



ADJUDICATOR'S REPORT

WASPA Member (SP):	Blinck Mobile
Information Provider (IP):	
Service Type:	Subscription Service
Source of Complaints:	WASPA Monitor
Complaint Number:	6727
Code of Conduct version:	7.0

Complaint

Complaint #6727 was lodged by the Media Monitor on 5 June 2009. The Monitor's complaint report is set out in full below:

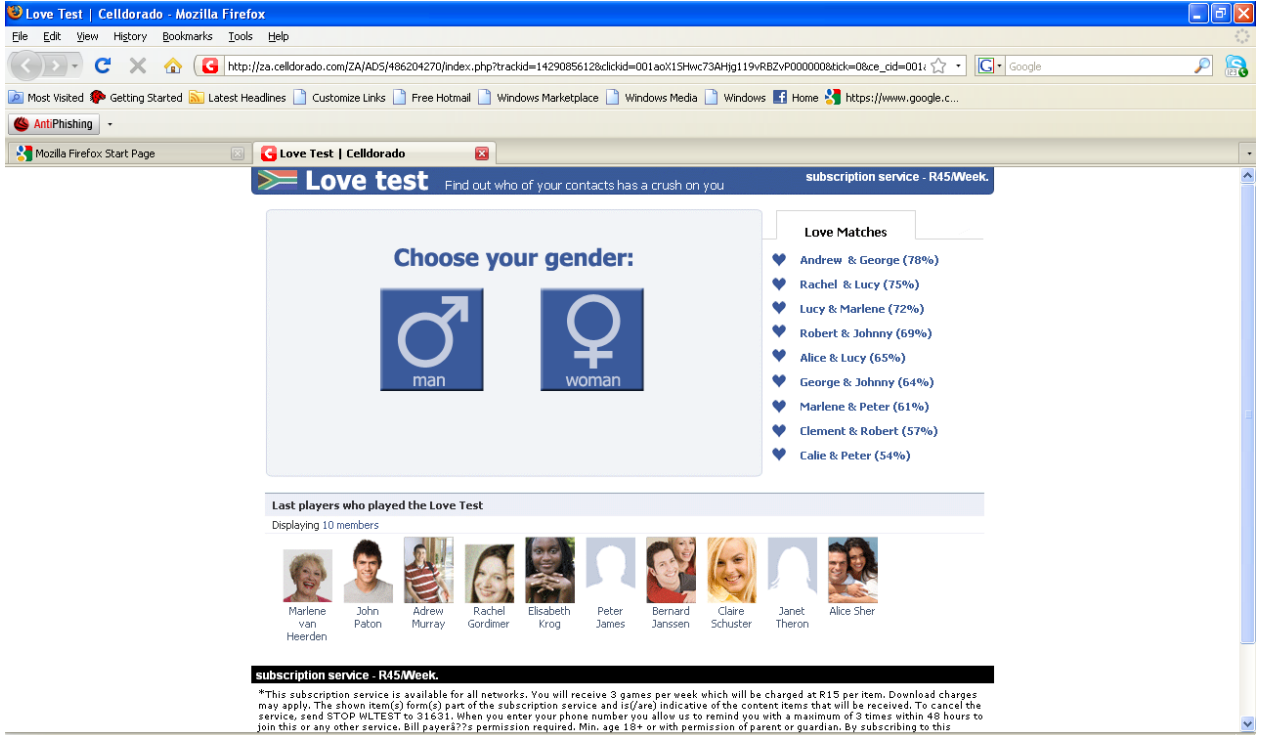
DATE: 5 JUNE 2009
PHONE NUMBER: 0769596058
STARTING BALANCE: R152.77
SERVICE PROVIDER: Blinck
SHORT CODE: 31631

Background:

