



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Buongiorno UK!
<b>Service Type</b>	Subscription Service
<b>Source of Complaints</b>	Public
<b>Complaint Numbers</b>	#0192, #0196, #0198, #0201, #0222 #0260, #0263, #0265 and #0266

### Complaint

Complaints were received in respect of the SP's subscription service, offered under the "Loadin" brand. As the complaints concern essentially the same issue in respect of the same service provided by the SP, these nine complaints have been consolidated into a single report.

The SP is associated with Teljoy Group (Pty) Ltd and also uses the name B!Mobile. As such many complainants and the SP itself, make reference to the Teljoy and B!Mobile brand as well as the "Loadin" brand. The SP has not indicated the exact nature of the relationship between Teljoy Group (Pty) Ltd, however the Internet web site of Buongiorno Vitaminic S.p.A. indicates that Buongiorno.UK Ltd, a Buongiorno Group Company, is the local business entity for the United Kingdom, while "Teljoy" is indicated as the "distribution partner" for South Africa.

The basis of the various complaints (with minor editing) is set out below:

Complaint Number	Detailed Description
#0192	Charging for service never requested / approved  I received an SMS noting that R30 will be added to my bill because for <a href="http://www.loadin.co.za">www.loadin.co.za</a> . I have never registered and do not download ring tones and other crap. What can be done??? How does one stop these people from activating something on your behalf and you just have to pay for it???
#0196	I received an unsolicited spam SMS instructing me to send a SMS to a number. Unless I do that they will subscribe me for something deducting R30 for the service. My number is *****. This is absurd. It is blackmail. Ignoring it as any sane person should, I received another SMS telling me that I am now registered (obviously less R30 without my distinct permission) and can download some rubbish from <a href="http://www.loadin.co.za">www.loadin.co.za</a> . They end there SMS with "SMS 56193 to 30123, we belong 2gether free".
#0198	Telephonic complaint indicating charges received for R100 and an additional R40 in two separate transactions on both of these

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	<p>numbers. Totalling R280.00 (being over the weekend).          These have originated from the SMSs "Congratulations, you are loadin..." etc          He would like a full refund of the charges credited immediately to his relevant accounts and an assurance from Teljoy that he will not receive any further spam SMSs from you as he runs two business telephones and finds subscription services and spamming to business lines an unacceptable business practice.</p>
#0201	<p>I received two SMSs on my cell (*****) from loadin.co.za. The first saying I had won a plasma tv &amp; the 2nd sms 25/02/06 at 20:06 saying that my Loadin Subscription had been processed. R30 was charged on my bill. I did not make such request at all. I went to the website: www.loadin.co.za &amp; submitted two requests online the first on 27/02/06 &amp; the 2nd request on 02/03/06 requesting that my account be refunded. I have received no reply whatsoever from them. There is no phone number so I'm unable to contact them. This is unacceptable. I should not have to pay for something I did not request. Please assist.</p>
#0222	<p>On 22 February 2006 I was sent an unsolicited SMS from Loadin' - a Teljoy initiative cryptically telling me of some subscription service I had never heard of before. Considering the SMS to be spam I ignored it and received another unsolicited SMS on 25 February 2006 saying that I was now subscribed. I was since charged R30 for an unsolicited service. I tried contacting Loadin from Teljoy after the second SMS without result and I am trying again in an attempt to obtain a refund.          Sms texts follows:          The first one was received at 10:32am on 22 Feb 2006 from +27820046400:          "Congrats Ms R Torpey this months Plasma TV winner. Loadin subs enter the giveaway free. Ur sub will b processed tomorrow R30. 2 unsub SMS STOP to 30123 free"          The second was received at 03:40pm on 25 Feb 2006 from +27820070511:          "Congrats ur Loadin Subs been processed. Get as many downloads as you want for 30 days. 4 selection www.loadin.co.za. SMS 65193 to 30123, we belong 2gether free"</p>
#0260	<p>Received monthly account with subscription charge for this service, and attempted to unsubscribe. Cannot find any details on how to get rid of this service. Website or company has no unsubscribe information available. Did not receive anything from this company.          Ref Cell: *****</p>
#0263	<p>I previously complained on 9 Mar 06 [Complaint #0201], about being charged for content that I did not request. This content came from Loadin.Co.Za which is also part of Teljoy. Again in Mar 06 I was charged another amount of R10 on my cell **** for services that I did not request. I have contacted them on 10 Mar 06 on 0112389201 &amp; spoke to Hennie. I then contacted them again on 17 Mar 06 &amp; spoke to a Samantha Barath on 0112389228, who confirmed the amount of R60 for Feb 06 was an error &amp; I would receive a refund, but they are still investigation the amount of R10 that I was charged in Mar 06. Vodacom has confirmed that Bmobile has billed this amount. I</p>

