



REPORT OF THE ADJUDICATOR

WASPA Member	AMV Holdings Ltd
Service Type	Content advertising
Source of Complaints	Public
Complaint Number	5870
Date lodged	24 February 2009
Code of Conduct version	6.2

Complaint

This is a relatively complex matter involving a subscription service offered by the WASPA member and is a reminder that offers you may come across online are very rarely "free" in the sense of there being no strings attached.

The initial complaint lodged reads as follows:

"Regrettably your code does not provide for the prevention of blatant scamming of the public.

However these fraudsters advertise software application free trials which don't download successfully but somehow you become subscribed.

Misuse of "free"?

Many months ago I requested free software from a website offering game software on a free trial basis. I was required to be a member of game zone and provide my cell number for download to be sent for free trial. Some content was sent but did not work so I disregarded the incident.

Thereafter i regularly received MMS messages from bling mobile but always deleted these as they were from an unknown source.

On January 12, 2009 I pointed out to a relative that I had again received a reminder :You are a member of GameZone. Thanks for using our service. Provider: Bluestream Mobile011 461 0317. Subscription billed at R50 per 5 days 16+

After finding Bluestream UK on the web I went to a known scams website and found that Bluestream had received several fines in excess of 20 000 pounds sterling from the UK watchdog payphoneplus. Horrified I called the above phone number which keeps you perpetually on hold and could well be a telkom premium line where Bluestream get paid while you are connected. I was horrified. I am 60 years old for gods sake. I eventually found out on the web that I should send a \"Stop All\" which I sent that same day. I then

received an SMS saying I was unsubscribed but still had 2 credits which I ignored. No more SMS/MMS for awhile. But guess what? It started again 17/02/2008 I again received a reminder that I am subscribed to GameZone which now includes an instruction on how to stop.

I refuse to send a stop instruction as that implies that i was a subscriber to their little scam.

These fraudsters seem to originate from the UK where they have notched very heavy fines and are now allowed to perpetrate the scam in South Africa.

CLOSE THEM DOWN. Your WASPA Code is in adequate or the slap on the wrist R5000 fine is minute compared to what they can steal. Your phone operator has agreed to call them but I insist that you investigate as well. I am prepared to make a criminal case."

Subsequent to submission of the complaint there was some confusion over the correct MSISDN used by the Complainant, with the WASPA member indicating that it had no record of any interaction with the MSISDN specified in the complaint. The Complainant indicated that there were two numbers which were relevant and which were linked together in such a manner that a call to either number would go through to the phone that was on at the time the call was made.

The Complainant also queried the lack of records in respect of the first number specified, stating that an unsolicited SMS - <http://wap.mob365.net/m435457729622641124.wm> was received from the WASPA member on that number on 26 February 2009.

Given the nature of the complaint there was little prospect of it being resolved through the informal complaints resolution procedure. The Complainant indicated that he was not interested in a refund and wished the matter to go to an independent adjudicator for formal adjudication.

Response

In its response the WASPA member indicated that the Complainant had accessed their mobile content site on 6 December 2008 through an advertisement place on an affiliate's website.

"While browsing the Internet on their **SAMSUNG-SGH-i780** cellphone the user responded to an advert for our Gamezone WAP site.

The site states that:

*CLICK TO SUBSCRIBE FOR
R50/5DAY*

Please confirm you are aged 16+.

Provider: BS Mobile.

YES

By clicking Yes you confirm subscription service entry. R50/5days.

Sms =STOP to 31434 to end service.

The user did not opt to subscribe, by clicking the 'yes' button, however selected to download the following free item from the site:

2008-12-06 =9:29:51	SA LANDING GAMEZONE =R50] [1953]	Vegas Blackjack = FV [85926]
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On the 8th December the user returned to the same Gamezone site.

At 06:52:37 the user clicked the 'Yes' button to accept the terms and join the subscription. The user was then diverted through to the Gamezone site and sent the following welcome message:

Thanks 4 using GameZone!Content link on its way!Click on it 2 get ur content!Help:011-461-0317.Subscription R50/5day.sms STOP to 31434 to unsubscribe.16+

The user was also sent the following monthly reminders:

You're subscribed to GameZone billed at R50 per 5 days from Bluestream Mobile. To stop service, SMS STOP to 31434. Help? Call 011-461-0317.

We have now ensured the number has been removed from all future messages.

We are prepared to issue a full refund as a gesture of goodwill and will contact the user directly to arrange this."

This Response was forwarded to the Complainant, who indicated that he remain unsatisfied and took further issue with the reminder messages sent by the WASPA member.

1. Their reminders read:

'REMINDER: YOU ARE A MEMBER OF GAMEZONE. THANKS FOR USING OUR SERVICE.PROVIDER: BLUESTREAM MOBILE. 011-461-0317. SUBSCRIPTION BILLED AT R50 PER 5 DAYS 16+

Notice the convenient mistakes

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- You are a member of (Not you are subscribed to)
 - The inclusion of Thank You for using our service (eluding to Fait accompli)
 - The exclusion of To stop service, SMS STOP to 31434. I had to search the Internet for several hours to find out how to stop
 - The exclusion of both Help? and Call.

