



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Blink Mobile

Information Provider (IP)
(if any)

Service Type Subscription service

Source of Complaints Mr J van Antwerpen

Complaint Number 7070

Date received 17 July 2009

Code of Conduct version 7.4

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 13 July 2009. The complainant was not satisfied with the SP's response and the complaint has been escalated to the formal complaint procedure.

The complainant states that he was tricked into subscribing to the service via a Facebook request from a friend to perform an IQ Test. There was no fine print or any further information on the page to indicate that he was subscribing to a service. The complainant believes this to be fraud.

On 26 June 2009, the complainant states that he sent through a "wface stop" request to be removed from this service. He did not receive any confirmation and was only removed on 14 July 2009 after his complaint was made to WASPA.

SP's response

The SP responded to the initial unsubscribe request by unsubscribing the complainant. It has investigated the matter in detail, and states that it cannot see any irregularities with the subscription service requested.

The SP's records indicate that the subscription was activated on 26 May 2009, following the entry of the mobile phone number onto its website. When a valid mobile number is entered, the SP's server sends an invitation message to the said number, which outlines all relevant information, including the cost and frequency of the service, along with a unique PIN code.

Only should the holder of the phone in question respond, by re-entering the PIN code into the required field on the website to confirm activation, is the service initiated.

The SP investigated the complainant's claim that he attempted to terminate the subscription service on 26 June 2009. The SP stated that there was no evidence of any messages sent to its service number on that day. The SP attached a MO/MT report confirming this. The SP then requested that the complainant provide it with a copy of the specified bill indicating the outgoing text message that was sent on this day.

Complainant's reply

The complainant replied by attaching an itemized billing statement for the services indicated. The complainant's handset is an Apple iPhone 3G and the time and date stamps are not all recorded. The complainant states that it is possible that the stop request was sent earlier than previously indicated, i.e. before 26 June 2009.

With regards to "entrapment" into a subscription service, the complainant attached a notification from a Friend from whom I received a Facebook request to do an IQ Test (Online in Facebook).

Upon completing the test on Facebook, you are requested to enter your mobile number, whereby a confirmation PIN is sent to your mobile. This PIN then enables you to see the results from the test. This is the process that was followed by the

complainant.

SP's further response

The SP reiterated that it needed a copy of the complainant's itemised billing statement showing that an outgoing STOP message was sent. Unfortunately, the itemized bill provided by the complainant does not provide any such evidence.

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 Test".

The complainant was directed to the SP's website where he was prompted to enter his details, including his cell phone number. It is common cause that 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 admitted that he received the PIN code and that he used same to activate the service. However, he also stated that, when doing so, he did not intend to subscribe to a subscription service when he entered the IQ Test.

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 Test. 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*.

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.

Regarding the allegation that the SP’s stop mechanism for the service did not operate properly when the complainant tried previously to unsubscribe for the service; I cannot make a finding in this regard based on the lack of evidence before me that such an unsubscribe attempt was made by the complainant.

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 Test” invite, contravene numerous provisions of the WASPA Code of Conduct and are generally 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 when the complainant was initially misled into believing that he was taking a test and not subscribing to a subscription service.

The following sanctions are given:

1. The SP must immediately stop its "IQ Test" 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 (see also adjudicator report 6839).
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.