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	have tried to contact them on numerous occasions. I even emailed a Richard Buxton on 23 Mar 06, but I have yet to receive any information about the status of my refund. Please assist.
#0265	Charging me without authorisation (and another 49 000 people as well!) random number generation? They say it's a mistake on their side but I still don't know how they ever got my number. They tell me they used Teljoy's database, but I'm not even on theirs. It's been R30 a month now that they have been charging, who knows how many other people know about this. I am still waiting to be reimbursed. THIS IS UNACCEPTABLE SPAMMING!
#0266	The content provider sent me two SMSs dated 25 and 26 February 2006 from 082-007051. These SMSs read as more or less as follows (I do not have them on my phone anymore): "Congrats Mr (name) this months (prize, eg plasma TV) winner. Loadin subs enter the giveaway free." I was charged R26.32 for each of these unsolicited SMSs I received. I contacted Buongiorno at 086-0835569, and was informed that they had "billed the wrong database". They took by banking details, and deposited R60 into my bank account. On 26 March I received another SMS from the content provider, number 0820046400. This SMS read as follows: "Congrats Mr Schmukler this months Plasma TV winner. Loadin subs enter the giveaway free. Ur sub will b renewed in 2 days R30 2 unsubs SMS STOP to 30123 free" I declined to SMS STOP to 30123 as directed because to the best of my knowledge I have no binding contract with the service provider and they have no right to hold me accountable for any payment.

Two complainants indicated the clauses of the WASPA Code of Conduct they believed had been contravened:

- The complainant in complaint #0222 referred to clauses 4.1.1, 4.1.5, 11.1.2, 11.1.4 and 11.1.7; and
- The complainant in complaint #0266 referred to clauses 4.1.3, 5.2, 11.1.4 and 11.1.7, "among others".

The Adjudicator considered the following clauses of the WASPA Code of Conduct:

2.20. A "**subscription service**" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

**4.1. Provision of information to customers**

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.3. 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.

4.1.5. 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.

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

## **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".

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.

11.1.3. Where feasible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.5. 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.

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

11.1.7. Once a customer has subscribed to subscription service, a notification message must be sent to the customer containing the following information:

- (a) The cost of the subscription service and the frequency of the charges;
- (b) Clear and concise instructions for unsubscribing from the service;
- (c) The member's contact information.

### **11.2. Customer support**

11.2.1. Assistance, such as 'help' information, for subscription services must be easily available to customers, and must not be limited to a medium that the customer is unlikely to have access to.

### **11.3. Termination of a service**

11.3.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.3.2. All subscription services must have an unsubscribe facility available at no more than one rand.

11.3.3. Where feasible, customers should be able to unsubscribe from any subscription service using no more than two words, one of which must be 'STOP'.

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11.3.4. Members must ensure that the termination mechanism is functional and accessible at all times.

13.3.7. The adjudicator must carefully review:

- (a) the complaint;
- (b) any response the member has made to the complaint;
- (c) the WASPA Code of Conduct;
- (d) any other material relevant to the complaint, as supplied by WASPA.

13.3.8. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

13.3.9. If the adjudicator determines that there has been a breach of the Code, then the adjudicator must determine appropriate sanctions.

13.3.10. In determining any appropriate sanctions, the adjudicator must take into consideration:

- (a) any previous successful complaints made against the member;
- (b) any previous successful complaints of a similar nature.

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## SP response

The Secretariat received a response from the SP indicating:

“As you are aware in December we launched a new subscription based service - Loadin'. As a promotional offer we offered all our TV and cellular subscribers a free trial (one month).

We communicated with our bases and many clients did in fact find the service useful and subscribed.

