



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Switchfire Limited
<b>Information Provider (IP)</b> (if any)	
<b>Service Type</b>	Subscription service
<b>Source of Complaints</b>	Mrs F Abraham
<b>Complaint Number</b>	8271
<b>Date received</b>	8 December 2009
<b>Code of Conduct version</b>	8.0

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### Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 30 September 2009. The SP responded to the request by blocking the number on its system and uploaded proof of subscription. No refund was initially offered.

The complainant was not satisfied with the response as she denied ever viewing any content on her phone at the times indicated on the SP's logs. The SP subsequently refunded the complainant for all amounts debited to her account "in the interest of customer satisfaction and to resolve this complaint".

The complainant was still not satisfied with the outcome and the matter has been escalated as a formal complaint.

The complainant maintains that she did not purchase or receive any content from the SP. She states further that, when asked where the SP got her number from, the SP offered "some lame excuse".

**SP's response**

The SP states that it has investigated this case and contacted the complainant who confirmed that she had received a full refund and was satisfied that the matter had been resolved.

The SP maintains that the complainant was charged for content purchased and the service worked as it was intended to. The refund was offered in the interest of customer satisfaction.

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**Sections of the Code considered**

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.

11.1.5. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that 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:

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- (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].*

11.2.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

11.2.2. The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:

*U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].*

or

*U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].*

11.2.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.2.2.

11.6.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
  - (b) proof that all required reminder messages have been sent to that customer;
  - (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
  - (d) any record of successful or unsuccessful unsubscribe requests.
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### **Decision**

The SP was requested to provide logs in terms of section 11.6.2 of the Code. The SP has provided logs but they do not provide proof that the complainant opted in to this service.

The complainant has denied opting-in for the service. The complainant requested the SP to provide an explanation as to how her number was obtained. The SP failed to provide this information.

In the absence of any further evidence from the SP, I must accept that the complainant was not validly subscribed to this service. The SP has contravened section 11.1.5 of the Code.

There is also no evidence before me that the SP sent a notification message to the complainant as it is required to do so by section 11.1.8 of the Code.

The complaint is accordingly upheld.

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### **Sanction**

It has been noted that the SP has refunded all charges to the complainant. However the SP has done so as a gesture of goodwill in order to resolve this dispute and not pursuant to an admission of any wrongdoing on its part.

It has also been noted that there have been no previous complaints lodged or upheld against the SP.

However, the subscription of consumers to services without first obtaining a valid opt-in is viewed in a serious light.

The following sanctions are given:

1. The SP is ordered to provide proof of a valid opt-in request from the complainant's number to the WASPA Secretariat within 7 (seven) days of receipt of this report.
2. In the event that the SP is unable to provide such proof, then the SP is fined the amount of R 100 000.00.