



## REPORT OF THE ADJUDICATOR

|                                   |                      |
|-----------------------------------|----------------------|
| <b>WASPA Member (SP):</b>         | Buongiorno UK        |
| <b>Information Provider (IP):</b> | Not applicable       |
| <b>Service Type:</b>              | Subscription service |
| <b>Complainant:</b>               | Public (anonymous)   |
| <b>Complaint Number:</b>          | 5014                 |
| <b>Code Version:</b>              | 6.2                  |
| <b>Advertising Rules Version:</b> | 2.3                  |

### Complaint

WASPA received the following complaint from a member of the public who wishes to remain anonymous:

*Complaint #5014 (lodged via the WASPA website):*

*Affiliation\_Information: Complainant wish to remain anonymous  
Name\_WASP: BMobileTeljoyBuongiornoUK*

*OtherID: Lodin 30123*

*Code\_Breached: 6.5. Use of the word "free"*

*6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network*

*11.2.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.*

*11.2.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.*

*11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times.*

*Detailed\_Description\_Complaint: Loadin are advertising heavily on TV. Loadin are using the word FREE as a keyword for their R30 per month subscription service. They claim the first month is free, but then they start charging. This is therefore in contravention to clause 6.5 as the service clearly then has associated charges, and significant ones. Additionally i'm a Loadin Subscriber. I tried to stop - I sent \"STOP\" to 30123 and got the following reply:*

*\"LOADIN: Your sms is invalid, but we would like to help. Please call our call center on 0214178001 [Std Telkom rates]\"*

*This is in contravention to 11.2.2., 11.2.3., 11.2.4.. They might argue that a user has to sms \"STOP xyz\". Why don't they then include that in their response to a \"STOP\" which is sent with ONLY ONE intention .... to STOP. 30123 only has one service - LOADIN to my knowledge, so why not stop it? This is obstructive and costly for the customer as the call to a Cape Town number is sure to cost a lot more than one rand. Tick\_as\_appropriate: I have not contacted the service provider and believe this matter requires WASPA's attention*

*Declaration\_Good\_Faith: Information provided is true and correct and provided in good faith*

There are two complaints against the service provider:

1. The service provider advertises that its service is “free” and yet only the first week’s subscription is at no cost to the user. The user is charged for usage after the first week.
2. The complainant attempted to terminate his/her subscription by sending the word “STOP” to the short code 30123. This did not terminate the subscription and the complainant received a message inviting him/her to contact a call centre based in Cape Town in order to terminate the subscription. The call to the call centre would be charged at Telkom’s applicable call prices.

### **Service provider’s response**

The service provider was furnished with a copy of the complaint on or about 17 October 2008 and responded on or about 29 October 2008 as follows:

*To Whom it may concern*

*I received the following complaint from WASPA:*

*Code\_Breached: 6.5. Use of the word “free”*

*6.5.1. The keyword “free” or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network 11.2.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.*

11.2.3. *Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.*

11.2.4. *Members must ensure that the termination mechanism is functional and accessible at all times.*

*Detailed\_Description\_Complaint: Loadin are advertising heavily on TV.*

*Loadin are using the word FREE as a keyword for their R30 per month subscription service. They claim the first month is free, but then they start charging. This is therefore in contravention to clause 6.5 as the service clearly then has associated charges, and significant ones.*

*Additonally i'm a Loadin Subscriber. I tried to stop - I sent \"STOP\"*

*to 30123 and got the follwoing reply:*

*\"LOADIN: Your sms is invalid, but we would like to help. Please call our call center on 0214178001 [Std Telkom rates]\"*

*This is in contravention to 11.2.2., 11.2.3., 11.2.4.. They might argue that a user has to sms \"STOP xyz\". Why don't they then include that in their response to a \"STOP\" which is sent with ONLY ONE intention .... to STOP. 30123 only has one service - LOADIN to my knowledge, so why not stop it? This is obstructive and costly for the customer as the call to a Cape Town number is sure to cost a lot more than one rand.*