As the trial period ended those people that did not subscribe were removed from our list. On the 25th and 26th, due to a lack of resource, the listing was not updated and these people were included in our billing cron when submitted to Vodacom. We immediately noticed this oversight and contacted Vodacom. We informed them that a number of clients had been billed erroneously and tried to reverse the billing.

Unfortunately we could not reverse the charge and we took it upon ourselves to contact the said clients and refund them.

Our call centre has been working around the clock to try and resolve the issue.”

The SP responded in a similar manner to the majority of the complaints considered in this report with the following exceptions, variations, additions or substitutions:

Complaint Number	Additional or Substituted Response
#0192	I note that the complainant states that they have NOT contacted us, we however DID contact them and have refunded them the FULL R30 and have removed the MSISDN from all our bases in-order to ensure that this does not recur.

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#0196	We did contact [the complainant] and have refunded the full R30. Furthermore we have removed the numbers from our lists in order to ensure that this does not happen again.
#0198	We did previously receive a call (complaint) and have spoken to [the complainant], we looked into this and saw that he was charged R30 NOT R100 (total R280) we have refunded the FULL amount debited and removed the numbers from our lists in order to ensure that this does not happen again.
#0201	<i>No addition to standard response</i>
#0222	I note that the complainant states that we have not resolved his complaint to his satisfaction, we have refunded the FULL R30 and have removed the MSISDN from all our bases in-order to ensure that this does not recur.
#0260	<p><i>The SP did not provide the standard response (above) and instead indicated:</i></p> <p>All our adverts clearly state that to stop the subscription one must simply SMS the word STOP to 30123.</p> <p>Our Website states the same.</p> <p>The Loadin service is configured as follows:  1 The customer subscribes  2 We send confirmation that they are subscribing to a subscription service at R30 per month  3 The subscriber needs to confirm acceptance by SMSing YES  4 We tell the customer that do unsubscribe they need to SMS stop to 30123  4 On day 28 we send a reminder that in 2 days they will be charged, if they do not want to be charged they can unsubscribe by SMSing STOP to 30123  5 On day 30 we send a message stating that they have been billed.</p> <p>I hope that this assists. We have numerous reminders and explanations as to how one can unsubscribe.</p> <p>In the meanwhile we have unsubscribed [the complainant] manually.</p>
#0263	<p><i>The SP did not provide the standard response (above) and instead indicated:</i></p> <p>Per our previous responses; a number of clients were billed in error.</p> <p>The complainant had confirmed that we have refunded the R60 per our response to WASPA previously.</p> <p>We have investigated the charge of R10 and per our system this has NOT been charged. The client did fax proof of charge and Richard has been working with the technical team to see how this happened.</p> <p>We will contact the client again on Monday and refund the R10 in the in term. We are still trying to resolve this problem and as soon</p>

	<p>as the technical team finds the error we will send a detailed explanation to WASPA and the client.</p>
#0265	<p><i>The SP did not provide the standard response (above) and instead indicated:</i></p> <p>Per our previous responses we would like to again explain what happened:</p> <p>In December we launched a new subscription based service - Loadin'. As a promotional offer we offered all our TV and cellular subscribers a free trial (one month). We communicated with our bases and many clients did in fact find the service useful and subscribed.</p> <p>As the trial period ended those people that did not subscribe were removed from our list. On the 25th and 26th, due to a lack of resource, the listing was not updated and these people were included in our billing cron when submitted to Vodacom. We immediately noticed this oversight and contacted Vodacom. We informed them that a number of clients had been billed erroneously and tried to reverse the billing.</p> <p>We erroneously billed +- 3 500 clients not 49 000. Our call centre has been working around the clock to try get hold of all these clients and refund them. Today we actually sent Vodacom a further list and they are now refunding people on their accounts. By the middle of next week EVERYONE we erroneously billed will have been refunded.</p> <p>I've checked our records [the complainant], is in fact on our Teljoy data base. If you require I can send you a copy of his contract.</p> <p>I hope that this explains the situation, I will call [the complainant] on Monday to clarify.</p>
#0266	<p><i>The SP did not provide the standard response (above) and instead indicated:</i></p> <p>Per our previous replies I would like to confirm the following:</p> <p>In December we launched a new subscription based service - Loadin'. As a promotional offer we offered all our TV and cellular subscribers a free trial (one month).</p> <p>We communicated with our bases and many clients did in fact find the service useful and subscribed.</p> <p>As the trial period ended those people that did not subscribe were removed from our list. On the 25th and 26th, due to a lack of resource, the listing was not updated and these people were included in our billing cron when submitted to Vodacom. We immediately noticed this oversight and contacted Vodacom. We informed them that a number of clients had been billed erroneously</p>