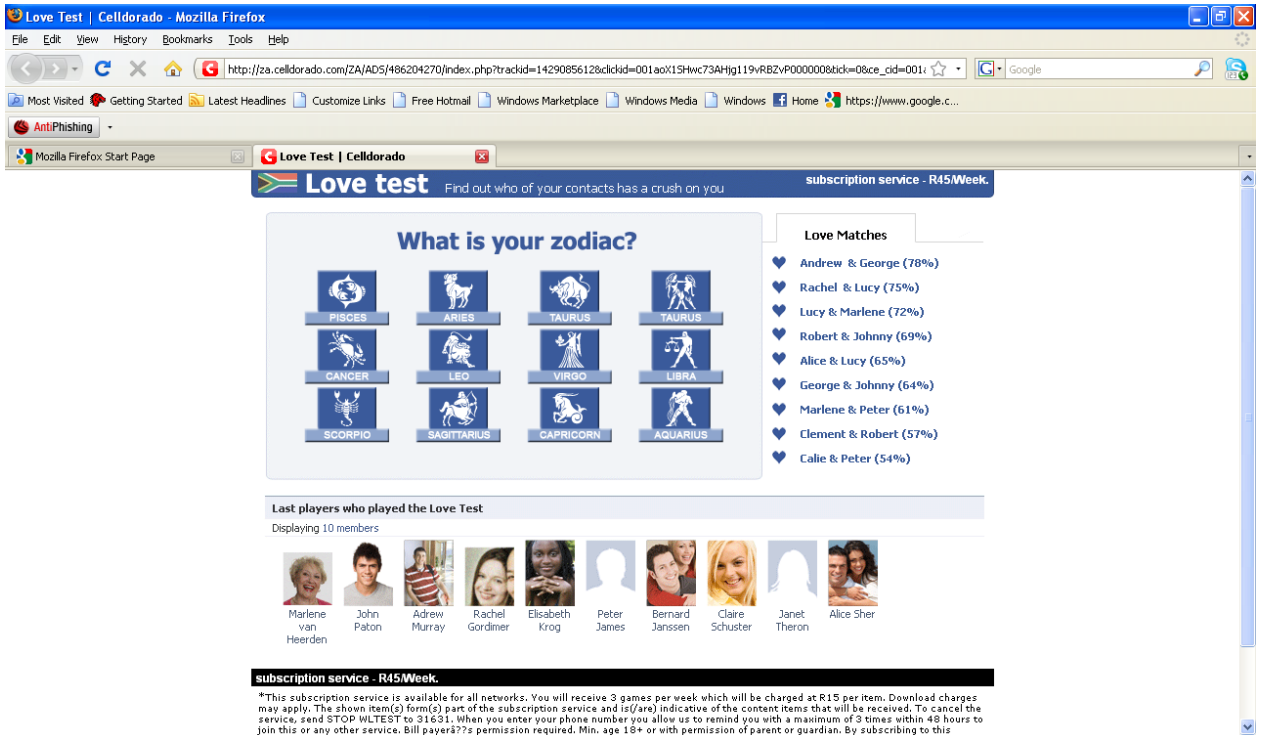
The purpose of this test is to check the functionality of this product, and also to check whether their web marketing falls within the advertising guidelines.

Blinck recently removed all their television advertising due to numerous breaches. It is clear that this provider needs to do an "all over" check of all their services and marketing.

WEBSITE: http://za.celldorado.com/ZA/ADS/486204270/index.php?trackid=1429085612&clickid=001aoX1SHwc73AHjg119vRBZvP000000&tick=0&ce_c id=001aoX1SHwc73AHjg119vRBZvP000000



I entered my gender and all the other information it prompted me in order to get my love test results.



Then entered my starsign

Love Test | Celldorado - Mozilla Firefox

http://za.celldorado.com/ZA/ADS/486204270/index.php?trackid=1429085612&clickid=001aoX15Hwc73AHjg119vRBZvP000008&tick=0&ce_cid=001

Love test Find out who of your contacts has a crush on you subscription service - R45/Week.

What is your name?

next

Love Matches

- ♥ Andrew & George (78%)
- ♥ Rachel & Lucy (75%)
- ♥ Lucy & Marlene (72%)
- ♥ Robert & Johnny (69%)
- ♥ Alice & Lucy (65%)
- ♥ George & Johnny (64%)
- ♥ Marlene & Peter (61%)
- ♥ Clement & Robert (57%)
- ♥ Calie & Peter (54%)

Last players who played the Love Test

Displaying 10 members

Marlene van Heerden John Paton Adrew Murray Rachel Gordimer Elisabeth Krog Peter James Bernard Janssen Claire Schuster Janet Theron Alice Sher

subscription service - R45/Week.

*This subscription service is available for all networks. You will receive 3 games per week which will be charged at R15 per item. Download charges may apply. The shown item(s) form(s) part of the subscription service and is/are indicative of the content items that will be received. To cancel the service, send STOP WLTEST to 31631. When you enter your phone number you allow us to remind you with a maximum of 3 times within 48 hours to join this or any other service. Bill payer's permission required. Min. age 18+ or with permission of parent or guardian. By subscribing to this

Then the name of my love

Love Test | Celldorado - Mozilla Firefox

http://za.celldorado.com/ZA/ADS/486204270/index.php?trackid=1429085612&clickid=001aoX15Hwc73AHjg119vRBZvP000008&tick=0&ce_cid=001

Love test Find out who of your contacts has a crush on you subscription service - R45/Week.

