

<b>WASPA Member (SP)</b>	Buongiorno
<b>Information Provider (IP)</b>	AMV
<b>Service Type</b>	Various Irregularities
<b>Source of Complaint</b>	Public
<b>Complaint Number</b>	#4488
<b>Code of Conduct Version</b>	5.7
<b>Date of Adjudication</b>	07/09/2008

---

## **Complaint**

The Complainant in this matter lodged the following complaint:

“It has recently come to my attention that Mira Network / Blingo has charged me for 15 or so accesses or downloads for the 26/05/2008. I am disputing accessing the said site and have spoken to Mira Network (CECE) who referred me to Blingo & we spoke to a Paul and Louise after which a supervisor called on 2008/06/18. It appear that this company is not willing to reason and are basically interested in billing clients and collecting funds. I am advising Vodacom with whom I have a contract which was recently activated not to debit my account for any other charges besides the contract premium of R129-00. We do not use this number during peak period and I presume there will be no call charges.

I have not contracted with vodacom for any other services or to collect money for any of their clients or independent service providers. Furthermore, I was not advised that my banking account details which was furnished in the contract for the sole purpose of collecting my contractual premiums will and can be used by Vodacom to collect money without my authority for third parties without my consent. The other point is that these third parties are basically unknown to me and are not willing to address complaints amicably, how do vodacom do business with these businesses without informing their clients of the implications to the client? My problem with this setup is that should Mira Network or Blingo feel that I owe them money, they should recover the money directly from me for their so called services (which I dispute) and it is not vodacom\'s right to debit my account arbitrarily for a third party that have dispute with and basically no recourse(does vodcaom provide a recourse in case of a dispute such as this one?).”

---

## SP Response

Initially it was indicated that MIRA Networks was responsible for some of the content delivered. MIRA Networks has however clarified the position and indicated that AMV was the responsible party. MIRA Networks also took it upon itself to extract information from AMV and relayed its response. The response would therefore be divided into two segments by first addressing Buongiorno UK response and then AMV's response.

---

### Buongiorno UK Response

#### **“On the 21st of January 2007:**

19:53:39, a SMS with the keyword **'trial'** was sent to the short code **'30123'**. This is an instruction to become a member to the Loadin Subscription service. If the complainant peruses his itemized billing for January / February 2007, confirmation will be found of the sent SMS.

19:53:40, a SMS was sent to the MSISDN (+27824874355): **"Loadin. Thanks 4 subscribing to the Loadin Free Trial. You can download a whopping 60 items from r catalogue and website [www.loadin.co.za](http://www.loadin.co.za)".**

20:03:40, a WAP push SMS was sent to the MSISDN: **" LOADIN. Begin downloading ur 60 items from this link. Click now!"**

#### **On the 6<sup>th</sup> of February 2007:**

10:35:27, the word **'unsubscribe'** was sent to the short code **'30123'**.

10:35:30 a SMS was sent to the MSISDN: **"Loadin. Sorry, please check you have sent the correct keyword as we couldn't service your request. If u require further help contact customer care on 0112389017"**.

#### **On the 8<sup>th</sup> of February 2007:**

20:43:12, the word **'cancel'** was sent to the short code **'30123'**.

10:35:30 a SMS was sent to the MSISDN: **"Loadin. Sorry, please check you have sent the correct keyword as we couldn't service your request. If u require further help contact customer care on 0112389017"**.

#### **On the 11<sup>th</sup> of February 2007:**

19:23:10, the word **'stop'** was sent to the short code **'30123'**.

19:23:11 a SMS was sent to the MSISDN confirming cancellation of the subscription service: **"Loadin. Your request has been received and you have been unsubscribed from the Loadin subscription service. Sorry to see you go."**

No billing occurred during this period as the complainant cancelled the service during the free month.

**On the 17<sup>th</sup> of April 2008:**

20:27:38, a SMS with the keyword 'play' was sent to the short code '30123'. This is an instruction to become a member of Loadin Games. If the complainant peruses his itemized billing for April / May 2008, confirmation will be found of the sent SMS. The Loadin Games service is a subscription service where the member receives a weekly game if successful billing has occurred.

20:27:38, a content push of a game was sent to the MSISDN: **"LOADIN Games: Ur first GAME! Click to Download!"**.

20:27:39, a SMS was sent to the MSISDN: **"LOADIN games: Welcome to the PREMIUM game subscription service! Currently processing ur order & will let you know when ur order has been confirmed."**

20:27:59, billing of R10 occurred.

20:27:59, a SMS was sent to the MSISDN: **"LOADIN games: Order successful - thank you! Every week u'll get a PREMIUM game for R10 per week! To cancel, SMS STOP to 30123. For HELP 0822327400(VAS rates)."**

**On the 23<sup>rd</sup> of April 2008:**

17:16:26, a SMS was sent with the keyword 'stop' to the short code '30123'.

17:16:26, a SMS was sent to the MSISDN: **"LOADIN' You have been unsubscribed from this service."**

After the billing upon subscription, all other billing attempts were failures.

**On the 11<sup>th</sup> of May 2008:**

20:49:44, a SMS with the keyword 'play' was sent to the short code '30123'. This is an instruction to become a member of Loadin Games. If the complainant peruses his itemized billing for April / May 2008, confirmation will be found of the sent SMS.

20:49:45, a content push of a game was sent to the MSISDN: **"LOADIN Games: Ur first GAME! Click to Download!"**

20:55:25, billing of R10 occurred.