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<p>and tried to reverse the billing.</p> <p>Unfortunately we could not reverse the charge and we took it upon ourselves to contact the said clients and refund them.</p> <p>Per the complainants mail WE HAVE REFUNDED THEM and our call centre has been working around the clock to try and resolve the issue.</p> <p>No further charges have been done on this customers account as they did not opt into our service.</p>
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## Decision

Following his decision in various other complaints, the Adjudicator decided that he was able to decide on complaints even where the specific clauses of the WASPA Code of Conduct were not individually identified by the complainant, as long as the issues were made clear to the SP and the SP had received an opportunity to respond to such issues and was not “ambushed” or taken by surprise.

In the view of the Adjudicator, the issues were made clear to the SP and the SP has had an opportunity to respond there and availed itself of such opportunity.

The Adjudicator decided as follows in respect of the various possible breaches of the WASPA Code of Conduct considered by the Adjudicator:

- Clause 4.1.1 of the WASPA Code of Conduct

The Adjudicator noted the efforts made by the SP to communicate its error to those customers that had been billed by the SP erroneously. However, its response does not appear to have been successful, in that many of the complainants had not yet received a communication from the SP at the time when the complaint was received.

The Adjudicator expressed his surprise that the SP had not sent an initial SMS communication to its customers, while the call centre was contacting them in person.

The Adjudicator accepted the submission of the SP that there was an error. As such, the Adjudicator did not find any dishonesty on the part of the SP, however the fairness of the SP’s treatment of its customers falls far short of the standard required of a WASPA member. In addition, subscribing the complainants to the promotional service without informing them adequately of the promotion being undertaken, is an unacceptable practice even when there was no intention to bill such persons.

**Complaint upheld.**



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- Clause 4.1.3 of the WASPA Code of Conduct

The design of the SP's "Loadin" Internet web site (both the layout and the colours used) tend to obscure the hyperlinks to the SP's terms and conditions, the SP's customer support and the WASPA Code of Conduct that appear indistinctly at the foot of each page of such Internet web site. The Adjudicator did not find that the SP's Internet web site was designed to mislead and was of the view that the obscuring of such hyperlinks may be inadvertent.

However, the SP's Internet web site does not indicate the registered company name of the SP (instead containing a possibly erroneous reference to "Teljoy Inc") and the SP's telephone and fax numbers, e-mail address and physical address do not appear on such Internet web site, as required by Clause 4.1.3 of the WASPA Code of Conduct.

**Complaint upheld.**

- Clause 4.1.5 of the WASPA Code of Conduct

The Adjudicator found that there was insufficient detail in the complaints to find a breach of this Clause of the WASPA Code of Conduct.

**Complaint not upheld.**

- Clauses 5.2.1 and 5.3.1 of the WASPA Code of Conduct

In response to complaints that the SP's communications were unsolicited, the SP responded that it has a "prior commercial relationship" with those of the complainants who raised this issue.

Clause 5.2.1(b) of the WASPA Code of Conduct is very specific in this regard:

"the message recipient has a direct and recent prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator"

The WASPA Code of Conduct defines a message originator as "the entity sending a commercial message and can be any person with a commercial arrangement with a WASP to send commercial messages, or a WASP directly". In this case the SP is the message originator. As far as the Adjudicator has been able to determine, Teljoy Group (Pty) Ltd is a distribution partner of the SP and as such the SP and Teljoy Group (Pty) Ltd and its subsidiaries are associated companies or businesses, but are not the same entity. In particular, the Adjudicator noted that membership of WASPA is held in the name of Buongiono UK! And not Teljoy Group (Pty) Ltd.

From the SP's submission, message recipients have a prior commercial relationship with Teljoy Group (Pty) Ltd or one of its subsidiaries or divisions. There is no basis to indicate a prior commercial relationship with the SP and in fact this is not even alleged by the SP in its various responses to the complaints.

