

WASPA Member (SP)	AMV Holding
Information Provider (IP)	N/A
Service Type	Various Irregularities
Source of Complaint	Public
Complaint Number	#3343
Code of Conduct Version	5.7
Date of Adjudication	24/04/2008

Complaint

In a magazine advert that was placed by the SP in this matter services were advertised to subscribe to. The Complainant subscribed through her son but was not aware that these services were indeed a subscription service. According to the Complainant she made several attempts to stop these services but to no avail. The Complainant further iterated that not enough is done by SPs to ensure that children are precluded from making use of such services.

SP Response

In its response the SP provided a detailed account of how the Complainant utilized its services and the response is reflected here in full:

“We received the following MO to 31434:

2007-09-29 19:23:43 Mobile 365 31434 YJ56441

The requested item of content was then sent to the users handset along with the following message:

Thanks 4 using BLiNG!Content link on its way!Click on it 2 get ur content!Probs?Call 011-461-0317 or refer 2 ad.Non-sub.16+

The user ordered a single content item from a magazine advert, and was sent a single 15R billing message, along with the content requested.

On the 16th October the user sent a further MO to 31434 requesting to join our BLiNG!

Subscription service, again responding to a print advertisement:

2007-10-16 13:02:57 Mobile 365 31434 SPEED

The requested link for the site was then sent to the user’s handset along with the following free message:

Thanks 4 using BLiNG!Content link on its way!Click on it 2 get ur content!Help:011-461-0317.Subscription service R15/5day.sms STOP to 31434 to unsubscribe.16+

This subscribed the user for a 15R per five days mobile content club.

The advertising terms clearly state that the service is subscription based, as does the free subscription confirmation message sent to the user.

On the same day the user then sent another MO to 31434:

2007-10-16 13:19:13 Mobile 365 31434 SS57728

The requesting item of content was then sent to the users handset along with the following message:

Thanks 4 using BLiNG!Content link on its way!Probs?Call 011-461-0317 or refer 2 ad.Content 15R, games just 30R!16+

On the same day the user then sent another MO to 31434:

2007-10-16 13:24:09 Mobile365 31434 2 AD

The order was not recognized and the user was sent the following message:

BLiNG! Sorry we could not process your order. Please try again, using the keyword text as advertised.

On the same day the user then sent another MO to 31434:

2007-10-16 13:34:57 Mobile365 31434 WAP SS57728

It appears the user has attempted to order two services in one message.

Unfortunately our system cannot process multiple orders.

The system has therefore recognized the first word only and processed the order.

WAP is a keyword to subscribe to our 30R per five days WAP Content Club.

The user was then sent the link for the site along with the following message:

Thanks 4 using BLiNG!Content link on its way!Click on it 2 get ur content!Help:011-461-0317.Subscription service R30/5day.sms STOP to 31434 to unsubscribe.16+

The user then sent a further MO to 31434:

2007-10-16 14:00:57 Mobile365 31434 WAP SS35514

Again the word 'WAP' was the only order processed. As the user had already joined this service the request was ignored.

The user has been sent the following monthly subscription reminders for the two clubs they joined on 16th October:

Reminder: You are a member of BLiNGmob. Thanks for using our service. Provider: Bluestream Mobile. Subscription: billed at R30 per 5 days 16+

Reminder: You are a member of BLiNGmob. Thanks for using our service. Provider: Bluestream Mobile. Subscription: billed at R15 per 5 days 16+

The first stop request we received was:

2008-02-11 03:39:23 Mobile 365 31434 PSE UNSUBSCRIBE ME ASAP

Our system will automatically search for the word 'STOP' or 'UNSUBSCRIBE' in any MO a user sends.

If such word is found the user is automatically unsubscribed and sent a free confirmation.

Between 16th October 2007 and 11th February 2008 the user was subscribed to two separate mobile content services provided by our company.

No attempt was made to STOP until February 11th 2008.

We believe the charges are therefore valid and our service has operated correctly.

All our advertising states that users must be over 16 to use our services.

We believe parents must take some responsibility for the actions of their children who are provided Cell Phones.

We have no record of this customer contacting our customer helpdesk to try and resolve her complaint. If she had contacted us, and pointed out that a person under the Age of 16 was subscribed to our services, we would have offered a 50% refund, as a gesture of goodwill.

We have since tried to contact the customer but not had an answer to our calls so far.

I have now ensured the number has been Blacklisted from any further 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:

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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.

5.1.6. Where the words ‘END’, ‘CANCEL’, ‘UNSUBSCRIBE’ or ‘QUIT’ are used in place of ‘STOP’ in an opt-out request, the service provider must honour the opt-out request as if the word ‘STOP’ had been used.

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

11.1.6. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

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.

11.2.1. 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.

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 requested further information from the SP and more specifically requested that the SP provided him/her with a copy of the disputed content. The SP responded by forwarding a copy of the said advertisement to the Adjudicator.

In reviewing the disputed content, the Adjudicator took all the relevant sections of the Code as detailed in '**Sections of the Code to be considered**' into consideration.

With regards to section 4.1.1 and 4.1.2 the Adjudicator is of the opinion that the SP has not failed in any of its obligations as is required by these sections.

Although the Complainant has stated that she has made several attempts to unsubscribe, the records supplied by the SP has indicated that only one such attempt was made wherein it was stated that she wants to unsubscribe. Instead of making use of the word 'STOP', the Complainant used the word 'UNSUBSCRIBE'. This word was recognized by the SP's system and the user was subsequently unsubscribed. This is a clear indication that the SP complied with section 5.1.6 of the Code of Conduct.

Sufficient information was provided by the SP in its advertisement's terms and conditions, instructions on the content itself, as well as in the corresponding text messages delivered to the Complainant. In further reviewing these terms and conditions, it was found that all the provisions laid down in sections 11.1.1, 11.1.8, 11.1.9 as well as 11.2.1 and 11.2.2 were clearly adhered to by the SP.

The section of the Code of Conduct that is probably the most relevant to this Complaint and where the Complainant in this matter raised grave concern is section 11.1.6. This section states that: "Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian to do so."

By stating in its terms and conditions that customers must have the permission of the bill payer to use the service, the SP is adhering to the said section. This scenario can be compared with the so-called "*ticket-cases*" as was illustrated in the **Durban's Water Wonderland (Pty) Ltd v Botha and Another 1999 (1) SA 982 (SCA)** case. When a customer therefore utilises the services, as in this matter, it agrees with the terms and conditions and subsequently confirms permission of use.

The Complainant in her Complaint also stated that she indeed did give her son permission.

The Adjudicator is of the strong opinion that the use of the Complainant's Mobile Phone is her responsibility and that access thereto must be controlled. In the event of allowing others access to your phone, it would then be the owner's responsibility to ensure that the purposes for what the phone is going to be used and the consequences that might lead up to such use, is clearly known and understood. In this matter it was the Complainant's responsibility to have read and understood the terms and conditions of the advertisement before granting her son access to her phone.

The Adjudicator finds no breaches of the relevant sections of the Code of Conduct by the SP.

The Complaint is dismissed.
