



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP):** ITOUCH (in respect of its Jippii brand)

**Service Type:** SUBSCRIPTION SERVICE

**Source of Complaints:** MEMBER OF PUBLIC

**Complaint Number:** 0100

**Adjudicator:** BRENDAN HUGHES

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### Complaint

The Complainant filed a complaint on 7 December 2005 alleging, inter alia, that a television advertisement broadcast on behalf of the SP (“the advertisement”) breached sections 11.1.1. and 11.1.4. of the WASPA Code of Conduct (“the Code”). Specifically, the Complainant alleged that the advertisement did not clearly advertise the services as “subscription services” and bundled a request for specific content with a request to join a subscription service. Furthermore, the Complainant alleged a breach of section 11.3.2 of the Code by the SP in that she was charged R5 for an unsubscribe request that was not processed and also alleged that the SP’s call centre did not advertise the cost of calling the call centre and did not provide a Telkom landline number as an alternative.

The relevant sections of the Code that the Complainant alleged were breached by the SP read as follows:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

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.

11.3.2. All subscription services must have an unsubscribe facility available at no more than one rand.

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### SP Response

The SP answered that the Complainant had requested a particular polyphonic ringtone in response to the advertisement broadcast on 30 May 2005. A copy of the advertisement was provided. For reasons that will become apparent later, it is not necessary for me to refer here to the terms and conditions, including pricing information, displayed in the advertisement.

The SP also replied by providing a copy of the text of the sms message sent to the complainant at the time of her subscribing to the service that read as follows:

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*"Welcome to Jippii! UR free content is on its way! Remember, U R billed R5 every 2 weeks & get tones @1/2 price. To unsubscribe sms STOP TONE to 31516 (50c/sms)."*

The SP stated that a request to unsubscribe was received on 25 November 2005, when the Complainant contacted the SP's call centre, whereupon the Complainant was manually un-subscribed.

The SP stated further that it had advised the Complainant that she would still be liable for two payments that had accrued prior to her request to unsubscribe and that had not been met due to a lack of funds in her pre-paid account at the time the payments fell due. The SP provided information that showed the Complainant had been a member of the subscription service from 30 May 2005 until 25 November 2005. The SP claimed that it debited the Complainant's account on 7 December 2005 in respect of two payments that had fallen due in the period up to 25 November 2005.

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## **Decision**

I will deal first with the complaint that the SP did not advertise the cost of calling its call centre and did not provide a Telkom landline number that the Complainant could use.

There is no requirement in the WASPA Code that a member must always display the cost of calling a call centre nor that a Telkom telephone number must be provided. Section 11.2.1 of the Code provides that customer support and assistance for subscription services must be easily available to customers, and must not be limited to a medium that the customer is unlikely to have access to. The requirements of section 6.2 of the Code dealing with the pricing of services may apply to a call centre number where a premium rated service number was used as the call centre number. Furthermore, section 1.3.6 of the Advertising Rules provides that if a premium rated number or VAS rates channel is used to contact an advertiser or as a helpline access number, then the fact that this number is premium rated or uses VAS rates must be indicated next to the access number. Although the Complainant has averred that the display of the customer support number is not accompanied by a notification that the number is premium rated nor a notification that free minutes do not apply, no allegation has been made that the customer support number is premium rated or charged at VAS rates.

The Complainant also alleged that the SP breached section 11.3.2. of the Code that all subscription services must have an unsubscribe facility available at a cost of no more than one Rand. This requirement is coupled with a practical requirement that members must ensure that the termination mechanism is functional and accessible at all times. I have studied the number of payments that were debited from the Complainant's account and found that these payments correspond with the number of two weekly periods during which the Complainant was a subscriber to the service. I have therefore accepted the SP's version that the complainant was charged the additional two amounts on 7 December as subscription payments that were due to it rather than as a fee for un-subscribing from the service. On the evidence available to me, I cannot find that the SP does not have an unsubscribe facility available at no more than one Rand, nor that it was not functional or accessible at all times.

With regard to the other complaints made by the Complainant that relate to the bundling of a request for content with a request to join a subscription service and the manner in which the pricing was advertised, it must be noted that the complaint stems from an advertisement that was broadcast on 30 May 2005. This is a date prior to the adoption of the WASPA Code of Conduct which became effective on 1 September 2005. In the circumstances, I am not empowered to rule on whether the subscription service was properly advertised nor whether a request for content was bundled with a request to join a subscription service in a manner that is in breach of the Code as the advertisement and the transaction precede the implementation of the Code.

The complaints are accordingly dismissed.

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