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It is the view of the Adjudicator that the complainants did not have a direct relationship with the SP and that at most the recipients have a direct and prior commercial relationship with an associated company or business of the SP. This is an indirect relationship and does not meet the criteria of Clause 5.2.1(b). Furthermore, it is the view of the Adjudicator that the recipients would not reasonably expect to receive communications from the SP as a result of their relationship with one of the other businesses conducted by Teljoy Group (Pty) Ltd and its subsidiaries and/or divisions. This is born out by the content of the complaints themselves.

**Complaint upheld.**

- Clause 11.1 of the WASPA Code of Conduct

The Adjudicator noted the SP's submission that an error had occurred. The Adjudicator noted further the SP's submission that it had "offered all our TV and cellular subscribers a free trial". As indicated above, the Adjudicator has found that the SP's submission that the persons subscribed to the SP's subscription service are customers of the SP is disingenuous and factually incorrect. Furthermore, the offer was not an offer in the traditional sense in that it could be accepted or rejected at the discretion of the offeree, but rather an automatic subscription.

As such, the SP's conduct displays a breach of Clauses:

- 11.1.2, as there was no independent transaction and no intent on the part of the subscriber to subscribe to the service;
- 11.1.4, as the subscription occurred automatically due to the customers' purchase of another unrelated product from an associate of the SP;
- 11.1.7, as no notification message was sent as required. The billing message sent by the SP is noted and it is thanks to this message that many complainants became aware of the error, however it does not substitute for the requirements of Clause 11.1.7.

**Complaint upheld in respect of Clauses 11.1.2, 11.1.4 and 11.1.7 of the WASPA Code of Conduct.**

- Clause 11.2 of the WASPA Code of Conduct

The SP's customer support is only available via an Internet based form, with responses to be sent by e-mail. This, combined with the fact that the customer support link on the SP's "Loadin" Internet web site is obscured (whether intentionally or inadvertently) led the Adjudicator to conclude that "help" information is not easily available to customers and furthermore, such information is limited to a medium to which many customers may not have access.

**Complaint upheld**

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The Adjudicator noted further an inconsistency in the responses of the SP. While certain of the SP's responses indicated that all customers erroneously billed have had their numbers removed from the SP's subscriber database, in other responses the SP indicates that this has been done manually.

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## **Sanction**

In considering the sanction to be imposed arising from the breaches of the WASPA Code of Conduct raised in the complaints under consideration:

- The Adjudicator took note of the decision of the Appeals Panel in respect of Complaint #0001;
- The Adjudicator noted that the SP has indicated that the breaches arose due to an error.
- The Adjudicator noted that the sanctions shall apply in respect of all complaints regarding the automatic subscription of customers to the SP's subscription service prior to the date of this report.

The Adjudicator accordingly imposed the following sanction:

- The SP is reprimanded for its numerous and egregious breaches of the WASPA Code of Conduct.
- The SP is required to:
  - refund all customers automatically subscribed by it and remove such customers from its data base; and
  - issue an apology to such customers, by SMS and the mechanism used by the SP's associated companies and businesses to communicate with such customers (one of physical post, e-mail or fax, as appropriate).
- The SP shall prepare a report indicating:
  - All of its subscribers, including contact details for verification purposes;
  - All subscribers automatically subscribed, including contact details for verification purposes;
  - The date of the refund to such automatically subscribed customers and their removal from the data base;
  - Any automatically subscribed customers who have elected to independently subscribe and detailed logs to prove such fact as well as contact details for verification purposes.

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The Adjudicator recognises that such information may be confidential to the SP and undertakes on behalf of himself and the Secretariat that any information contained in the report will be kept confidential and only used for verification purposes.

- The SP is ordered to pay a fine of R200 000. However, having regard to the SP's submission that these breaches arose out of an error and the Adjudicator's finding that certain of these breaches did arise from such error, an amount of R100 000 of the fine imposed is suspended for a period of twelve (12) months from date of this Report; provided that no further breach of the WASPA Code of Conduct are identified in such twelve (12) month period from the date of this Report.

Clause 13.3.13 of the WASPA Code of Conduct indicates that the SP "must, within five working days, comply with any sanction imposed, or notify the secretariat that it wishes to appeal against the decision of the adjudicator". Having regard to the content of the report required to be prepared by the SP and the fact that such report must include the date on which refunds have been paid, the period for the delivery of such report shall be ten (10) working days from the date of receipt of this report.