



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	TIMw.e. New Media Entertainment South Africa
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainant:	Member of the public
Complaint Number:	6753
Code Version:	7.0 (consideration also given to version 7.4)
Advertising Rules Version:	2.3

Complaint

The complainant is a member of the public who was subscribed to a Vibramovel subscription service and lodged a complaint with WASPA, claiming he was unaware of Vibramovel. After being furnished with what I imagine were subscription logs from the SP, the complainant made the following comments:

I have looked at your attachments.

Firstly:

As far as I can see, the initial contact made with me is not shown. How was that accomplished?

If the first line of this document is the first contact then this is blatant spam.

Secondly, the first SMS to me says nothing about a subscription service.

Thirdly, the first indication about a subscription service is in the SMS after the subscription is already completed. This is the type of SMS that I typically delete without reading. One would have to open the message and then scroll down to find the real content. Additionally, it indicates that I have to pay in order to stop something I never wanted in the first place?

Is this acceptable according to the WASPA code of conduct?

The complainant was unsubscribed from the service almost 4 months after being subscribed and appears to have been refunded an amount of R538,92.

The complainant appears to have been subscribed to a subscription service involuntarily. The unsubscription logs I was briefed with and which are annexed to this report, marked Annexure "A" indicate that the complainant received a message on 29 January 2009 with the following text:

Insert your password ccadv and receive 3 Games and 1 Truetone every week. Please check T&C at www.za.natta.com/web/za/tac.

The complainant was then sent the following welcome message about 2 minutes after the second welcome message:

*Welcome! U have joined Games Club. 3 Games + 1 Tune per week, R4,99/day. Stop?Dial *120*33535# and follow the menu(1c/sec). Helpline:(0)11 4470357. Total TIM*

The logs further indicate the complainant remained a subscriber until roughly 18 May 2009 when he was still receiving communications from the SP.

Service provider's response

The SP responded to the complaint by forwarding proof of a refund to WASPA and requested that it be updated when the dispute comes to a close.

The logs do not indicate whether the complainant responded positively to the invitation to subscribe or that the complainant took any steps to subscribe. They are, in this regard, of no real value in determining whether a person actually subscribed to a service and responded positively to the initial message. On the other hand, the logs are relatively detailed and this suggests that the absence of an indication of a positive response to the initial message is an indication that there was no such positive response.

In any event, the complainant submitted the following follow-up to his complaint on receiving notification of the refund:

Thank you. I have received the refund.

I would not say that the complaint is resolved entirely to my satisfaction.

I still have not been presented with evidence of how I initially subscribed to this service.

It is my belief that this was obtained in an unethical fashion, contrary to WASPA's code of conduct, and I would like WASPA to investigate this matter further.

Should my allegation be true, then I would expect that the appropriate actions are taken against the service provider.

I have an additional complaint involving Vodacom and whether they are entitled to add third party charges to my account? Is this something that falls within WASPA's jurisdiction? If not, to whom do address this complaint?

While the refund to the complainant addresses the complainant's losses as a result of his involuntary subscription to the service, it does not address the SP's non-compliance with the Code.

Sections of the Code considered

This complaint was filed prior to the most recent update to the Code to version 7.4. I have accordingly considered versions 7.0 and 7.4 for the purposes of this report in order to determine compliance with the Code (referencing version 7.0) and the remedy for non-compliance (referencing version 7.4). Having regard to the issues raised in this complaint, I have also considered other sections of the Code which are pertinent.

I have therefore considered the following sections of the Code:

Version 7.0	Version 7.4
<p>11.1.2: Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.</p>	<p>11.1.2: Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.</p>

Version 7.0	Version 7.4
<p>11.1.10: Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:</p> <p style="padding-left: 40px;">[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing]. Help? Call [call centre number + "(VAS)" if applicable]. To unsubscribe, [unsubscribe instructions].</p>	<p>11.1.10: Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:</p> <p style="padding-left: 40px;">[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing].</p>
<p>11.2.1: 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.</p>	<p>11.2.1: 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.</p>

Version 7.0	Version 7.4
<p>11.2.2: The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:</p> <p>U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].</p>	<p>11.2.2: The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:</p> <p>U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].</p> <p>or</p> <p>U r 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 unsubscribe, sms STOP [service keyword] to [short code].</p>
<p>11.5.2: Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.</p>	<p>11.5.2: Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.</p>

Version 7.0	Version 7.4
	<p>11.5.6: When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:</p> <p style="padding-left: 40px;">You've been unsubscribed from [service name].</p> <p style="padding-left: 40px;">or</p> <p style="padding-left: 40px;">You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. U'll then b resubscribed @ [cost of service and frequency of billing].</p>

Sections of the Advertising Rules considered

Not applicable to this complaint.

Decision

As I have mentioned in previous reports, there have been a number of complaints against the SP for involuntarily subscribing complainants to its subscription service. This practice is of great concern because it could potentially affect a substantial number of people who, in good faith, completed a survey, test or completed a similar process expecting a specific outcome, only to find themselves subscribed to an ongoing subscription service.

