



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Blinck Mobile
Information Provider (IP) (if any)	
Service Type	Subscription service
Source of Complaints	Mr J van Belkum
Complaint Number	6839
Date received	19 June 2009
Code of Conduct version	7.4

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 17 June 2009. The complainant was not satisfied with the SP's response and the complaint was escalated to the formal complaint procedure.

The complainant initially reported that in April 2009, he entered an online "IQ Challenge" via the website: www.facebook.com. The prompt gave the complainant the impression that he was responding to the challenge from a friend. He duly took up the challenge and entered his details, including his cell number.

The complainant subsequently received a series of unsolicited SMS messages in the evenings stating "Message cannot be displayed Sender: +2782004896031631. He soon discovered that he was being charged R20 each time this message was received.

The complainant was advised by his service provider that the messages were sent by Sybase. On 24 April 2009, after written complaints had been made to VODACOM, the complainant received the following SMS message:

"You have been subscribed to the Blink WGAME8 service. 3 X R20/week. For help,txt HELP to 31631 or call 0800980963. To unsubscribe, Txt STOP to 31631. Have FUN! "

The complainant immediately unsubscribed and received an SMS acknowledgement a few minutes later. The complainant has submitted several email letters of complaint to VODACOM and believes that a fraud has been committed. He was referred by his service provider to WASPA.

SP's response

The SP responded to this complaint by stating that the subscription was activated on 24 March 2009 at 20:47:01 following the entry of the relevant mobile phone number onto the SP's website. When a valid mobile number is entered, the SP's server sends an invitation message to the number containing all relevant details, including a unique PIN code. The service would then only be activated if the given PIN code is re-entered onto the SP's website.

The SP offered a refund in the amount of 340.00 ZAR to the complainant despite the fact that it had not noticed any irregularities with the service. The SP's records indicate that it is still waiting on the relevant refund payment details from the complainant in order to process the refund.

Complainant's reply

The complainant persisted with his complaint despite the SP's response. He maintains that sections 3.1 and 4.1.2 of the Code of Conduct have been contravened in that he was misled by the Facebook invite to the "I.Q Challenge".

He believes that a fraudulent misrepresentation was made and refers to similar complaints on the popular consumer watchdog website: www.hellopeter.com.

Sections of the Code considered

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.

3.1.2. Members are committed to lawful conduct at all times.

4.1. Provision of information to customers

4.1.1. Members must have 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.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

4.1.4. Members must make the terms and conditions of any of their services available to customers and potential customers, on request.

4.1.5. Terms and conditions of members' services may not contain clauses that contradict the requirements of the WASPA Code of Conduct.

4.1.6. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of

complaints expeditiously, and must respond to any complaints within a reasonable period of time.

4.1.7. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

4.1.8 . Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

4.1.9. Customer support may not be provided via premium rated numbers, and may only be provided via standard-rate or VAS-rate numbers.

4.1.10. Members undertake to inform their wireless application service customers that they are bound by this Code of Conduct. Members also undertake to make these customers aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer wish to do so.

4.1.11. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

11. Subscription services

11.1. Manner of subscription

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 and may not be an entry into a competition or quiz.

11.1.3. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.

11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

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.

11.1.6. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.7. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

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.

11.1.9. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

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].

11.1.11. If a subscription service can be initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.

Decision

The SP has promoted its WGame8 subscription service via the invite facility on the Facebook website. The complainant responded to an invite, which he believed to be from a friend, to enter an "IQ Challenge".

The complainant was directed to the SP's website where he was prompted to enter his details, including his cell phone number. Based on the SP's statement, the complainant would then have been sent a PIN code to his cell phone. This PIN code then had to be re-entered onto the SP's website before the service was activated (double opt-in procedure).

The complainant has neither admitted nor denied whether he received a PIN code and/or whether that code was used to activate the service. However, whether he did or not, it appears that the complainant did not intend to subscribe to a subscription service when he entered the IQ challenge.

With reference to section 11.1.1 of the WASPA Code of Conduct, the first question to be answered is whether the SP *prominently* and *explicitly* identified the services it was promoting as a "subscription service"? It appears from the information before me that it did not.

Secondly, the complainant joined the SP's subscription services when his specific intention was to access a specific content item, i.e. the IQ Challenge. Section 11.1.2 specifically states that a request from a subscriber to join a subscription service may not be *an entry into a competition or quiz*.

It does not appear that the SP included any examples of the content provided as part of its subscription service in its Facebook promotion.

Finally, the manner in which the SP has promoted its subscription service is a form of bait marketing which is not only misleading but is also dishonest. The SP has therefore contravened the provisions of section 3.1 and 4.1 of the WASPA code.

Sanction

I have noted from the complaints page on www.facebook.com that similar "promotions" around the world have been met with numerous complaints from other unsuspecting Facebook users. Unfair and misleading promotional tactics such as the IQ Challenge invite contravene numerous provisions of the WASPA code of conduct and is contrary to the general spirit of the code. They must therefore be viewed in a very serious light.

I have taken into account that the SP has offered the complainant a refund. However I have also noted the SP's statement that it did so while believing that there was nothing wrong with its services. I find it difficult to believe that the SP is not fully aware of the misleading nature of its promotion. The double opt-in procedure does not help its cause as the harm had already been caused.

The following sanctions are given:

1. The SP must immediately stop its "IQ Challenge" promotion and remove and/or take down any banner advertising, web pages or other links or references to this promotion.

2. The SP must provide the WASPA Secretariat with written confirmation that it has complied with the sanction in paragraph 1 above.
3. The SP must refund all subscribers who have used the SP's WGame8 service from the date that the service commenced for all subscription fees charged to their accounts.
4. The SP must send an SMS notification to all such subscribers that they are entitled to claim the aforesaid refund.
5. The SP is fined an amount of R150 000.00.

These sanctions are not to be suspended pending the outcome of any appeal lodged by the SP.