



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Blinck Mobile Ltd

Information Provider (IP) s/a
(if any)

Service Type Subscription services

Source of Complaints Helene Bloom

Complaint Number 4657

Date received 30 May 2008

Code of Conduct version 5.9

Complaint

This complaint was escalated from WASPA's automated unsubscribe system. The complainant's daughter is alleged to have downloaded a "free" ringtone to her cellphone and was automatically subscribed to the IP's subscription service. The complainant believes that the use of the word "free" in the advertisement is misleading and a misrepresentation. She also states that her daughter does not have the necessary authority to enter into any contracts with the IP and requests a refund of the charge of R375.00 which was billed for data services.

SP Response

During the automatic unsubscribe procedure, the SP has responded as follows:

“We feel strongly that at all times all subscribers are fully informed of the subscription nature of our services, the applicable costs, and the method of stopping the subscription service. We feel that the responsibility for payment lies with the subscriber, and Blinck has fully complied with all requirements in transacting with the consumer, although it is unfortunate that the mother of the subscriber is unhappy with the service, we see no reason in this instance to process full refund as the subscriber is above age and fully capable to make an informed purchase decision, at the same time as she did download at least 4 content items. We will although as a show of good faith, offer a partial refund for the incurred costs.”

The SP uploaded proof of subscription and has confirmed that the number has been unsubscribed from the relevant service. However the SP has failed to refund the amount of R375.

The SP has failed to provide any formal response to the current complaint after its escalation.

Sections of the Code considered

Section 11

Decision

There are a number of disputes of fact in this complaint. Firstly, the complainant alleges that her daughter downloaded a single content item which was advertised as being free of charge, whereas the SP alleges that 4 content items were downloaded by the subscriber.

Secondly, the complainant alleges that her daughter does not have the necessary authority to enter into contracts, whereas the SP alleges that the subscriber is above the requisite age.

WASPA requested the SP to provide proof of the download request for the 4 content items alleged to have been downloaded by the user. The SP was also asked to provide a copy of the wording of the advertisement it used for this service.

The complainant was also requested to provide proof of her daughter's age.

Neither party responded to WASPA's request for the aforesaid information. As a result, I am unable to make a ruling on the basis of the information before me.

The complaint is accordingly dismissed.