

WASPA Member (SP)	MIRA Networks / SMSNET-ZA
Information Provider (IP)	AMV
Service Type	Various Irregularities
Source of Complaint	Public
Complaint Number	#4486
Code of Conduct Version	5.7
Date of Adjudication	20/08/2008

Complaint

The Complainant in this matter lodged the following complaint:

“Cell number 083 416 4988 is on contract with Altech Autopage. I have recently been charged for Content Charges to a subscription service from MIRA NETWORKS, which I have not subscribed to. I was charged from 15/4/08 to 15/5/2008 a total amount of R141-75.

Secondly, my son, Charles Dreyer has cell number 083 697 6704 which is also on contract with Altech Autopage. This sim card is used by myself. I have also been charged as the above by a company called SMSNET-ZA for 06/01/2008 on this one day totalling an amount of R175-45 (5 x MMS @ R35-09 each)

I would like you to investigate the two above cases I have not subscribed to any subscription service. I am completely anti-subscription offers and I feel that I have been falsely charged. I would like these companies to reimburse my money and not make any further charges to my accounts.”

SP Response

Initially it was indicated that MIRA Networks was responsible for some of the content delivered. MIRA Networks has however clarified the position and indicated that AMV was the responsible party. MIRA Networks also took it upon itself to extract information from AMV and relayed its response. The response would therefore be divided into two segments by first addressing SMSNET-ZA response and then AMV's response.

SMSNET-ZA Response

The SP responded by indicating in its logs that there was no subscription for the number 083 697 6704. It did however reveal a log for single content items downloaded.

AMV Response

The IP responded by providing the following reply which is reproduced here in full:

“On the 11th April 2008 at 15:02 the user accessed our mobile content site through an advertisement on an affiliate’s website.

While browsing the internet on their cellphone the user responded to an advert for our Mobile Mayhem WAP site.

The user did not purchase any content and was not charged however they did click on a "claim your free item" link which offered a choice of one free item.

If the user decides to dispute browsing Mobile Mayhem at the time above he should ask his network operator to provide full internet browsing data for 11th April so we can prove that access to blingmob.com took place at the above time.

The site states that content purchasers or users who access free content may receive future promotions from us, and that they should sms STOP ALL to 31434 to opt-out, or to call our helpline number.

We have not had an opt-out request from this user.

We have since contacted the user with free promotional information in relation to other services we offer.

On the 26th April the user responded to a promotion for our Wild Vids site.

The user browsed onto the homepage of the site using a **Nokia6680** mobile handset.

The site states that:

Free Sexy Videos

Free Sexy Video Terms: Your FREE sexy videos must be downloaded from the link above. This is a 100 percent no obligation free video pack. No questions asked!

18+ only. This WAP menu is charged at R30 per page viewed (3 Videos per page, R10 per video). All videos on each page may be downloaded inclusive of this price.

The user then proceeded to enter the following billable pages within the site and download content:

2008-04-26 12:19:58	SA WILD Vids [1195]	Hannah Lounge 2 [77274]
2008-04-26 12:21:56	SA WILD Vids [1195]	SA DirtyVids StrictlyAdultVids
2008-04-26 12:22:11	SA WILD Vids [1195]	Ex-Girlfriend Vids
2008-04-26 12:23:17	SA WILD Vids [1195]	SA DirtyVids OpenMeUp
2008-04-26 12:23:32	SA WILD Vids [1195]	SA DirtyVids MostDownloaded
2008-04-26 12:23:51	SA WILD Vids [1195]	SA DirtyVids MostDownloaded
2008-04-26 12:24:17	SA WILD Vids [1195]	SA Babehouse MostDownloaded
2008-04-26 12:25:30	SA WILD Vids [1195]	Ex-Girlfriend Vids

As a result the user was sent billing confirmations on 31931.

We have now Blacklisted the number from any future transactions with our company.”

Sections of the Code considered

Without the Complainant specifying which sections of the Code were breached, the Adjudicator, after reviewing the Complaint, considered the following sections of version 5.7 of the Code of Conduct:

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.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. In this matter the Adjudicator has ascertained that the SP named MIRA Networks has had no involvement in this matter and is therefore found to be wrongfully identified as a respondent.

SMSNET-ZA

The Adjudicator has reviewed the response from this SP. It is clear from the information provided that the SP had indeed not subscribed the user and that the content downloaded were single content items. The logs provided are sufficient evidence in itself that the simcard with number 083 697 6704 was indeed used to download the single content items. From the complaint received it is assumed that the Complainant did not do it in her personal capacity. As owner of the simcard however, it remains the responsibility of her son to regulate access to the simcard. It is however unclear from the information provided whether the Complainant or her son is the contracted party. If the Complainant indeed proves to be the owner, then the responsibility of use would be with her. The fact of the matter remains that single content items were downloaded and the SP billed the Complainant accordingly. Based on the information provided to him/her the Adjudicator has therefore found no breach of the WASPA Code of Conduct by the SP. The complaint against SMSNET-ZA is therefore dismissed.

AMV

From the information provided to the Adjudicator it seems clear that there is no evidence of any subscription that took place. It also seems relatively clear that the user of the simcard with number 0834164988 did indeed download the single content items as was indicated by the IP in its response. There could therefore be no breach of section 11.1.4 of the Code of Conduct.

However, the primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. The current wording of the message in this complaint falls foul of the Code. The use of the word "free" with the videos is deceptive and misleading. Although this sort of use of the word "free" is explicitly prohibited in version 6.1 of the Code of Conduct, it is not the case with version 5.7. However, the Adjudicator still feels that the deceptive use of the word is a breach of section 4.1.2 of version 5.7 of the Code of Conduct.

It is unclear whether the Complainant in this matter downloaded the content on the assumption that the content was free, or whether he / she actually realized that the content was going to be billed. However, in this matter the Complainant argued that he / she did not utilize the services, which proves to be contradictory to the logs supplied.

The Complaint is partially upheld.

In determining sanctions against AMV the following factors are considered:

- The prior record of AMV with regard to breaches of section 4.1.2 and of the WASPA Code of Conduct; and
- The actions taken on behalf of the client.

AMV is fined R 10 000,00. This fine is payable to the WASPA Secretariat within five (5) days of notification hereof. AMV is also ordered to refund the Complainant 50% for content downloaded within five (5) days of notification hereof.