Sections 11.1.2 of the Code specifically prohibits subscribing a person to a subscription service where that person has not concluded an “independent transaction” to subscribe to the SP’s subscription service or lacked the “specific intention” to subscribe to that service.

The SP has not furnished WASPA with any substantive indication that the complainant concluded an “independent transaction” with the “specific intention” of subscribing to its subscription service. Its logs made no mention of any communication from the complainant that would suggest he satisfied the test outlined in 11.1.2 of the Code.

In addition, I see no real compliance with the requirements of section 11.1.10 of the Code. The SP's welcome message (quoted above) may be its attempt at compliance with 11.1.10 but I submit there is a marked difference between "*U have joined Games Club ...*" and wording along the lines of "*You'll be subscribed to the Games Club service ..*". The welcome message sent disguises the subscription nature of the service whereas the wording set out in section 11.1.10 is intended to state the subscription nature of a service explicitly.

I further note that while the reminder messages sent roughly a month after subscription include instructions to terminate a subscription using the word "STOP" and a short code, the welcome message does not. This renders the welcome message non-compliant with section 11.5.2 of the Code.

Sanctions

1. To the extent the complainant's subscription to the subscription service was not terminated as the documentation before me indicates, the SP shall unsubscribe the complainant from the subscription service;
2. The SP is ordered to cease the service giving rise to this complaint until such time as the service complies fully with the Code and sections 11.1.2, 11.1.10 and 11.5.2 in particular;
3. The SP shall send an sms notification to all existing subscribers of the campaign in the format prescribed in 11.4 of the current Code;
4. The SP is fined -
 - 4.1. R75 000 for its non-compliance with 11.1.2 of the Code;
 - 4.2. R50 000 for its non-compliance with 11.1.10 of the Code; and
 - 4.3. R75 000 for its non-compliance with 11.5.2 of the Code in relation to its welcome messages.

These fines must be paid to the WASPA Secretariat within five (5) days of notification of this report's findings.

Annexure "A"

Time	Origin	Destination	Message
2009-01-29 17:44:50	133535	██████████	Insert your password ccadva and receive 3 Games and 1 Truetone every week. Please check T&C at www.za.natta.com/web/za/tac .
2009-01-29 17:46:00	133535	██████████	Welcome! U have joined Games Club. 3 Games + 1 Tune per week, R4,99/day.Stop?Dial *120*33535# and follow the menu(1c/sec). Helpline:(0)11 4470357. Total TIM
2009-01-29 17:46:00	33535	██████████	Click to get the coolest games now! www.za.natta.com
2009-01-30 06:32:15	33535	██████████	Download now
2009-01-31 06:30:37	33535	██████████	Download now
2009-02-01 06:14:46	33535	██████████	Download now
2009-02-02 06:35:54	33535	██████████	Download now
2009-02-03 06:51:41	33535	██████████	Download now
2009-02-04 06:47:18	33535	██████████	Download now
2009-02-05 08:10:25	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-02-06 06:51:13	33535	██████████	Download now
2009-02-07 07:09:07	33535	██████████	Download now
2009-02-08 06:37:22	33535	██████████	Download now
2009-02-09 06:50:55	33535	██████████	Download now
2009-02-10 07:09:56	33535	██████████	Download now
2009-02-11 06:51:34	33535	██████████	Download now
2009-02-12 08:11:52	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-02-13 07:02:00	33535	██████████	Download now
2009-02-14	33535	██████████	Download now

06:59:57			
2009-02-15 06:44:43	33535	██████████	Download now
2009-02-16 07:04:44	33535	██████████	Download now
2009-02-17 06:59:16	33535	██████████	Download now
2009-02-18 07:08:54	33535	██████████	Download now
2009-02-19 08:12:12	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-02-20 07:01:58	33535	██████████	Download now
2009-02-21 07:07:33	33535	██████████	Download now
2009-02-22 06:53:26	33535	██████████	Download now
2009-02-23 07:21:13	33535	██████████	Download now
2009-02-24 07:02:19	33535	██████████	Download now
2009-02-25 07:05:43	33535	██████████	Download now
2009-02-26 08:11:53	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-02-27 08:48:33	33535	██████████	Download now
2009-02-28 08:16:36	33535	██████████	Download now
2009-02-28 18:56:31	133535	██████████	FreeMsg: You are subscribed to Games Club.Cost R4,99/day. To Stop Subscription, SMS STOP to 33535. Helpline: (0)11 4470357 (VAS Rates). Total Tim
2009-03-01 08:05:26	33535	██████████	Download now
2009-03-02 06:00:50	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-03-02 06:39:26	33535	██████████	Download now
2009-03-03 06:52:03	33535	██████████	Download now

