

WASPA Member (SP)	Buongiorno
Service Type	Various Irregularities
Source of Complaint	Susanna Kitching
Complaint Number	#4867
Code of Conduct Version	5.7
Date of Adjudication	14/10/2008

Complaint

The Complainant in this matter lodged the following complaint:

“I am receiving service messages on a regular basis regarding adult content. I never subscribed to any of this rubbish. It is mainly nude, or sex related websites that I must access. I NEVER subscribed to any of this rubbish. I would like to know where they got my mobile no. more importantly; I have paid a few hundred rands to date on my cell c account.”

In its initial response the SP unsubscribed the Complainant but the Complainant reiterated the fact that this was not sufficient a response and demanded a refund.

SP Response

In its initial response the SP stated the following:

“The number was subscribed to BLINKO CLUB on the 16th January 2008 via sms- the text sent through was "FREE" to the shortcode 30123, a welcoming/joining sms was sent to the MSISDN on the same day subscription was joined. Customer has been receiving WASPA reminders each month -last reminder was sent on 16th August 2008. The subscription has now been cancelled on 11 September 2008. A confirmation sms has been sent.”

On escalation the SP responded as follow:

“The complaint received feedback from Buongiorno but was unhappy as she requests a reimbursement regarding the subscription on the MSISDN #####

The complaint has mentioned that she has been paying “hundreds of Rands over the past few months” for a service she did not request.

With regards to the above mentioned complaint, I have pulled the following logs off of our system.

1. The MSISDN ##### subscribed to the Blinko Club on the 16 January 2008 at 20:24:33. sms with the keyword ‘free’ was sent to the short code ‘31199’. Please peruse itemized billing for the period January / February 2008 for confirmation.
2. During the course of the subscription monthly comfort | reminder messages have been sent to the customer to verify the subscription and how to unsubscribe (please see below in red)

We at iTouch| Buongiorno feel that we are not in breach of the code of conduct as we have notified the customer monthly regarding the subscription to the Blinko club, as laid out in the Code of Conduct:

11.1.8 A monthly reminder SMS must be sent to all 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.

As can be seen below all monthly reminder messages are in line with clause 11.1.8 of the code.”

The SP then provided WASPA with a log of all the monthly reminder messages and reiterated the fact that it does not justify a refund. It also provided a log displaying its billing of the Complainant.

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.

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

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 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.

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 has reviewed the complaint and has also perused the SP’s response.

One of the first irregularities or inconsistencies that revealed it in the SP’s response was the shortcode it claimed the Complainant utilized. In the SP’s first response it indicated that the Complainant sent the text “FREE” to 30123 but in its later response, it indicated that this text was sent to 31199. Whether this is a mere oversight on behalf of the SP or not, is open for argument but does raise the concern that the SP is not thorough in its approach when conducting its response.

The SP further responded by claiming that it indeed complied with the relevant sections of the Code concerning subscriptions, specific those contained in section 11.1.8. However, in the logs provided by the SP it failed to show any

proof of subscription reminders being sent to the Complainant for the months of March, April and May of 2008. This is a clear breach of section 11.1.8 of the Code which states that the SP must send its customers a monthly reminder 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.

It also failed to follow the format as indicated in section 11.1.9 in most of the reminders it did sent.

The use of the word “free” leading up to a subscription is in the opinion of the Adjudicator deceptive and misleading. Although this sort of use of the word “free” is explicitly prohibited in version 6.1 of the Code of Conduct, it is not the case with version 5.7. However, the Adjudicator still feels that the deceptive use of the word is a breach of section 4.1.2 of version 5.7 of the Code of Conduct.

Without having been given a print screen of the relevant webpage which the Complainant allegedly accessed, it is not possible for the Adjudicator to clarify whether there was a breach of section 11.1.1 concerning promotional material.

It is unclear whether the Complainant in this matter downloaded the content on the assumption that the content was free, or whether she actually realized that the content was going to be billed. However, in this matter the Complainant argued that she did not subscribe (whether willingly or unwillingly) to the services, which proves to be contradictory to the logs supplied.

The fact that the SP proved that the Complainant did indeed become a subscriber is according to the logs provided an established fact. Whether the SP however conducted itself in a manner that is 100% in accordance with the Code, is doubtful and the irregularities and inconsistencies made mention of on behalf of the SP in its response leaves the Adjudicator to the conclusion that the SP has fallen short of its obligations under the code.

The Complaint is partially upheld.

In determining sanctions against the SP the following factors are considered:

- The prior record of the SP with regard to breaches of the various sections;
and
- The actions taken by the SP to eradicate the complaint.

The SP is fined R 20 000, 00. This fine is payable to the WASPA Secretariat within five (5) days of notification hereof. The SP is also ordered to refund the

Complainant 50% for content downloaded within five (5) days of notification hereof.