Fill in your number and receive your personal love test

next

Love Matches

- ♥ Andrew & George (78%)
- ♥ Rachel & Lucy (75%)
- ♥ Lucy & Marlene (72%)
- ♥ Robert & Johnny (69%)
- ♥ Alice & Lucy (65%)
- ♥ George & Johnny (64%)
- ♥ Marlene & Peter (61%)
- ♥ Clement & Robert (57%)
- ♥ Calie & Peter (54%)

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Then my cell number



Waiting for www.google-analytics.com...

And then I received a sms with a pin code:

You will receive your personal pincode on your mobile in a moment. Fill the pincode and press "Confirm". Can't wait? Just text OK to 31631 now!

Fill in this code 37375. Or reply OK.U will be subscribed TO WL TEST from Blinck@R15/sms, 3sms/wk.Help?Call 0800980963. To unsubscribe:txt WL TEST STOP.

No money had been deducted yet.

Then I received a welcome message:

Welcome to WL TEST! This service is charged R15/sms,3sms/week. To unsubscribe sms WL TEST STOP to 31631. For Help call:0800980963.Info? Celldorado.com

Then I received a service message with a link that I clicked on.

The link said:

Love Match is not compatible with your mobile phone, please choose an alternative below

-DonTMiss Rome

-Free Chat

-Lovetimer

Have fun with your download!For info call 0800980963

So I just clicked on the first option **DonTMiss Rome** as I had no clue what this was.

It downloaded to my games and I opened it...

It seemed to be an information booklet on all the different touristy sights in Rome which you could click the pics and it gave you detailed subscriptions.

I then exited and checked my balance:

And it was R142.55 which means R10.22 had been deducted.

I then decided to opt out of the service and used the instructions as given in the welcome message: **"To unsubscribe sms WL TEST STOP to 31631"** I did exactly this and typed word for word "WL TEST STOP" to 31631. **I tried this four times** and every time it cost my 50 cents. All four times I received the same sms saying:

Your text is not recognized. Join LOW? Text LOW to 31631. (R10/sms;max 3sms/wk).Info? www.text1.tv or 0800 980963. REPLY LOW NOW!

I then realized the only way I would be able to unsubscribe is if I called the help line number given in the sms. Which is unacceptable.

I called the helpline and followed the voice prompts and entered my cell number which I wished the services to be cancelled off of. The voice recording told me that my request to unsubscribe from all blink services will be processed within 24 hours. The call duration was 1 min and 50 sec and cost me R4.64.

Conclusion:

The advertisement clearly states **“Find out who of your contacts has a crush on you”** and prompts you by choosing your gender. The customer is drawn to find out the **“crush”** and his/her aim is to do the Love Test. Although the screenshot does show in the top right **“Subscription service R45/Week”** it is not clear and explicitly displayed. The only way you can complete the Love Test is by joining a subscription service. The T&Cs: the size of the wording is very small and this is a breach of the advertising rules.

After entering the required information it prompts you to **“Fill in your number and you receive your personal Love Test”** of course the customer would do so in order to get the result he/she is looking for. The line **“Get this and many more games”** is misleading as it seems like an advertisement for a service rather than saying something along the lines of “by entering your number you will be subscribed to the following service and will be able to receive this and many more games”.

When entering your number you are prompted to enter the pin you receive by sms, **“You will receive your personal pincode on your mobile in a moment. Fill the pincode and press “Confirm”. Can’t wait? Just text OK to 31631 now!”** once again it does not tell you by doing this you will be subscribing to a service. Although the pin sms does say you will be subscribed to a service, the pricing information is unclear. The welcome message makes use of abbreviations once again, even though the service provider is aware it is not allowed. (abbreviations complaint lodged and instructed via complaint 6478)

On receiving my link for the love test and clicking on it I was told **“Love Match is not compatible with your mobile phone, please choose an alternative below”**.

Nowhere did it state that your phone needs to be compatible in order to receive the Love Test results that the consumer is so interested in getting. It should have given a compatible handset listing upfront, or at least in the T&C’s. Instead I was given a list of new content to choose from. I had no idea what they actually were, so I just decided to click on something as I had been subscribed to a service anyway (which wasn’t my intent) and then been told that I couldn’t receive the results of the test I did.

Breaches of the Code:

3.3.1. Members will not offer or promise services that they are unable to provide.

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.

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with

downloading, browsing or receiving that content.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.3.1. For services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service. (The code reads “for services such as ...”. I trust that quizzes can be included in this breac).

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.

11.1.5. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.8. 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.

11.1.10. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing]. Help? Call [call centre number + “(VAS)” if applicable]. To unsubscribe, [unsubscribe instructions].

Breches of the Advertising Rules:

9.2.1.1. Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater.

