

**WASPA appeals panel
Complaint 13530**

REPORT OF THE APPEALS PANEL

Date: 08 May 2012

Service Provider (SP): Mira Networks

Information Provider (IP): US Cellcom LLC

Appellant and IP: US Cellcom LLC

Complaint Number: 13530

Applicable versions: 10.0

1. BACKGROUND TO THE APPEAL

1.1 This appeal concerns a complaint lodged on 29 June 2011 against US Cellcom, an Information Provider (IP), for allegedly subscribing the complainant without his knowledge.

1.2 The SP is a member of WASPA and based in South Africa.

1.3 The IP is a US company and is an affiliate member of WASPA.

1.4 The complaint relates to subscription irregularities.

1.5 The complaints, the findings of the Adjudicator and the IP's appeal, are fully recorded in the case files provided to this appeals panel, and as these are, or will be, publicly available on the WASPA website, they will not be repeated in full in this appeal panel's report.

2. CLAUSES OF THE CODE CONSIDERED

2.1 The following clauses of the Code were considered:

- 2.1.1 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.
- 2.1.2 3.10.2. Should the nominated representatives change, or the contact information for the representatives change, the member must notify WASPA of the changes.
- 2.1.3 11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:
 - 2.1.3.1 (a) proof that the customer has opted in to a service or services;
 - 2.1.3.2 (b) proof that all required reminder messages have been sent to that customer;
 - 2.1.3.3 (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
 - 2.1.3.4 (d) any record of successful or unsuccessful unsubscribe requests.
- 2.1.4 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.
- 2.1.5 14.3.5. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint, including any mitigating factors that the member wishes the adjudicator to consider.
- 2.1.6 14.3.6. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond. An extension to

this time period may be given to the member at the discretion of the WASPA Secretariat.

3. FINDINGS AND DECISIONS OF THE ADJUDICATOR (Please note that this extract is a verbatim copy of part of the Adjudicator's Report)

3.1 I have perused the subscription logs provided by the IP to WASPA.

3.2 I am not satisfied that the relevant logs provide sufficient proof that the complainant has opted in to the service in question.

3.3 The logs refer to the MTN network and the complainant has advised that his number is on the Cell C network.

3.4 The logs also do not comply with section 11.10.2 of the Code of Conduct in that they do not contain a detailed transaction history.

3.5 The complaint is accordingly upheld.

3.6 Sanctions Imposed

3.6.1 The IP is ordered to refund all amounts charged to the complainant's account.

3.6.2 The IP is fined the sum of R 25 000.00.

4. GROUNDS OF APPEAL

4.1 Grounds of appeal for complaint 13530

4.1.1 The Appellant submitted detailed grounds of the appeal which will not be recanvassed in full here:

4.1.2 Therefore, the Panel has decided to extract a verbatim copy of 6 key aspects submitted by the Appellant:

4.1.3 In a respect of a complaint received from your side and as a proof of valid subscription on our service, we are providing you a description of subscription (via web) in details:

4.1.3.1 1. Link of our landing page where User has left his mobile number (this landing page was shown to the User after he clicked on our ad): <http://www.the-lobop.com/wSubs/index2.php>

4.1.3.2 2. User is receiving message: *Your PIN is: 5488.Activate your unlimited SMS, enter your PIN on www.the-lobop.com.*

4.1.3.3 3. User is entering his unique PIN (5488) on <http://www.the-lobop.com/wSubs/pin1a.php>

4.1.3.4 4. After entering PIN, the next page is shown to the User <http://www.the-lobop.com/wSubs/thankyoua.php> and he is receiving the following messages on his mobile number: *Welcome: You are now subscribed to BONUS SMS, R7/SMS, 7 SMS/week, reply Stop to unsubscribe, support: 0861106472, www.the-lobop.com. Login to www.the-lobop.com and send unlimited SMS! Your username is: 786786500 ,password: 452762. You can SMS anyone, anywhere, unlimited!*

4.1.3.5 5. User is subscribed to the service only and solely after entering his unique PIN received on his mobile device

4.1.3.6 6. For all mentioned tags we are sending you our logs (date: 28.03.2011.) as proof of mentioned claims:

4.1.3.6.1 15:31:09> | &msisdn=27786786500&oadc=39853&text=Your PIN is: 5488.Activate your unlimited SMS, enter your PIN on www.the-lobop.com&network=65510&endpoint=452

4.1.3.6.2 15:31:09> msisdn: 0027786786500 oadc: 39853 operator: 65510 endpoint: 452 text: Your PIN is: 5488.Activate your unlimited SMS, enter your PIN on www.the-lobop.com

4.1.3.6.3 15:31:09> sendmsg 452 0027786786500 Your PIN is: 5488.Activate your unlimited SMS, enter your PIN on www.the-lobop.com 39853 65510 452

4.1.3.6.4 15:31:09> ACK

4.1.3.7 7. And the last thing which should be very important for this appeal is **IP address** from which User has been subscribed to our service on 28.03.2011. : **41.133.73.55**

4.1.3.8 **8.** A monthly reminder message was sent accordingly to the User: *Reminder: You are subscribed to BONUS SMS. Cost R7/day, support: 0861106472, support@thelobop.com. To unsub, sms STOP to 39853.*

4.1.3.9 **9.** Please take into account that we couldn't respond to your complaint before since our support email for all members and user is support@the-lobop.com and not mb@the-lobop.com. In order to minimize any additional problems we have added additional email addresses as back up for all emails received from WASPA and MIRAnet.