*Tick\_as\_appropriate: I have not contacted the service provider and believe this matter requires WASPA's attention*

*Declaration\_Good\_Faith: Information provided is true and correct and provided in good faith*

*below is a screen shot of a current TV commercial.*

*The following can be seen:*

1. *The use of the keyword FREE. The word free is used as we are offering the 1st week of the service for nothing, it does not cost the user to subscribe, as the Shortcode is zero rated. This means that the user can sms the keyword in and it will not cost anything. We are also using the work FREE as the customer has access to the ENTIRE loadin service for no cost. They are able to download any item of content and will not be charged.*

2. *The pricing of the service: in the top right hand corner of the screen the price is displayed on a solid black background. It clearly indicates that the first week of the service is free and then the user will be charged R30 l month*

3. *The terms and conditions at the bottom of the advert show that to unsubscribe the user needs to sms in the words STOP LOADIN to 30123. This is because there is not just loadin but also Loadin Games that is offered on the 30123 short code. The user may choose to unsubscribe from Loadin*

*but remain part of the Loadin Games club, therefore we have not only had STOP as an unsubscribe. We are currently in the process of developing a system whereby if the user sms the word STOP to a Shortcode then he / she will be unsubscribed from all services pertaining to that particular Shortcode. (this means if the user is part of Loadin and Loadin Games and sms the word STOP to 30123, He / She will be unsubscribed from both)*

*We as a member of WASPA have not meant to mislead the public in any way.*

*The unsubscribe error messages that the customer received was to indicate that we could not determine which club he / she wished to unsubscribe from. We offered the call center number for further assistance which, as per the messages states that the call will be charged at std Telkom rates.*

*"LOADIN: Your sms is invalid, but we would like to help. Please call our call center on 0214178001 [Std Telkom rates]"*

*Below is a screen shot of how the TVC's moving forward will be designed and created. This is a template supplied by WASPA and we intend to move all TVC's to this format as of 1 November for new commercials and 1 January for old commercials (as stipulated by WASPA)*

*This is too show the customer that we are not intending to mislead them or "cheat" them out of any service.*

*I have not been given a MSISDN to run a check on. Therefore I cannot pull communication that was sent to the user.*

*I trust the below is in order.*

*Regards*

*Rosalinda*

The service provider supplied the screenshots which are annexed to this report below.

## **Sections of the Code and Advertising Rules considered**

### Complaint 1

Complaint 1 concerns the use of the word "free" in its marketing campaign. Clause 6.5 of WASPA's Code of Conduct provides as follows:

#### **6.5. Use of the word "free"**

*6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.*

Rule 1.4.11 deals with so-called free services and provides as follows:

#### **1.4.11 Free Services**

*The keyword “free” or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.*

Both sub-rules clearly prohibit the use of the word “free” except where a service has “no associated charges **whatsoever**” (emphasis added). In this particular instance the word “free” was used in the following sentence:

*“One week free then R30/month”*

This sentence appears to have been stated in a location prescribed by the advertising rules. Technically the use of the word “free” is in violation of both sub-rules 6.5 of the Code of Conduct and 1.4.11 of the Advertising Rules in that the service offered in the advertisement did have charges associated with it after the initial week in which there is no charge for use of the service.

The rationale of the rule expressed in these two sub-rules appears to be to guard against any confusion about whether services are paid services or not and the misleading use of the word “free”. In this particular case there is a relatively low likelihood of confusion as to when the service will become a paid service and what the subscription fee would be.

In addition, the colour scheme the service provider used for the text boxes in its advertisement are not compliant with the specifications set out in the Advertising Rules. The Advertising Rules require that the text boxes have a white background and black text. These requirements were clearly not complied with in the advertisement concerned.

