and
- c) the terms and conditions and/or mechanics of the service, and in particular, that all incoming SMS's would be charged at R7.50 per message were disclosed to him.

After joining the service, the complainant received an SMS message confirming that he had joined the "**Complete Package**" and stating the cost to be R7.50/20 message/week. This confirmatory message does not comply with section 11.1.7 of the Code in that it does not include a telephone number for the IP. However, it does refer to the IP's website at the URL: <http://www.sms.ac>.

The IP, in its response, has stated that it makes its service absolutely clear to its customers. I assume, by this it means to include prospective customers also. However, the IP does not specifically indicate how this is done. Reference is made to its "Mobile Nutrition Label," but I have no idea what this means and entails.

I have accessed the IP's website at the URL: www.sms.ac and tried to find information concerning the pricing and terms and conditions for this service. I have been unable to do so. In particular, when I tried to choose South Africa from the drop down menu on the pricing page, an error message was returned (a screenshot of the error message is annexed marked "Annexure A").

Before I am able to make a determination in this matter, I require the following further information:

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1. How did the complainant become aware of the Free SMS service offered by the IP?
 2. If pursuant to him viewing, hearing or reading promotional material in connection with the service, details of such material are requested and if possible a screenshot, transcript or copy of the material in question should be furnished?
 3. If not, then confirmation as to whether the IP's pricing structure and terms and conditions for this service were made known or available to the complainant?

The Secretariat is requested to direct the foregoing queries back to the complainant to be answered within 10 (ten) days of him receiving a request for this information from the Secretariat.

The complainant must also furnish the Secretariat with a copy of his Vodacom statement for the period during which he was subscribed to the service with the entries on his account pertaining to incoming messages allegedly received by him from the IP highlighted.

The SP is also requested to obtain from the IP details of all promotional material it uses to promote its Free SMS service in South Africa and copies, screenshots and transcripts of all such material must be furnished to the Secretariat within 10 (ten) days of the SP being notified by the Secretariat to do so.

In the interim, the SP is ordered to take reasonable steps to ensure that no further SMS's are sent by the IP to the complainant until a final decision regarding this complaint is made.