4.1.4 This appeal includes Screen shots of mentioned landing pages and history check for received and sent messages for MSISDN 27786786500 on the date of subscription.

5. FINDINGS OF APPEAL PANEL

5.1 Version of the Code

5.1.1 The date when the alleged breach took place is 25 May 2011 and the date on which the complaint was lodged, is 29 June 2011.

5.1.2 **Version 10.0 of the Code, in use from 13 October 2010 to 8 June 2011, therefore applies.**

5.2 Decision

5.2.1 The Panel has taken careful consideration of the appeal prepared by the Appellant.

5.2.2 The Panel has also revisited all the communication, documents and samples that were provided to the Adjudicator in assisting him or her to have reached his or her decision, which decision / adjudication was subsequently scrutinised by this Panel in evaluating the arguments levelled against it by the Appellant in this matter.

5.2.3 First and foremost this Panel feels it important to address the issue of providing an appropriate response to a complaint and reasons offered by the IP in this matter for having failed to do so.

5.2.4 The WASPA Code of Conduct is very clear on the issue of issuing a response as detailed in section 14.3.5 thereof and referenced in paragraph 2.1.5 hereof.

5.2.5 The Code, in section 14.3.6 thereof and referenced in paragraph 2.1.6 hereof also reiterates that if a member fails to respond, it will be assumed that the member has chosen NOT to respond.

5.2.6 The IP, and Appellant in this matter, failed to respond and the Adjudicator, in the opinion of this Panel, therefore *had* to assume that the IP has *chosen* not to respond.

5.2.7 The Appellant referenced in paragraph 4.1.3.9 hereof alleged, in justifying the absence of a response, that it failed to respond due to the fact that the complaint was sent to a wrong email.

5.2.8 This Panel regard such an attempt by the Appellant as unacceptable and negligent.

5.2.9 Sections 3.10.1 and 3.10.2 of the Code referenced here, in paragraphs 2.1.1 and 2.1.2, place the responsibility of correct contact information squarely on the shoulders of the member, and in this particular case, the Appellant.

5.2.10 The Panel requested relevant information from the Secretariat on this and was informed, that according to WASPA's logs, the correct or updated email address / contact information for complaints was only provided by the Appellant to WASPA on 13 December 2011 and therefore subsequent to this complaint.

5.2.11 Up and until such date, the email provided to WASPA was mb@the-lobop.com.

5.2.12 This, and correctly so, was the email used by WASPA to initiate a response.

5.2.13 The learned Adjudicator therefore, in reaching his or her decision, only had the subscription log submitted to use as a reference.

5.2.14 This then brings the Panel to the aspect in this case that relates to the evidence (logs) submitted by the Appellant.

5.2.15 This Panel has reviewed the logs and has to concur with the Adjudicator, that the logs provided by the IP, and Appellant in this matter, even after having had the chance to resubmit it during this Appeal, are not complete.

5.2.16 Section 11.10.2 (c) of the Code referenced in paragraph 2.1.3.3 hereof requires a member, and the IP and Appellant in this matter, to provide a detailed transaction history indicating all charges levied and the service or content item applicable for each charge.

5.2.17 This has not been forthcoming.

5.2.18 The Panel is also confused as to the meaning of the 18-04-2011 descriptions in the log.

5.2.19 The Panel therefore upholds the decision of the Adjudicator.

5.2.20 The Appellant did however provide some details as to the subscription action itself and also provided an IP address in support of its evidence.

5.2.21 The Panel is also not convinced that the reference by the Complainant to MTN and Cell C has any bearing on the logs and felt that the Adjudicator erred should this have had a significant impact on his or her decision. Number portability takes place on a daily basis and the Panel has to concede that the Appellant would not necessarily have had

knowledge thereof and could have mistaken the number as a MTN number.

5.2.22 The Panel therefore feels that these aspects (5.2.20 & 5.2.21), coupled with the Appellant's complaints history (1 upheld complaint), is sufficient to serve as factors in mitigating the sanctions.

6. The finding of the Appeals Panel is:

6.1 The Adjudicator's sanction referenced in paragraph 3.6.1 is upheld.

6.2 The Adjudicator's sanction referenced in paragraph 3.6.2 is overturned and the IP, and Appellant in this matter, is formally reprimanded for its breach of sections 3.10.1, 3.10.2 and 11.10.2 (c) of the WASPA Code of Conduct.

| The cost of appeal is non-refundable.
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