9.2.2.1. The T&C text must be in 12 point font size, or 50% of the largest access number on a Web page, whichever is the greater.

9.3.1 ABBREVIATIONS MAY READ:

Indication	Correct Abbreviation	Wrong Abbreviation
Additional type & cost	+ 3 SMSs or + Rx.yy (include spaces)	+3 messages or +Rx.yy (no spacing shown)
At	At	@ (<i>unless in an email address</i>)
Cost	R1 : R1.50	R1.00 : R1.5
Day	Day	Dy
Message	SMS	Sms or msg or MSG or msgs or txt or txts
Minimum	Minimum	Min or Mnm
Minute	Minute	Min
Minutes	Minutes	Mnts
Month	Month	Mth
Months	Months	Mths
Pricing	R7.50/week	R7.5/wk or 7.5R / wk
Pricing per period	/	per
Rand Pricing	R7.50	R7.5 or 7.5R or ZAR7.5 etc
SMS Messages	SMS or SMSs	Sms or msg or MSG or msgs or txt or txts
SMS Received	Received	Rvcd or Rcd
SMS Sent	Sent	Snt
Subscription	Subscription	Subs, or Sub or Subscr
Week	Week	Wk or wk

As you can see by the above screenshot taken from the Advertising Rules there are a number of wrong abbreviations used in the Welcome and Pin code messages I received from the SP.

Response of SP

The SP submitted a written response together with a log of all messages sent between the Monitor and SP and the Monitor replied thereto by tracking her further comments into the SP's written response. The response of the SP is set out in full in black text below and the reply of the Monitor to various points raised by the SP is set out in blue text:

BLINCK'S SUBMISSION TO WASPA COMPLAINT # 6727

Blink Mobile Ltd ("Blink") wishes to respond to the complaint number 6727 of June 5th, 2009.

The following allegations are made by the WASPA Media Monitor in complaint number 6727:

- **Issue 1: unsubscribe doesn't work**
- **Issue 2: unsubscribe through helpline costs money**
- **Issue 3: the fact that the service is a subscription service is not clear and explicitly displayed**
- **Issue 4: the T&C's are a breach of the advertising rules**
- **Issue 5: The line 'Get this and many more games' is misleading**
- **Issue 6: the pricing information in the pin sms is unclear**
- **Issue 7: The welcome message makes use of abbreviations**
- **Issue 8: a list of compatible handsets should be given upfront**

Below we will respond to the allegations that are made in this complaint separately.

Issue 1: unsubscribe doesn't workBlinck's Response:

The fact that the unsubscribe request of the WASPA Media Monitor didn't work through SMS, is because he/she texted "WL STOP" with a space between WL and STOP instead of "WLSTOP" without a space between WL and STOP.

The message that was sent out by us states a.o.: "To unsubscribe:txt WLTEST STOP to 31631." Please see also the attached MO/MT Report which clearly shows this.

The stop request WLTEST STOP is also mentioned like this (without any space between WL and TEST) in the disclaimer on the Landing Pages of the service.

If the WASPA Media Monitor would have texted the correct stop request to 31631, his/her stop request would have worked immediately.

I find this very confusing: Was I meant to send WLSTOP or WLTEST STOP? If WLSTOP was the keyword I was meant to send, then this SP is in breach of 11.5.2 as well. The fact that one of my words was STOP, my request should have been honoured. Or at least, the SP could have sent a message informing me that I have typed my message incorrectly.

Issue 2: unsubscribe through helpline costs moneyBlinck's Response:

Our helpline number in South-Africa is a free number and we do not charge anything. We do not know why the WASPA Media Monitor was charged R4.64 but we suspect this amount was a standard charge from the operator for the use of his/her mobile phone.

The fact that R4.64 was deducted once again shows that it was not a free call.

Issue 3: the fact that the service is a subscription service is not clear and explicitly displayedBlinck's Response:

We strongly disagree on this point with the opinion of the WASPA Media Monitor.

Firstly, the fact that this service is a subscription service is clearly mentioned in the right hand corner of all the web pages of the campaign, including but not limited to the sign-up and the confirmation page.

Secondly, in the below left hand corner of all the campaign pages we also mention 'subscription service – R45/week'.

Thirdly, on the sign up page we clearly state "Get this and many more games" together with 2 examples of other games from the Service the customer will receive after the Love Test once he signs up.

Fourthly, in the Pin Message (sent to the WASPA Media Monitor on the 5th of June, 2009) it is clearly mentioned that by filling in the pin code or replying OK the customer will be joining a subscription service:

"Fill in this code 37375.Or reply OK.U will be subscribed to WLTEST from Blinck@R15/sms,3SMS/wk.Help?Call 0800980963.To unsubscribe:txt WLTEST STOP."