There is a further aspect of the service provider's advertisement which is problematic although this was not part of the initial complaint. The Advertising Rules require that certain information be included in every advertisement of this kind. In particular, the Advertising Rules require members to include the following information in such advertisements:

#### **“1.2.4 MANDATORY T&C DISPLAY TEXT**

*This mandatory T&C display text is the minimum information that must be displayed with the T&C box using the required formatting. The amount of information required has been kept to a necessary minimum so as to keep the T&C box uncluttered.*

*Any other information placed in the T&C box is optional, unless it is an additional, critical component of any offering to a consumer. This additional information has its own formatting criteria. See Figures 1 & 2.*

**For an example, see <http://www.youtube.com/watch?v=NrCINj1ifAU> as well as Figure 1 or 2**

*A: Number Of Text Messages To Be Received Or Sent Per Time Period*

**Mandatory text:** eg “3 SMS/week”

*Note: For clarity, numeric values only must be used to indicate the number of SMS messages*

*B: Indicate If WAP/GPRS Are Required:*

**Mandatory text:** "Network charges extra".

*C: Indicate If Incomplete Transactions Are Still Billable*

**Mandatory text:** "Errors billed"

*D: If A Subscription, Indicate The Access Channel Number To Stop A Subscription*

**Mandatory text:** "SMS stop 31234"

*E: Indicate Advertiser Company Name:*

**Mandatory text:** "XYZ Company"

*F: Advertiser Help Phone Number Details*

**Mandatory text:** "Help 0xx-123-4567" or

"Help 08x-222-1345 (VAS)"

- Only phone numbers issued in terms of the ICASA numbering plan may be used No voicemail boxes may be used for customer care
- Customer support may not be provided via premium rated numbers, and may only be provided via standard-rate or VAS-rate numbers"

The service provider failed to include the following information in the advertisement:

1. Number of text messages to be received or sent in the relevant time period;
2. Whether any network charges are applicable;
3. A clear statement whether errors are billable<sup>1</sup>;
4. A clear statement of the access number to terminate a subscription;
5. The service provider's name; and
6. Help phone number/s.

## Complaint 2

This complaint concerns the complainant's inability to terminate his/her subscription by sending the word "STOP" to the short code 30123 which did not terminate the subscription and the complainant instead received a message inviting him/her to contact a call centre based in Cape Town in order to terminate the subscription. The call to the call centre would be charged at Telkom's applicable call prices.

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<sup>1</sup> the term "E & OE" does not meet the requirement in the Advertising Rules

This option defeats the purpose of the "STOP" (or similar) option. Rule 11.2 provides as follows:

***"11.2. Termination of a service***

*11.2.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.*

*11.2.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be "STOP".*

*11.2.3. The "STOP" request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).*

*11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times."*

As I mentioned in my consideration of the first complaint above, there is no indication in the advertisement which access number or keywords will terminate the service. It is reasonable that a user of such services and/or a user who is familiar with WASPA's code of conduct may assume that sending the word "STOP" will terminate the service. This was clearly not the case here.

The service provider advised WASPA that:

1. the terms and conditions on the advertisement indicate that a user should sms the words "STOP LOADIN" to the short code 30123;
2. due to the number of services offered, sending the word "STOP" will not terminate a specific service or all services a user may have subscribed to and that the service provider is in the process of *"developing a system whereby if the user sms the word STOP to a Shortcode then he / she will be unsubscribed form all services pertaining to that particular Shortcode"*; and
3. the error message the complainant received when sending "STOP" to the relevant short code was intended to advise the complainant that the service provider was unable to determine which service the complainant wished to unsubscribe from and to afford the complainant an opportunity to contact a call centre instead.

In the first instance it is not apparent from the terms and conditions in the screenshot the service provider supplied what a subscriber should sms to which number. This is a breach of the Code of Conduct and Advertising Rules as I have mentioned above.

The service provider's failure to provide subscribers with a functioning short code system, regardless of the complexity of the subscription service, is a breach of 11.2 quoted above. It is not sufficient to return an error message and provide the subscriber with a call centre number. A purpose of the short code system outlined in the Code of Conduct is to provide users with a simple and effective option to terminate mobile services. Introducing a call centre defeats this purpose and introduces an additional cost both in terms of time and expense which the subscriber must bear.

