

WASPA appeals panel
Complaint 8271

REPORT OF THE APPEALS PANEL

Date: 14 February 2011

Appellant and Service Provider: Switchfire Limited

Complaint Number: 6842

Applicable versions: 8.0

1. BACKGROUND TO THE APPEAL

1.1 This appeal concerns a complaint lodged on 8 December 2009, by one Mrs F Abraham against Switchfire Limited.

1.2 The complaint essentially relates to a claim by Mrs Abraham that she did not receive or request any of the content that she was charged for.

1.3 The complaints, the findings of the Adjudicator, the IP's response to and appeal against the complaint, are fully recorded in the case files provided to this appeals panel, and as these are, or will be, publicly available on the WASPA website, they will not be repeated in full in this appeal panel's report.

2. CLAUSES OF THE CODE CONSIDERED

The clauses cited in this matter were sections 11.1.1, 11.1.2, 11.1.5, 11.1.8, 11.1.10, 11.2.1, 11.2.2, 11.2.3 and 11.6.2.

3. FINDINGS AND DECISIONS OF THE ADJUDICATOR

3.1 Finding of the Adjudicator

The Adjudicator stated: “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.”

3.2 Sanctions

The Adjudicator gave the following sanctions:

- 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.
- In the event that the SP is unable to provide such proof, then the SP is fined the amount of R 100 000.00.

4. **GROUND OF APPEAL**

4.1 Grounds of appeal for complaint 8271.

4.1.1 The SP’s submitted evidence of log-in.

- 4.1.2 It also explained that this was not a subscription service, but an “item by item” download through a website. It submitted evidence to support this.
- 4.1.3 The Appellant requested that, “As noted in the Report of the Adjudicator, Switchfire has no previous complaints lodged or upheld. We kindly request that this case is similarly marked as "not upheld" and removed from our record.”

5. FINDINGS OF APPEAL PANEL

5.1 Version of the Code

- 5.1.1 The complaint was made on 8 December 2009. Version 8.0 of the Code, in use from 13 October 2009 to 31 March 2010 applies.

5.2 Finding

- 5.2.1 The Appeal Panel firstly notes that the SP has provided relevant logs requested by the Adjudicator in the original decision, and that the sanction of R100 000 falls away.
- 5.2.2 This is not, however, the SP’s primary concern. It appears to be appealing this matter in the interests of ‘clearing its name’.
- 5.2.3 We agree that it does not appear that this matter related to a subscription service.
- 5.2.4 The SP has in any event refunded all the payments.

5.2.5 We agree that as this is not a subscription service, the cited clauses of the Code are not applicable.

5.2.6 **Given the above, the appeal is upheld, and the Adjudicator's decision is overturned in its entirety.**

5.2.7 The cost of appeal is non-refundable.