Last but not least, in the welcome message that was sent to the WASPA Media Monitor on the 5th of June, 2009 on 10:39:12, we clearly mention (again) that this service is a subscription service.

Considering the above, we make it very clear to a customer that he/she is joining a subscription service.

Although it does state in the above right and bottom left of the advertisement that it is a subscription service, The LOVE TEST is advertised in such a way that After entering the required information it prompts you to "Fill in your

number and you receive your personal Love Test” of course the customer would do so in order to get the result he/she is looking for
When entering your number you are prompted to enter the pin you receive by sms, “You will receive your personal pincode on your mobile in a moment. Fill the pincode and press “Confirm”. Can’t wait? Just text OK to 31631 now!”
once again it does not tell you by doing this you will be subscribing to a service. Although the pin sms does say you will be subscribed to a service, the pricing information is unclear in that and the welcome message and abbreviations are used once again that the service provider is aware are not allowed.

Issue 4: the T&C’s are a breach of the advertising rules

Blinck’s Response:

Article 9.2.2.1 of the WASPA Advertising Rules states that the T&C text must be in 12 point font size, or 50% of the largest access number on a Web page, whichever is the greater.

Unfortunately the WASPA Monitor is correct in claiming that we did not fully comply with this Article. We have therefore taken this campaign offline.

We would like to see proof of the new T&Cs text once it has been amended.

Issue 5: the line ‘Get this and many more games’ is misleading

Blinck’s Response:

Also on this issue we strongly disagree with the opinion of the WASPA Media Monitor. To our opinion, the line ‘Get this and many more games’ in combination with the image of two other examples of games subscribers to this Service will receive, is the opposite of being misleading. In fact, this clearly points out that this is a subscription service.

The customers’ sole intention is to get the results of the advertised LOVE TEST. After entering the required information it prompts you to “Fill in your number and you receive your personal Love Test” of course the customer would do so in order to get the result he/she is looking for. I disagree with the Service Provider and still feel the line “Get this and many more games” is misleading as it seems like a sub advertisement for a service advertised on the same page of the LOVE TEST. A normal customer would not think the two are linked at all as there is no similarity linking the fact that LOVE TEST results have anything to do with other games? The information that this game service is linked with the LOVE TEST would be a lot more clearer by saying something along the lines of “by entering your number you will be subscribed to the following service and will be able to receive this and many more games”.

Issue 6: the pricing information in the pin sms is unclear

Blinck’s Response:

The following Pin SMS was sent (twice) to the WASPA Media Monitor on the 5th of June, 2009.

“Fill in this code 37375.Or reply OK.U will be subscribed to WLTEST from Blinck@R15/sms,3SMS/wk.Help?Call 0800980963.To unsubscribe:txt WLTEST STOP.”

This message fully complies with article 11.1.10 of the WASPA Code of Conduct. We therefore do not understand why and how the WASPA Media Monitor can claim that the pricing information in this message is unclear.

There are many things wrong with this message and that is why the service provider is in breach of code 11.1.10 which states:

11.1.10. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that

message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing]. Help? Call [call centre number + "(VAS)" if applicable]. To unsubscribe, [unsubscribe instructions].

- The pricing information is unclear because of how it is written, instead of saying the pricing is R45 a week (which is clear and concise) it says R15/sms,3SMS/wk.

- Once again the Service Provider is also in breach of the advertising rules with the use of abbreviations in this message. It should read 'week' not 'wk'. Also the use of 'txt' is not allowed (as shown in the advertising rules section 9.3.1.) and should be replaced by the word 'SMS'.

- Although the message tells you what words to sms to opt out or stop the service, the vital number which you must send the sms to is missing so how is the customer suppose to know where to send WLTEST STOP to if the number is not there?

So therefore the pin sms should read as follows:

Fill in this code 37573. Or reply OK.U will be subscribed to WLTEST from Blinck@ R45 a week. Help? Call 0800980963. To unsubscribe: SMS WLTEST STOP to 31631

Here is once again a list of the correct/incorrect abbreviations as stated in the Advertising rules 9.1.3. It is extremely clear what the correct abbreviations are:
9.3.1 ABBREVIATIONS

