



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Teljoy
Information Provider (IP) (if any)	
Service Type	Subscription
Source of Complaints	Competitor
Complaint Number	2398
Date received	8 October 2007
Code of Conduct version	5.3

Complaint

The Complaint in this matter, lodged on behalf of the Complainant by a person employed by a competitor, reads as follows:

"The user 084976xxxx seems to remember sending Free to 30123 in response to the Loadin TV advert. He thought he was getting free content and feels misled as the advert made it difficult to see that they'd start charging R30 per month after a month by emphasising the Free and not mentioning the R30 except in writing in a small font (violation of 6.2.4).

The notification messages required in 11.1.7, which I received when testing the service, didn't include the price as required. Therefore the deception is enhanced. This is a contravention of 11.1.7. b), c) and d) as there is no cost, or frequency of charges, no unsubscribing instructions or telephone number.. The message reads: \"LOADIN. We sent you a link to our WAP site where you can download ur 60 items. Trouble accessing? Contact Vodacom on 111 to request WAP Setnigs\". They send a link to the WAP site, but many users can't use WAP and a stopping facility was not discovered on the WAP site.

The customer's bill is also concerning as there is not R30 billed as per the advert but rather odd amounts at odd times. This is a contravention of 11.1.10.

Below is a list of bills from Loadin.

08/15/2007	R 10
08/16/2007	R 10
08/17/2007	R 10
09/18/2007	R 10
09/30/2007	R 3."

SP Response

The SP filed a comprehensive Response incorporating logs showing the interaction between its service and the Complainant and reviewing such interaction against the relevant sections of the version of the WASPA Code of Conduct in force at the time of the interaction.

The SP offered the following summary of its position:

"As per the complainants' mention of the breaches, herewith an explanation:

Code 6.2.4 – Code not breached as at the time of the advertisement, WASPA Code of Conduct version 4.92 was enforce. The MSISDN subscribed to the service on 13.06.2007 @ 20:50:48. The current advertisements of Loadin adheres to the WASPA Code of Conduct Version 5.3 of 2007-07-20.

Code 11.1.7 – Code not breached as at the time of the advertisement, WAPSA Code of Conduct version 4.92 was enforce. The MSISDN subscribed to the service on 13.06.2007 @ 20:50:48. Upon subscription of the service, the first month is free and thereafter, the reminder message is sent: Reminder: you are a member of LOADIN'. R30 per month for 60 COOL downloads! You are entered into monthly PLASMA TV draw! 0822803333 (VAS rates). Furthermore, our advertisements of the Loadin Service, explicitly state that a WAP enabled mobile is required.

Code 11.1.10 – Code not breached as Loadin Subscription Service has a monthly subscription charge of R30. The following billing has occurred on the respective MSISDN:

13.06.2007 to 12.07.2007 Free period
13.07.2007 to 12.08.2007 R 29.00 billed
15.07.2007 R 3.00
16.07.2007 R 10.00
17.07.2007 R 3.00
18.07.2007 R 10.00
19.07.2007 R 3.00
13.08.2007 to 12.09.2007 R 30.00 billed
15.08.2007 R 10.00
16.08.2007 R 10.00
17.08.2007 R 10.00
13.09.2007 to 12.10.2007 R 26.00 billed
18.09.2007 R 10.00
30.09.2007 R 3.00
02.10.2007 R 10.00
03.10.2007 R 3.00”

It is also noteworthy that the SP made significant efforts to resolve this matter informally.

Sections of the Code considered

The following sections of version 5.3 of the WASPA Code of Conduct were considered:

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.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

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

- (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.

11.1.8. A monthly reminder SMS must be sent to all content subscription service customers containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

11.1.9. The monthly reminder SMS must adhere to the following format:

- (a) The monthly reminder must begin with either "Reminder: You are a member of NAME OF SERVICE" or "You are subscribed to NAME OF SERVICE".
- (b) Any marketing for a new service must appear after the cost and frequency of the existing service and the service provider's telephone number.

11.1.10. 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.

The following sections of version 4.92 of the WASPA Code of Conduct were considered:

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

- (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.
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Decision

The Adjudicator does not believe that there is merit in the alleged breach of section 6.2.4 of the Code of Conduct and the Complainant has not adduced any evidence in support of this claim. The Complaint received indicates that the “user 084 xxx xxxx **seems** to remember” which is not a secure basis from which to proceed to make a series of definite statements regarding the features of the advertisement. The continued use of the service after the initial R30 billing also militates towards a finding that the Complainant (or the person on whose behalf the Complaint was lodged) was aware of the charges and accepted them.

This aspect of the Complaint is dismissed.

The reference by the SP in its Response in respect of the alleged breach of section 11.1.7 to different versions of the Code is nonsensical as the relevant section is identical as between the two versions of the Code. This is aside from the fact that it can reasonably be assumed from the Complaint that this alleged breach is raised pursuant to a testing of the service at or shortly before the lodging of the Complaint.

Nevertheless it seems evident from the text provided that the Complainant is not referring to a mail as contemplated by section 11.1.7. Neither, for that matter, is the SP.

Section 11.1.7 states:

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

- (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.”

(Adjudicator’s emphasis)

Notwithstanding that the first month of the service is free it is evident that a consumer first subscribes to the service provided by the SP at the time that such consumer sends the word FREE to the relevant short code. The obligation on the SP, be it under version 4.92, 5.2 or 5.3 of the Code of Conduct, to send the message

contemplated by section 11.1.7 falls to be observed at this stage and should not be confused with the obligation to send a periodic reminder of the fact of subscription as set out in sections 11.1.8 and 11.1.9.

There is no evidence in the logs provided by the SP or in its Response indicating that section 11.1.7 has been complied with and the Adjudicator finds that the SP has breached this section of the Code. As noted above the question as to which version of the Code was in force at the time of the breach is not relevant.

Turning to the billing of the Complainant and the alleged breach of 11.1.10 the Adjudicator does not equate the actual billing as alleged by the Complainant and confirmed by the SP with an advertised billing of R30 per month. The impression created by the advertising for the SP's service is that there will be a once-off billing amount of R30 and not a number of staggered debits for varying amounts taken at what seems to be the whim of the SP. Such a system could conceivably prevent a subscriber from properly planning for a single debit on the anniversary date of the service and cause significant inconvenience.

Section 11.1.10 (Version 5.3) states:

"11.1.10. 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."

It is not clear to the Adjudicator that the conduct of the SP in this matter equates to an increase in the "amount and frequency" of the service as required by this section. It does, however, appear that the billing methodology adopted constitutes a breach of section 4.1.1. of the Code in that pricing information for the service has not been clearly and accurately conveyed to customers and potential customers. The Adjudicator is aware that this is a competitor-type complaint and that the Complaint does not allege a breach of section 4.1.1 but does not regard consideration of this clause as being procedurally unfair to the SP which has provided comprehensive details of the manner in which it bills its service and it unlikely to deny that it has in fact done otherwise.

The SP is accordingly found to have breached section 4.1.1 of the Code of Conduct. This finding is not dependent on the particular version of the Code in force at the time of any particular interaction between the SP and the Complainant.

Sanction

The Adjudicator has considered previous adjudications and the comprehensive Response of the SP.

The SP is fined the sum of R8 000 in respect of the breach of section 11.1.7 of the Code of Conduct and is further required to take immediate steps to ensure that its systems are compliant with this section as also section 11.1.8 and 11.1.9.

The SP is fined the sum of R9 500 in respect of the breach of section 4.1.1 of the Code of Conduct and is further required to take immediate steps to ensure that the billing methodology applied reflects the manner in which advertisements for the service indicate billing will take place.