



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Teljoy Mobile
<b>Information Provider (IP)</b> (if any)	BuongiornoUK
<b>Service Type</b>	Subscription service
<b>Source of Complaints</b>	User
<b>Complaint Number</b>	1329
<b>Date received</b>	17 May 2007
<b>Code of Conduct version</b>	4.92

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### Complaint

The complainant lodged the complaint via the WASPA website on 17 May 2007. The complainant alleges that on 4 November 2006 at 9.20am, she responded to a television advert which prompted viewers to SMS "free" to 30123 to win a plasma screen TV.

The complainant responded and subsequently received a message back saying that she had not won.

She was then billed for a number of months thereafter. The entry on her Vodacom reflected a R30 content charge. In May (5 months later), the complainant enquired through the Vodacom call centre what the charge was for. She was advised that the charge was for a subscription service through the IP. The complainant contacted the IP on 16 May 2007 and was advised by a person called Lungi that by responding to the TV advert, the complainant had joined a subscription service. Lungi also advised the complainant that the details of the service would have appeared in small print in the TV advert.

Lungi said there was nothing she could do further despite the complainant's protestations. After trying to resolve the matter further, the complainant then realised that she was being billed for the call and confirmed with Lungi that the call was charged at R5-00 per minute.

The complainant is also aggrieved by the fact that her network operator has allowed these charges to be billed to her account.

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### **SP Response**

The SP responded to the complaint on 7 June 2007. The SP has advised that on 4 November 2006 at 09:20:17, the keyword 'trial' was text'd to the short code '30123' from the complainant's cell number (i.e. +27823023968). A few seconds later, a WAP message was delivered to the MSISDN: "LOADIN. Begin downloading ur 60 items from this link. Click now!" From the link provided in the WAP message, the MSISDN surfed the Loadin' WAP site. At 09:36:13, the product code 'W22882' was texted to '30123'; this was a request for a wallpaper. Thereafter, a normal SMS message was delivered to the MSISDN: "LOADIN. We sent you a link to our WAP site where you can download ur 60 items. Trouble accessing? Contact Vodacom on 111 to request WAP settings". The keyword 'trial' was texted to '30123' once more at 15:12:17 on the same day.

The SP states that by sending in that keyword to that specific shortcode, the complainant was subscribed to the IP's Loadin Service. The Loadin Service is a subscription service that allows the subscriber to download 60 pieces of content (wallpapers, ringtones, java games, etc) from the Loadin WAP site. The first month subscription is free on the Loadin Service. If the subscriber wants to opt out, she can sms the word STOP to the shortcode 30123. If no unsubscribe request is received during the first free month, the subscription fee (paid in advance) is applicable.

Regarding the content of the TV advert in question, the SP alleges that the advert displays the following information:

**SMS TRIAL to 30123 (First month FREE, then R30 per month)**

**Helpline: 082 280 3333 (VAS Rates Apply)**

**This subscription service is charged at R1 per day.**

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**To unsubscribe, SMS STOP to 30123 (free SMS)**

**Please note that you require a WAP enabled handset to make use of the Loadin Service.**

**E&OE. We regret no refunds.**

**Loadin may contact you with special offers.**

The SP confirms that no STOP request was ever sent to the shortcode 30123 between 4 November 2006 and 4 December 2006 by the complainant. As a result, the following billing occurred:

- \* 4 December 2006 at 12:18:07 - R 30.00
- \* 3 January 2007 at 11:45:01 - R 30.00
- \* 2 February 2007 at 08:53:08 - R 30.00
- \* 4 March 2007 at 08:35:56 - R 30.00
- \* 3 April 2007 at 08:32:11 - R 30.00
- \* 3 May 2007 at 06:50:21 - R 30.00

The complainant was unsubscribed from the Loadin Service on 16 May 2007 at 15:44:20 by one of the IP's Customer Care Agents.

Furthermore, the SP has also provided a list of messages sent to the complainant's number from the period January 2007 to May 2007, wherein there are repeated references to the subscription service and how to unsubscribe therefrom or to the fact that the complainant is a Loadin member.

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**Sections of the Code considered**

Although the complainant has incorrectly referred to sections 5.1.3, 5.2.1 and 6.2 of the Code, I have considered the sections of the code relating to subscription services including the applicable Advertising Rules.

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**Decision**

In the absence of any proof to the contrary that the IP's initial television advert and subsequent SMS notifications did not comply with the requirements of the Code and the advertising rules, I am satisfied that the IP has not breached the provisions of the Code and/or advertising rules.

The complaint is accordingly dismissed.

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