Indication	Correct Abbreviation	Wrong Abbreviation
Additional type & cost	+ 3 SMSs or + Rx.yy (include spaces)	+3 messages or +Rx.yy (no spacing shown)
At	At	@ (<i>unless in an email address</i>)
Cost	R1 : R1.50	R1.00 : R1.5
Day	Day	Dy
Message	SMS	Sms or msg or MSG or msgs or txt or txts
Minimum	Minimum	Min or Mnm
Minute	Minute	Min
Minutes	Minutes	Mnts
Month	Month	Mth
Months	Months	Mths
Pricing	R7.50/week	R7.5/wk or 7.5R / wk
Pricing per period	/	per
Rand Pricing	R7.50	R7.5 or 7.5R or ZAR7.5 etc
SMS Messages	SMS or SMSs	Sms or msg or MSG or msgs or txt or txts
SMS Received	Received	Rvcd or Rcd
SMS Sent	Sent	Snt
Subscription	Subscription	Subs, or Sub or Subscr
Week	Week	Wk or wk

Issue 7: the welcome message makes use of abbreviations

Blinck's Response:

The welcome message we send out for this service is the following:

"Welcome to WLTEST!This service is charged R15/sms,3SMS/week.To unsubscribe sms WLTEST STOP to 31631.For Help call:0800980963.Info?Celldorado.com"

This message was sent to the WASPA Media Monitor on the 5th of June, 2009 on 10:39:12.

This message is fully compliant with Article 11.1.8 of the WASPA Code of Conduct and does not make use of abbreviations.

The problem with the welcome message had nothing to do with abbreviations. The problem with the abbreviations (As listed in the complaint) was in the Pin number message not the welcome message. The welcome message should state the cost of the service clearly.

e.g. it should read 'This service is charged at R45 a week' instead of 'This service is charged R15/sms,3SMS/week'.

Issue 8: a list of compatible handsets should be given upfront

Blinck's Response:

On our website and on each landing page of ours we put a link to compatible handsets. On the Landing Pages the link is put below the disclaimer. This was also the case with this campaign. Therefore, the WASPA Media Monitor's claim that we did not provide a compatible handset listing upfront is not correct.

It clearly states in the code that the advertisements must make it CLEAR that the customer needs to have a compatible handset.

All that the advertisement has is a link to compatible handsets which is situated under the T&C's in the disclaimer (As said above). So basically the only way that you are able to see that there is a link with compatible handsets

is by scrolling down profusely through the T&Cs and right to the end of the page. The code states:

6.3.1. For services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service.

I once again completely disagree with the Service Provider here, as the breach is in the fact that it is not made clear to the customer at all that he/she needs to have a compatible handset, and that the breach has nothing to do with saying 'the Service Provider does not provide a compatible handset listing'.

Closing Remarks

Blink is of the opinion that the allegations made by the WASPA Media Monitor in this complaint are unfounded, with the exception of issue 4 above.

I feel that there are a lot more issues above that are in breach, not only issue 4. One can see this by my responses. Also it is very clear that the Service Provider is in clear breach of the Advertising Rules with the abbreviations used.

Message Log

The message log submitted by the SP is set out below:

<u>Sent / Received</u>	<u>Line</u>	<u>AppName</u>	<u>Message</u>
2009-06-11 10:39:35	31631	@Default 31631	You are not subscribed to any of our services. You will not receive any messages. Info? 0800-980963. MP3 Ringtones? Join HIT (R20/sms,3sms/wk). T ext HIT to 31631
2009-06-11 10:39:30	31631		Ok
2009-06-11 10:38:18	31631	@Default 31631	You are not subscribed to any of our services. You will not receive any messages. Info? 0800-980963. MP3 Ringtones? Join HIT (R20/sms,3sms/wk). T ext HIT to 31631
2009-06-11 10:38:15	31631		Ok
2009-06-05 12:32:43	31631	ZA_31631_GAME_W1_WLTEST	U have been unsubscribed from WLTEST.If u want to subscribe again txt WLTEST to 31631.For PACMAN,reply PLAY to 31631 now! Join PLAY! (R20/sms,3sms/wk)
2009-06-05 12:13:35	31631	@Default 31631	Your text is not recognized. Join LOW? Text LOW to 31631. (R10/sms;

			max 3sms/wk). Info? www.text1.tv or 0800 980963. REPLY LOW NOW!
2009-06-05 12:13:32	31631		WL TEST STOP
2009-06-05 12:09:00	31631	@Default 31631	Your text is not recognized. Join LOW? Text LOW to 31631. (R10/sms; max 3sms/wk). Info? www.text1.tv or 0800 980963. REPLY LOW NOW!
2009-06-05 12:08:58	31631		WL TEST STOP
2009-06-05 12:07:30	31631	@Default 31631	Your text is not recognized. Join LOW? Text LOW to 31631. (R10/sms; max 3sms/wk). Info? www.text1.tv or 0800 980963. REPLY LOW NOW!
2009-06-05 12:07:27	31631		WL TEST STOP
2009-06-05 12:06:18	31631	@Default 31631	Your text is not recognized. Join LOW? Text LOW to 31631. (R10/sms; max 3sms/wk). Info? www.text1.tv or 0800 980963. REPLY LOW NOW!
2009-06-05 12:06:13	31631		WI test stop
2009-06-05 10:39:27	31631	ZA_31631_GAME_ W1_WLTEST	[WapPush Binary Message Part]
2009-06-05 10:39:12	31631	ZA_31631_GAME_ W1_WLTEST	Welcome to WLTEST!This service is charged R15/sms,3sms/week. To unsubscribe sms WLTEST STOP to 31631.For Help call:0800980963.Info ?Celldorado.com
2009-06-05 10:39:11	31631		WLTEST OK PIN=37375 486204270 1429085612 198.54.202.195 confirm