It is also a concern that a subscriber is expected to follow this more complex procedure to terminate a service which begins with an initial week with no charge followed by a charge of R30 per month thereafter. The additional steps a subscriber must take to terminate a subscription could well take a subscriber beyond the initial week and result in a charge to the subscriber for a service the subscriber no longer desires.

## **Decision**

### Complaint 1

I find that the service provider has breached the Code of Conduct and the Advertising Rules, in particular sub-rules 6.5 of the Code of Conduct and 1.2 and 1.4.11 of the Advertising Rules. I note that the service provider has previously been cautioned to amend its advertising in order to comply with the Code of Conduct and Advertising Rules. The service provider has failed to ensure that its advertising is compliant and I accordingly find that the service provider has breached the Code of Conduct and the Advertising Rules on the basis set out above and impose a fine of R15 000 which is payable to the Secretariat within 5 days of notification of these findings.

### Complaint 2

I find that the service provider has breached the Code of Conduct, in particular rule 11.2. I therefore fine the service provider R15 000 which is payable to the Secretariat within 5 days of notification of these findings.

### Complaints 1 and 2

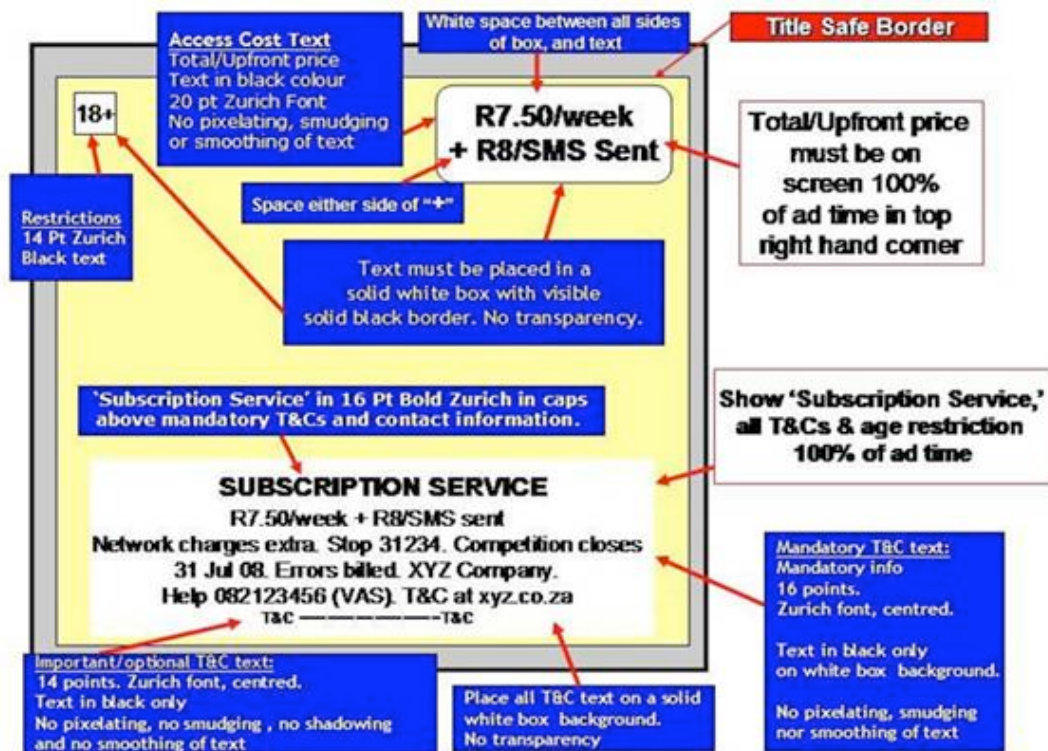
I further instruct the service provider to review its current and planned advertising and ensure that its advertising is compliant with both the Code of Conduct and the Advertising Rules in all material respects.

Findings date: 31 December 2008

## Annexures



Screenshot 1



Screenshot 2