



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	18328
<b>WASPA member(s):</b>	US Cellcom IP / Mira Networks SP
<b>Membership number(s):</b>	(IP) (1046) / (SP) (0011)
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription Services
<b>Date complaint was lodged:</b>	2012-08-23
<b>Date of the alleged offence:</b>	2012-04-11
<b>Relevant version of the Code:</b>	11.6
<b>Clauses considered:</b>	6.2.9, 11.2.1, 11.2.5, 11.5.1, 11.6.1, 11.6.2, 11.6.3, 11.10.2 & 14.3.14
<b>Relevant version of the Ad. Rules:</b>	2.3
<b>Clauses considered:</b>	N/A
<b>Related cases considered:</b>	18262

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### Complaint

The Complainant in this matter alleged that he never subscribed to the service.

He further alleged that he did not receive reminders of his "alleged" subscription in terms of WASPA Code.

He then lodged an unsubscribe request but was not happy with the relevant response of the IP and requested an escalation of the complaint.

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### Information provider's response

The IP unsubscribed the Complainant from its services and provided a "log" it felt provided sufficient proof to indicate that the Complainant opt-in for its services.

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## Sections of the Code considered

6.2.9. During any calendar month, if the total cost of any service exceeds R200 for that month:

(a) Where the WASP is in control of the billing (e.g. an OBS), a notification must be sent to the customer that they have reached this limit and a communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.

(b) Where the WASP is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.6.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter. The customer may not be charged for these reminder messages.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

Reminder: You are subscribed to [name of service provider] [content/service description].

Cost [cost of service and frequency of billing]. SMS HELP [optional keyword] to [short code]/call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

or

Reminder: You are subscribed to [name of service provider] [content/service description].

Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

11.6.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.6.2.

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:

(a) proof that the customer has opted in to a service or services;

- (b) proof that all required reminder messages have been sent to that customer;
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (d) any record of successful or unsuccessful unsubscribe requests.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

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## 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 IP's subsequent reply.

The Complainant has failed to provide any sufficient content or any material for that matter to provide the Adjudicator with any prima facie information assisting him / her to render the subscription invalid.

However, that having been said, as with Adjudication 18262, the Adjudicator is not of the opinion that the IP has complied with the various provisions of the WASPA Code of Conduct in rendering its own account of events.

The so-called log received by the Adjudicator shows no indication as to what has materialised and can most definitely not be taken as sufficient evidence of a subscription. It does not even provide the numbers communication was sent from and numbers utilised to receive such communication. All it demonstrates is that "apparent" communication took place between the IP and somebody.

The Adjudicator in this matter is of the opinion that WASPA members are in a better position to provide proof of actions or inactions on their behalf and deems it inappropriate for members to submit unclear, ill constructed or non-detailed information / logs in clarifying or negating allegations lodged or raised against them.

Even more so when they are specifically requested by WASPA to provide relevant information.

In this matter for instance the Complainant disputes his subscription, but also raises the fact that he did not receive any communication as requested by section 6.2.9.

Section 6.2.9 states that during any calendar month, if the total cost of any service exceeds R200 for that month:

- (a) Where the Wasp is in control of the billing (e.g. an OBS), a notification must be sent to the customer that they have reached this limit and a communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.
- (b) Where the Wasp is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.

The subscription service is R7 / day which would indicate a total of more than R 200-00 per day.

As referred to in Adjudication 18262, it is NOT merely sufficient for the member to provide a so-called "log" showcasing only the alleged opt-in.

An allegation by a complainant of non-subscription goes far wider than merely the act of subscription. It goes beyond such act to an earlier episode where it must be asked as to WHY the complainant allegedly subscribed. In other words, what motivated him / her?

Was he / she mislead into subscribing, was confirmation or subscription done via a webpage, sms, or any other means and, having had sight thereof, have all the correct processes been followed?

For this precise reason the WASPA Secretariat, during complaints, issues the following notice in its initial request to members, as was done in this instance:

*It is recommended that your response should include as much as possible of the following information that is relevant to this complaint:*

- Logs as stipulated in clause 11.10.2. of the Code of Conduct
- Information on how this service was or is advertised e.g.: TV, WAP, Internet, SMS, radio
- A copy of the advertisement/marketing material
- In the case of a TV advert please provide flight times and codes
- Statistics on the number of entries/users of this service

Section 11.10.2 states that when requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
- (b) proof that all required reminder messages have been sent to that customer;
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (d) any record of successful or unsuccessful unsubscribe requests.

This was clearly NOT adhered to by the IP in this matter which places the Adjudicator in a position where it cannot draw inference from the submitted log that a VALID subscription actually took place.

It can also not ascertain whether less than R200-00 was charged during any particular month since section 11.10.2 (c) was not complied with.

However, the Adjudicator can also not establish whether there were in fact other breaches, since the content of the log does not render enough context to the type of subscription service.

No information was received as to how the complainant's number was obtained, how the service was advertised etc.

The Adjudicator is also of the opinion that the IP did not provide him / her with a formal response indicating the chain of events. It merely provided the Adjudicator with an ill-detailed log, alleging opt-in.

Section 14.3.14 states that on the basis of the evidence **presented**, the Adjudicator will decide whether there has been a breach of the Code. **Each case will be considered and decided on its own merits.**

Due to its non-conformance with section 11.10.2 and more specifically due to the sparsely compiled and / or unclear log, the Adjudicator does not feel that the IP in this matter has rendered sufficient proof of a VALID subscription, especially insofar as it relates to the context of the subscription and allowed processes which could have been clarified by a detailed response.

The adjudicator in this matter is also of the opinion, due to the IP's non-conformance with section 11.10.2 (c), that the IP failed to adhere to section 6.2.9.

Therefore the IP is found to be in breach of sections 11.2.1 and 6.2.9.

The Complaint is upheld.

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### **Sanctions**

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

- The prior record of the SPs with regard to breaches of the relevant sections of the Code of Conduct; and
- The SPs' subsequent response

The IP is instructed to fully refund the Complainant within 5 (five) days after having received notice hereof and provide subsequent proof to the WASPA Secretariat of such payment on even date.

With reference to its breach of section 11.2.1, the sanction referred to in adjudication 18262 applies.

The IP is further fined R 10 000-00 for its non-compliance with section 6.2.9, payable to the WASPA Secretariat within 5 (five) days after having received notice hereof.