Decision

The SP addressed the Monitor's allegations of breach as separate numbered issues and, to begin with, it is convenient to follow the same delineation of the issues in this decision.

Issue 1 – unsubscribe stop request

The message logs reveal that the subscription notification message sent to the Monitor required the words **“WLTEST STOP”** to be sent to the SP. It seems as though the Monitor inserted a space between the **“WL”** and **“TEST”** which resulted in the unsubscribe request being rejected. The SP’s own response to the complaint also contains a mistake regarding the key words to be used which confused the issue further, however the message logs have been taken to be the most accurate record of the unsubscribe instruction sent out by the SP. The complaint of a breach of 11.1.8 and 11.5.2 is dismissed.

Issue 2 – cost of accessing support line

There is no requirement in the Code that help line support must be provided by a free telephone number. Section 4.1.8 of the Code simply provides that Customer support may not be provided via premium rated numbers, and may only be provided via standard-rate or VAS-rate numbers. There is no evidence to suggest that the SP’s help line was provided via a premium rated number, however nor was any specific complaint actually made by the Monitor in this regard. The Monitor simply recorded the cost of the support call and pointed out in response to the SP’s statement that its support line was a “free” that the call was not actually “free”. Section 6.5.1 of the Code provides that 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. It is, in any event, not necessary to consider this issue in relation to support lines in this complaint as the support line was only referred to as “free” in the SP’s response to the complaint and not in any advertising.

Issue 3 – identification of subscription services

Having reviewed the screenshots provided by the Monitor, I do not agree that the web pages do not clearly and explicitly identify the service as a subscription service. The complaint of a breach of section 11.1.1 of the Code is dismissed.

Issue 4 – size of terms and conditions

The SP has conceded that the advertised terms and conditions for the service do not meet the minimum font size requirements of the Code read with section 9.2.2.1 of the Advertising Rules. The complaint of a breach of section 9.2.2.1 of the Advertising Rules is accordingly upheld.

Issue 5 – misleading description of the service

For the same reasons outlined under issue 3 above, I do not regard the subscription nature of the service to have not been clear from the information contained on the site. The sentence **‘Get this and many more games’** does not significantly detract from the use of the words **“subscription service – R45/week”** on the website.

Issue 6 – costs of service in activation message

The key point to consider when determining whether the pricing information contained in the welcome SMS is clear and complies with the Code is whether the SP is permitted to advertise the cost as **R15/SMS 3SMS/wk**.

Section 11.1.10 provides that where a subscription instruction is contained in an SMS, the subscription service information must be presented in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing]. Help? Call [call centre number + "(VAS)" if applicable]. To unsubscribe, [unsubscribe instructions].

The Code requires the cost of service and the frequency of billing to be presented, not the cost per SMS plus the number of SMS's in a billing period. The website plainly informs that the service will be charged at "**R45/ week**" and, assuming that then is in fact the case, then the notification message ought to have done the same (i.e. "R45/week" and not "R15/SMS 3SMS/wk"). The complaint of a breach of section 11.1.10 is upheld.

Issue 7 – use of abbreviations

Section 11.2.5 of the Code provides that the cost of service and frequency of billing must use the format "RX/day**", "**RX/week**" or "**RX/ month**" (or **RX.XX if the price includes cents**). No abbreviations of "**day**", "**week**" or "**month**" may be used.**

Furthermore, section 9.3.1 of the WASPA Advertising Rules provide that the abbreviation "**SMS**" may be used to indicate "message" but not the abbreviation "**txt**". It is clear from the message logs sent by the SP that the word "**week**" has frequently been abbreviated to "**wk**" and that the abbreviation "**txt**" has been used by the SP to mean "message". As such, the complaint of a breach of section 9.3.1 of the Advertising Rules is also upheld.