2. How does: "content!Help:011-=61-0317.Subscription R50/5day.sms STOP to 31434 to unsubscribe.16+/" translate into please send me regular SMS's reading as below and requiring that I press "go" to be linked to <http://wap.mob365.net/.....wml>">

FREE DIRTY VIDS!<=span>

Bling up yr Mob!

Pleasure=Vids Xx

2x Free 18+Vids!

Free 18+=et Vids?

I have all the sms' as evidence.

My 8 year old grandson often tells me I have a message and reads it to me. Thankfully I did not allow him to press go."

The Complainant also indicated that, as at 6th March 2009, the WASPA member had not contacted him.

The WASPA member thereafter filed the following additional comments in response to the above:

Please find our additional comments below.

The user subscribed to the service in December 2008, at this time our monthly reminder read as follows:

Reminder: You are a member of GameZone. Thanks for using our service. Provider: Bluestream Mobile. 011-461-0317. Subscription billed at R50 per 5 days 16+

We have recently updated our monthly reminder text to the new compliant text.

All monthly club reminders now read as follows:

You are subscribed to (club name) billed at R(cost) per =)days from Bluestream Mobile. To stop service, SMS STOP to (shortcode) . Help? Call 011-461-0317.

We note the specific allegations made by [the Complainant] and would roundly refute them.

[The Complainant] accuses us of being "liars" and "scam artists."

We have at no point lied to either [the Complainant] or WASPA about our services.

Our service operates in compliance with the Code of Conduct, and it therefore not a scam.

[The Complainant] is clearly angry at having to pay his bill for the service requested.

Despite our complete disagreement with [the Complainant's] arguments we are prepared to issue a gesture of goodwill refund

With regard to his comments in having not been contacted please find a copy of my email below initially sent on 5th March. I have now resent this to him and cc'd complaints@waspa.org.za for your reference:

From: [the Member]

Sent: 05 March 2009 19:03

To: [the complainant]

Subject: 27828502713

Dear Sir,

We were asked to contact you regarding charges to the above cellphone.

We are prepared to issue a full refund as a gesture of goodwill.

Please supply the following information so I may arrange for this to be dispatched:

Accountholder Name

Account Number

Bank Name

SWIFT Code (required for international =ransfers)

We have also ensured the number has been removed =rom all future messages.

I look forward to hearing from you in the near =uture.

Regards

Carina Ellis

Customer Care Manager

Bling Mobile Help Team."

Sections of the Code considered

The following sections of version 6.2 of the WASPA Code of Conduct were considered:

2.1. An “adult service” is any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.

2.11. A “content subscription service” includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a “club” or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location-based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.

2.23. A “subscription service” is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

4.1. Provision of information to customers

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.

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.

8.1.2. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting

them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.

8.1.3. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult content service.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (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.

11.1.11. The format of the both the initial notification message and the monthly reminder should comply with the relevant section of the WASPA Advertising Rules.

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.

The following sections of version 2.3 of the WASPA Advertising Rules were considered:

12 Subscription Service Reminder Messages

12.1 As is specified in the WASPA Code Of Conduct (www.waspa.org.za), a monthly reminder SMS must be sent to all subscription service customers. The reminder must contain the following information only:

- (a) The name of the subscription service.
- (b) The name of the service provider supplying the content or service to the subscriber
- (c) The inclusive cost of the subscription service and the frequency of the charges;
- (d) Explicit instructions on how the subscriber may stop their subscription to a service using an SMS MO.
- (e) The service provider's telephone number. If VAS rates are applicable, this must be indicated next to that telephone number.
- (f) The information in (a) - (e) above must be presented in the reminder message in the order of first (g), then (b), then (c), then (d), then last (e), inclusively.
- (g) No other characters other than those prescribed in this section may be inserted before the information contained in (a) and after (e).

12.2 The information specified in **s12.1** must, without exception, take the following design and have the following content, capitalisation, and spacing and must be provided exclusively in **ENGLISH** only:

You'r<space>subscribed<space>to<space><SERVICE NAME><space><inclusive cost of service & the frequency of billing><space>from<name of content provider><period>To<space>stop<space>service,sms<space>STOP<space><insert service name><space> to<space><insert number><space><open bracket><cost of MO><close bracket><period>Help?Call <space>0xy1234567<open bracket>VAS<close bracket>

- where <period> indicates the full stop character, "."
- where <open bracket> indicates the "(" character
- where <close bracket> indicates the ")" character
- where the word "VAS" is inserted only if required by the type of helpline number being utilised

Decision

1. The Adjudicator requested detailed logs showing the full interaction between the complainant and the WASPA member which logs were duly received.
2. During the time that the Complainant was subscribed to the service WAP content links were sent to his handset every five days. The following table shows the messages identified as important for the purposes of this Adjudication:

Date & Time	Message content
8-Dec-2008 Mon 06:52	Thanks 4 using GameZone!Content link on its way!Click on it 2 get ur content!Help:011-461-0317.Subscription R50/5day.sms STOP to 31434
12-Jan-2009 Mon 11:09	Reminder: You are a member of GameZone. Thanks for using our service. Provider: Bluestream Mobile. 011-461-0317. Subscription billed at R50 per 5 days 16+
12-Jan-2009 Mon 11:11	STOP ALL
12-Jan-2009 Mon 11:16	[NO MESSAGE]
12-Jan-2009 Mon 15:36	PLEASE REMOVE ME IMMEDIATELY & NOTE THAT ANY CHARGES INCURRED BY ME WILL BE RECOVERED WITH COSTS AND MEDIA EXPOSURE.
12-Jan-2009 Mon 15:36	U have been unsubscribed. U still have 2 unused credits! Reply ACTIVATE to this sms to use them NOW! BS Mob:011-461-0317. Subscription service R15/5day. 16+
17-Jan-2009 Sat 14:05	http://wap.mob365.net/m294268985422641124.wml
11-Feb-2009 Wed 13:10	You are subscribed to GameZone billed at R50 per 5 days from Bluestream Mobile. To stop service, SMS STOP to 31434. Help? Call 011-461-0317
3-Mar-2009 Tue 11:15	http://wap.mob365.net/m486318198622641124.wml

3. The complainant does not make any explicit statements regarding the manner in which he became subscribed to the service but the Adjudicator accepts that he was unaware of subscribing to the service and did not appreciate the implication of the regular messages he received. No finding can be made, however, with regard to this aspect of the matter.
4. The subscription confirmation message sent by the member on 8 December 2008 complies with section 11.1.7 of the Code.
5. The reminder message sent on 12 January 2009 is not compliant with chapter 12 of version 2.3 of the Advertising Rules read with section 11.1.11 of the Code of Conduct. Version 6.2 of the Code came into force on 14 August 2008 and its requirements are explicit. The message sent was non-compliant as regards the required format and the

inclusion of unsubscribe instructions. The member is found to have breached section 11.1.11 read with Chapter 12 of the Advertising Rules.

6. The Adjudicator notes with regard to the breach of section 11.1.11 read with Chapter 12 of the Advertising Rules that the non-compliant message does include the term “subscription” and the cost and billing frequency of the service. Furthermore the later reminder message sent on 11 February 2009 is compliant.
7. On 12 January 2009 the Complainant unsubscribed from the service and this was confirmed by the WASPA member. The member does not, however, explain in either its initial or its additional response why the Complainant continued to be subscribed to the service and no evidence of any re-subscription has been offered to explain the reminder message sent on 11 February 2009.
8. In the absence of such explanation the adjudicator can only conclude that the member has breached section 11.2.4 of the Code in that the STOP termination mechanism was not functional at the time that the Complainant attempted to unsubscribe.
9. The Adjudicator dismisses the complaint in respect of section 6.5 of the Code relating to the use of the word “free”. This term was applied to an item available for no associated cost other than that those who downloaded this item were consenting to receive promotional material from the WASPA member.
10. This downloading of a free item was, in the understanding of the Adjudicator, the source of the adult content wap links which the Complainant refers to. The member has not made any specific response to this allegation and the version of the Complainant is accepted. The member is found to have breached sections 3.1.2 (such conduct prima facie contravenes the Film and Publications Act as amended), 8.1.2 and 8.1.3 of the Code of Conduct.
11. This member was fined R100 000 in respect of similar conduct under [Adjudication 5235](#), which complaint was lodged on 19 November 2008 and published on 21 June 2009, i.e. subsequent to the current Complaint being lodged. This fine has been paid in full and the Adjudicator is satisfied that any remedy flowing from the instant breach of sections 3.1.2, 8.1.2 and 8.1.3 of the Code can be subsumed within that matter.
12. The Adjudicator does not believe that sufficient grounds appear from the correspondence to warrant a finding that the member has breached either section 3.1 or section 4.1 of the Code.
13. In summary, the member is found to have breached:

- 13.1. Section 11.1.11 of the Code read with Chapter 12 of the Advertising Rules;
- 13.2. Section 11.2.4 of the Code; and
- 13.3. Sections 3.1.2, 8.1.2 and 8.1.3 of the Code.

Sanction

- 14. In respect of the breach set out in paragraph 13.1 above the factors listed in paragraph 6 above are to be regarded as mitigating circumstances. In aggravation the Adjudicator has considered the fact that the member was not forthright about this breach in its initial response, representing that the later, compliant subscription reminder was the only one sent.
- 15. The Adjudicator has consulted relevant precedent regarding breaches of this nature and imposes a fine of R15 000 in respect of this breach, such amount to be paid to the WASPA Secretariat within five (5) days of receipt of the relevant invoice.
- 16. In respect of the breach set out in paragraph 13.2 above the Adjudicator, after consulting relevant precedent and taking into account the lack of any explanation from the member, imposes a fine of R25 000 in respect of this breach, such amount to be paid to the WASPA Secretariat within five (5) days of receipt of the relevant invoice
- 17. As noted above the sanction in respect of the breaches listed in paragraph 13.3 are to be subsumed with those imposed in respect of Adjudication 5235.
- 18. The member is ordered further to ensure that the refund which it has offered is implemented and proof thereof furnished to the WASPA Secretariat.