



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (IP)</b>	2Waytraffic (Emexus)
<b>Service Type</b>	Subscription
<b>Source of Complaints</b>	Public
<b>Complaint Number</b>	#2510
<b>Date received</b>	14 November 2007
<b>Code of Conduct version</b>	5.3

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### Complaint

The Complainant alleged that there was no mechanism to remove a MSISDN from a subscription service offered by the IP, independently a member of WASPA, and that she had been trying unsuccessfully to unsubscribe for a period of 5 months.

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### SP Response

The Complaint was initially forwarded by the WASPA Secretariat to Mira Networks which functioned as the SP in respect of the IP's service. Mira Networks advised the Secretariat to redirect the Complaint to the IP but nevertheless provided the necessary message logs relevant to the Complaint.

Despite proper notice provided to the IP in accordance with the Code of Conduct, no Response was received.

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### Sections of the Code considered

The following sections of Version 5.3 of the WASPA Code of Conduct were considered:

#### 3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

11.1.8. A monthly reminder SMS must be sent to all content subscription service customers containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

11.1.9. The monthly reminder SMS must adhere to the following format:

- (a) The monthly reminder must begin with either "Reminder: You are a member of NAME OF SERVICE" or "You are subscribed to NAME OF SERVICE".
- (b) Any marketing for a new service must appear after the cost and frequency of the existing service and the service provider's telephone number.

## **11.2. Termination of a service**

11.2.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.2.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

11.2.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times.

11.2.5. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

**Decision**

The message logs provided (for the period 20.07.2007 to 21.11.2007) indicate that:

- the MSISDN was subscribed to the service on or about the 22<sup>nd</sup> day of a previous month;
- on 30 July 2007 the Complainant subscribed to an unrelated subscription service and almost immediately successfully unsubscribed therefrom;
- reminder messages as required by section 11.8 of the WASPA Code of Conduct were sent on 22 July, 22 August, 22 September and 22 October 2007 (“Keep on dancing with our ringtone service, Info: [www.text-ring.com](http://www.text-ring.com) help:0800-980430. to cancel reply: stop. R10 per ringtone, 3 ringtones per week, subscription”). It accordingly appears that there was indeed a mechanism to allow the Complainant to unsubscribe and that she was made aware thereof in the proper manner; and
- there is no evidence of the Complainant attempting to unsubscribe from the service provided by the IP – rather it appears that the Complainant has consistently used the service during the period for which logs were provided.

On the basis of the message logs it appears that, on a balance of probabilities, the Complainant became confused as between the service provided by the IP and the other service from which she subscribed. The Complainant’s reference to a period of “5 months” would seem to support this.

In the circumstances the Complaint is dismissed.

That is not, however, the end of the matter. The failure of the IP to respond to the Complaint, notwithstanding the numerous notifications and reminders sent to it by the WASPA Secretariat, is unacceptable and deserving of sanction. This failure constitutes a breach of section 3.1 of the WASPA Code of Conduct in that the IP has not acted in a professional manner in its dealings with either the public (in the form of the Complainant) or WASPA itself.

That it appears that the matter could have been easily resolved using the informal complaints resolution process and without creating further frustration on the part of

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the Complainant or unnecessarily burdening the WASPA Secretariat is regarded by this Adjudicator as an aggravating factor in determining an appropriate sanction.

Having regard to the record of the IP as regards complaints (none) and having further regard to the growing number of complaints to which no response is received, the following sanction is imposed:

The IP is issued with a formal reprimand and fined the sum of R1 500, payment of which is suspended for a period of six (6) months subject to the IP not being found to be in breach of section 3.1 of the WASPA Code of Conduct during this time period.

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