Issue 8 – compatible handsets

Section 6.3.1. of the Code provides that "**for services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service.**"

The word "**clear**" must be interpreted in the light of a specific advertisement. In the present matter the service provider provided a link in its terms and conditions to a list of compatible handsets. This link appears to have escaped the attention of the Monitor however this might have been due to the fact that the terms and conditions themselves are not presented in the minimum font size. The purpose of having a minimum font size in the Code is to ensure that terms and conditions are clear and easily legible. It is quite possible that compatible handset requirements could be made clear within the terms and conditions section of an advertisement however in this case the requirements were positioned in a link that was presented in a font size below the minimum prescribed size. In my opinion, the presentation of compatible handset requirements for this service was not sufficiently clear and a complaint of a breach of section 6.3.1 is upheld.

Further issues – complaint of breach of section 11.1.2 and 11.1.5**Section 11.1.2**

The SP does not deal directly in its response with the Monitor's complaint that the service breaches section 11.1.2. of the Code which provides as follows:

Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.

It follows from section 11.1.2 that if a request to join any subscription service is dependent on a request being made for any specific content item, then the request would not be an ***"independent"*** transaction within the meaning of section 11.1.2.

"Content item" is not a term defined in the Code. However, section 2.11 of the Code defines a ***"content subscription service"*** as including ***"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."***

A ***"content item"*** ought therefore to be construed to include a sound clip, ring tone, wallpaper item, image, video, game, text or MMS content or information.

Section 11.1.2 must therefore be interpreted as prohibiting the bundling of any request to join a subscription service with a request to receive any specific sound clip, ring tone, wallpaper item, image, video, game, text or MMS content or information.

In the present case, it is apparent that a subscription is intended to be activated when the consumer requests the answer to the "Love Test". The "Love Test" answer generated by the service would be a ***"specific content item"*** as contemplated by section 11.1.2 of the Code. Following a request by the consumer for the answer the subscription is activated. In this sense the subscription activation is not an independent request but a bundled request that is entirely dependent on the Love Test answer request.

The subscription activation process would comply with the consumer protection offered by section 11.1.2 of the Code if the Love Test answer were first generated for free or for a once off content item fee and, thereafter, the consumer was invited to independently request and transact for his or her subscription to the service at advertised rates.

The complaint of a breach of section 11.1.2 of the Code is accordingly upheld.

Section 11.1.5

Section 11.1.5 provides that customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

In the present case, it does not appear to be the case that the content was advertised or requested as non-subscription content and the complaint of a breach of section 11.1.5 is therefore dismissed.

Sanction

Subscription pricing and activation methods that fail to comply with the strict requirements of the Code are serious breaches of the Code as they frequently result in disgruntled consumers feeling duped into an expensive service they did not intend to subscribe for. Complaints of hidden charges and inadvertent subscription to services are frequent and pose a significant threat to the industry's ability to provide for any measure of self-regulation in future. If service providers do not adhere strictly to the provisions of the Code relating to advertising and transparent subscription mechanisms, then not only consumers, but the entire membership body of WASPA will be substantially prejudiced.

In the circumstances, the following sanctions are imposed:

1. The SP is directed to:
 - 1.1 immediately suspend the service and all billing for the service;
 - 1.2 pay over to WASPA a fine of:
 - 1.2.1 R25 000 in respect of the breach of section 9.2.2.1 of the Advertising Rules;
 - 1.2.2 R25 000 in respect of the breach of section 9.3.1 of the Advertising Rules;
 - 1.2.3 R25 000 in respect of the breach of 6.3.1 of Code;
 - 1.2.4 R25 000 in respect of the breach of section 1.1.10 of the Code; and
 - 1.2.5 R100 000 in respect of the breach of section 11.1.2 of the Code;
- within 5 days of the delivery of this report failing which the SP's membership of WASPA shall be suspended for a period of 30 days or until such time as the fines have been paid in full, whichever period is the longer.
2. In terms of section 13.4.2 of the Code, the sanction contained in paragraph 1.1 above may not be suspended pending any appeal that may be instituted in this matter but shall become effective immediately on the publication of this report.
3. The SP is further directed:
 - 3.1 within 5 days of the delivery of this report to send an SMS message to all current and past subscribers advising them that the service has been found to breach the WASPA Code of Conduct and advising such persons of their right to claim a refund of all subscription fees paid by contacting the SP's help desk by 5pm on a date falling 15 days after the

sending of such message or the first business day thereafter if that date falls on a weekend or public holiday; and

- 3.2 as contemplated by the provisions of section 13.4.3(g) of the Code, to issue a blanket refund to all subscribers claiming a refund within the period mentioned in paragraph 3.1 above within 10 days of the expiry of such period.
4. The suspension of the service shall continue until such time as all sanctions have been fully complied with and until the WASPA Secretariat has received a report on all refunds issued and approved of a detailed description of all advertising for and revisions to the service designed to ensure full compliance with the Code in future.