



## Report of the Adjudicator

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| <b>WASPA Member (SP)</b>                     | Blink Mobile    |
| <b>Information Provider (IP)</b><br>(if any) |                 |
| <b>Service type</b>                          | Subscription    |
| <b>Source of complaints</b>                  | Mr A Carter     |
| <b>Complaint number</b>                      | 8668            |
| <b>Date received</b>                         | 5 February 2010 |
| <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 26 November 2009. The complainant was not satisfied with the SP's response and the complaint has been escalated as a formal complaint.

The complainant states that after noting high cellphone bills over a period of 4 months, he queried charges to his account with his network service provider. He was informed that he had been subscribed to an application service.

The complainant denies that he ever subscribed to any services or gave permission to be subscribed.

The complainant demands that action be taken against the SP and alleges that the SP either illegally took funds out of his account or in some way tricked him into opening up a file that automatically subscribed him to the service.

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The complainant is claiming a refund and compensation for the time and expense incurred in trying to resolve his complaint.

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### **SP's response**

The SP responded to the unsubscribe request by unsubscribing the complainant and sending confirmation via sms sent to the complainant. The SP uploaded proof of subscription and advised that it had, as per its policy, asked the complainant to send an email with his refund application, upon receipt of which it would try to resolve the matter with the complainant.

After the complaint was escalated, the SP responded by referring to its MO/MT report as confirmation that the complainant had subscribed to its services on 29 May 2009. The subscription was terminated when the first unsubscribe request was received from the complainant.

The SP proposed a full refund to the complainant as a gesture of good customer relations.

The SP also stated that it was more than willing to provide more information on the exact webpage the complainant subscribed to (the page that contains information on price, subscription, the product, and stop info), if so requested.

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### **Complainant's reply**

The complainant acknowledges that he received a message "*that said send no or something to this effect that I deleted as I do not reply to junk. I then deleted anything I received and as you know some of there stuff cannot be deleted, more reason to realize that this is fraud.*"

The complainant denies receiving any written notification of a refund and confirmed that the SP has his correct email address.

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The complainant called for proper evidence that he opted-in to the service in question and denied that the MO/MT list is sufficient evidence that he requested this service.

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### **Sections of the code considered**

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 11.2.1

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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.

#### Section 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].*

#### Section 11.5.9

If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

#### Section 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.

**Decision**

I have perused the MO/MT log spreadsheet provided by the SP and note the multiple messages to and from the complainant's number on 29 May 2009 between 19:33 and 19:36 when the complainant is believed to have subscribed to the service. I am not satisfied that the log provided by the SP constitutes proper proof that the complainant intentionally subscribed to the service.

To the contrary, the fact that the message containing the access code for the service was repeatedly sent to the complainant's number, creates the impression that there was an error of some kind on the SP's system.

The log does refer to a number of content items which were downloaded via WAP to the complainant's number. However, it does not provide the necessary details indicating the charges levied and the service or content item applicable for each charge.

On 29 July 2009 and in response to a monthly reminder message, the complainant texted back "Take a hike". This reinforces my view that the complainant did not intentionally subscribe to this service.

In the absence of further proof that clearly shows that the complainant intentionally opted-in to the service, this complaint is accordingly upheld.

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**Sanction**

I have taken note of the adjudicator's decision and sanctions in complaint 7419 which was lodged against the SP in August 2009, and which is under appeal, and the numerous previous complaints dealing with the same or similar contraventions of the Code by the SP.

The SP has previously advised that it had stopped all marketing of its services in SA. However, there is no evidence that the SP has terminated its membership of WASPA. It therefore remains bound by the provisions of the WASPA Code of Conduct.

The following sanctions are given:

1. The SP's membership of WASPA is suspended with immediate effect for a period of 6 (six) months.
2. All services and billing rendered by the SP via short code 31631 are suspended with immediate effect for a period of 6 (six) months.
3. The SP can either then choose to terminate its membership permanently or offer services that are compliant with the Code.
4. The SP is ordered to refund all amounts charged to the complainant's account and send proof of the refund to the WASPA Secretariat within 7 (seven) days of receiving notice of this report.