2009-03-05 08:09:38	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-03-06 06:39:54	33535	██████████	Download now
2009-03-07 06:50:46	33535	██████████	Download now
2009-03-08 06:27:37	33535	██████████	Download now
2009-03-09 06:48:45	33535	██████████	Download now
2009-03-10 07:22:40	33535	██████████	Download now
2009-03-11 10:39:22	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-03-11 10:56:30	33535	██████████	Download now
2009-03-11 12:52:29	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-03-11 18:27:38	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-03-12 08:12:42	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-03-12 11:16:11	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-03-13 06:31:06	33535	██████████	Download now
2009-03-14 07:08:04	33535	██████████	Download now
2009-03-15 06:26:58	33535	██████████	Download now
2009-03-16 07:07:29	33535	██████████	Download now
2009-03-17 07:28:13	33535	██████████	Download now
2009-03-18 07:10:52	33535	██████████	Download now
2009-03-19 08:11:09	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-03-19	133535	██████████	Click 2 get the coolest games now! www.za.natta.com

08:12:44			
2009-03-20 06:50:52	33535	██████████	Download now
2009-03-21 06:54:26	33535	██████████	Download now
2009-03-22 06:46:24	33535	██████████	Download now
2009-03-23 07:03:18	33535	██████████	Download now
2009-03-24 07:47:39	33535	██████████	Download now
2009-03-25 07:25:30	33535	██████████	Download now
2009-03-26 08:12:45	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-03-26 08:17:10	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-03-27 06:08:39	33535	██████████	Download now
2009-03-28 06:22:16	33535	██████████	Download now
2009-03-29 07:25:27	33535	██████████	Download now
2009-03-30 07:32:33	33535	██████████	Download now
2009-03-30 18:54:59	133535	██████████	FreeMsg: You are subscribed to Games Club.Cost R4,99/day. To Stop Subscription, SMS STOP to 33535. Helpline: (0)11 4470357 (VAS Rates). Total Tim
2009-03-31 08:09:42	33535	██████████	Download now
2009-04-01 08:14:52	33535	██████████	Download now
2009-04-02 09:06:34	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-04-02 10:17:12	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-04-03 07:07:31	33535	██████████	Download now
2009-04-04 07:10:13	33535	██████████	Download now

2009-04-05 07:21:10	33535	██████████	Download now
2009-04-06 07:31:35	33535	██████████	Download now
2009-04-07 07:43:08	33535	██████████	Download now
2009-04-08 08:02:36	33535	██████████	Download now
2009-04-09 09:11:41	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-04-09 09:20:15	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-04-10 07:00:44	33535	██████████	Download now
2009-04-11 07:14:27	33535	██████████	Download now
2009-04-12 07:25:40	33535	██████████	Download now
2009-04-13 07:26:01	33535	██████████	Download now
2009-04-14 08:26:54	33535	██████████	Download now
2009-04-15 08:13:44	33535	██████████	Download now
2009-04-16 08:58:55	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-04-17 08:21:46	33535	██████████	Download now
2009-04-18 07:06:02	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-04-18 07:25:42	33535	██████████	Download now
2009-04-19 07:10:59	33535	██████████	Download now
2009-04-20 07:37:45	33535	██████████	Download now
2009-04-21 07:37:47	33535	██████████	Download now
2009-04-22	33535	██████████	Download now

08:27:17			
2009-04-23 09:03:43	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-04-23 10:12:21	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-04-24 07:03:29	33535	██████████	Download now
2009-04-25 07:11:35	33535	██████████	Download now
2009-04-27 07:26:21	33535	██████████	Download now
2009-04-28 08:11:53	33535	██████████	Download now
2009-04-29 08:55:55	33535	██████████	Download now
2009-04-29 18:57:47	133535	██████████	FreeMsg: You are subscribed to Games Club.Cost R4,99/day. To Stop Subscription, SMS STOP to 33535. Helpline: (0)11 4470357 (VAS Rates). Total Tim
2009-04-30 08:55:45	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-04-30 10:56:14	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-05-01 07:03:14	33535	██████████	Download now
2009-05-02 07:06:04	33535	██████████	Download now
2009-05-03 07:17:42	33535	██████████	Download now
2009-05-04 07:24:46	33535	██████████	Download now
2009-05-05 08:38:03	33535	██████████	Download now
2009-05-06 08:14:07	33535	██████████	Download now
2009-05-07 08:45:33	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-05-07 16:48:43	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-05-07 18:55:24	133535	██████████	Click 2 get the coolest games now! www.za.natta.com

2009-05-07 20:46:48	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-05-08 07:09:35	33535	██████████	Download now
2009-05-09 07:09:33	33535	██████████	Download now
2009-05-10 07:27:17	33535	██████████	Download now
2009-05-11 07:29:56	33535	██████████	Download now
2009-05-12 09:04:14	33535	██████████	Download now
2009-05-13 08:28:02	33535	██████████	Download now
2009-05-14 09:10:50	33535	██████████	Get 100 Credits to download all u want! SMS COOL to 33535.Subs R4,99/day.Stop? dial *120*33535# and follow the menu(1c/sec).Helpline:(0)11 4470357!TotalTim
2009-05-14 09:19:23	133535	██████████	Click 2 get the coolest games now! www.za.natta.com
2009-05-15 07:05:05	33535	██████████	Download now
2009-05-16 07:01:21	33535	██████████	Download now
2009-05-17 07:20:35	33535	██████████	Download now
2009-05-18 07:27:55	33535	██████████	Download now