20:59:45, a SMS was sent to the MSISDN: **"Welcome 2 LOADIN' Games! U receive a AWESUM weekly game 2 download! Go gaming!**

**Help:0822327400[R10/week Subscription.2 end SMS stop games to 30123]"**

21:02:43, a SMS was sent with the word 'stop' to the short code '30123'.

21:02:43, SMS was sent to the MSISDN: **"LOADIN': Please recheck the command you recently SMSed as it is an unrecognized command! Please remember that LOADIN' is only for VODACOM users..."**

21:10:34, a SMS with the keyword 'stop games' to the short code '30123'.

21:10:34, a SMS was sent to the MSISDN: **"Ur LOADIN' Games membership has ended. U no longer get a weekly game. To re-join SMS LGC to 30123. [R10/week service]"**

**On the 14<sup>th</sup> of May 2008:**

21:29:55, a SMS with the keyword 'stop games' was sent to the short code '30123'.

21:29:55, a SMS was sent to the MSISDN: **“LOADIN': Please recheck the command you recently SMSed as it is an unrecognized command! Please remember that LOADIN' is only for VODACOM users...”** MSISDN was not subscribed to any service hence the error message.

**On the 21<sup>st</sup> of May 2008:**

22:56:56, a SMS with the keyword **'free'** was sent to the short code **'30123'**. This is an instruction to become a member to the Loadin Subscription service. If the complainant peruses his itemized billing for May / June 2008, confirmation will be found of the sent SMS.

22:26:59, billing of R30 occurred. The complainant already had a free trial when he subscribed to Loadin Subscription service on the 21st of January 2007 at 19:53:39 therefore he was billed for the service.

22:56:59, a WAP push SMS was sent to the MSISDN: **“Hi! U're a member of LOADIN! Click here 4 Entertainment Anytime!”**

23:01:08, using a Samsung U700 handset, the Loadin WAP site was accessed. The following content was downloaded:

- Polyphonic – No One
- True Tone – I Got You I Feel Good
- True Tone – That's The Way I like It
- True Tone – Diamonds Are A Girls Best Friend
- True Tone – Sexual Healing
- True Tone – With A Little Help From My Friends

23:11:56, a SMS was sent to the MSISDN: **“Welcome 2 LOADIN! Entertainment Anytime! 60 downloads 4 ur fone monthly! Help:0822327400 [R30/month Subscription.2 end SMS stop loadin to 30123]”**

23:13:56, a SMS was sent to the MSISDN: **“LOADIN! Access ur FREE downloads from wap or USSD. Dial \*120\*30123# from ur cellphone & follow the prompts on the menu 2 download FREE games, vids & more.”**

23:24:53, a SMS with the keyword **'stop loadin'** was sent to the short code **'30123'**.

23:24:53, a SMS was sent to the MSISDN: **“LOADIN! Ur Entertainment Anytime membership has ended. U no longer have access to 60 FREE downloads monthly. 2 rejoin SMS MORE to 30123. [R30/month service]”**

23:27:21, a SMS with the words **'stop game'** was sent to the short code **'30123'**. Immediately, a SMS was sent to the MSISDN: **“LOADIN': Please recheck the command you recently SMSed as it is an unrecognized command! Please remember that LOADIN' is only for VODACOM users...”**

Herewith the billing history for the above services:

Service	Date	Time	Billed
loadin Games	2008/04/17	20:27:59	10.00
Loadin Games	2008/05/11	20:55:25	10.00
Loadin Subscription	2008/05/21	22:56:59	30.00

All SMSes sent to the short code '30123' are free. No reminder messages were sent during the period of subscription to the above services as the duration of the subscription period did not reach anniversary date.

Considering that the above services were used, a refund of R50 is not justified.”

---

### AMV Response

The IP responded by providing the following reply which is reproduced here in full:

“On the 11<sup>th</sup> May 2008 the user accessed our mobile content site through an advertisement on an affiliates website.

While browsing the internet on their **SAMSUNG-SGH-U700** cellphone the user responded to an advert for our Gamezone WAP site.

The site states that:

*Click here for your free game!*

*Free game terms: Your FREE GAME must be downloaded from the link above. This is a 100% no obligation FREE GAME. No questions asked! All other items on this page are charged at the standard rate of R30.*

The user has then purchased the following items:

2008-05-11 19:57:00	SA WAP Ad GameZone Mixed [1091]	<b>Sonic Jump [86102]</b>
2008-05-11 19:57:32	SA WAP Ad GameZone Mixed [1091]	<b>Crash of the Titans [86125]</b>

The requested items were then sent to the users handset.

On the 14<sup>th</sup> May the user returned to the same site to access further content:

2008-05-14 19:46:27	SA WAP Ad GameZone Mixed [1091]	<b>The Spiderwick Chronicles [86260]</b>
---------------------	---------------------------------	------------------------------------------

The requested item was then sent to the users handset.

On the 26<sup>th</sup> May the user responded to an advert for our Babehouse site.

The site states that:

*Free Sexy Videos!*

*Free Sexy Video Terms: Your FREE sexy videos must be downloaded from the link above. This is a 100 percent no obligation free video pack. No questions asked!*

*18+ only. This WAP menu is charged at R30 per page viewed (3 Videos per page, R10 per video). All videos on each page may be downloaded inclusive of this price.*

The user then proceeded to enter the following pages within the site and download content:

2008-05-26 20:27:18	SA WAP Ad Babe House [1411]	<b>SA_Bedroom_Babes</b>
2008-05-26 20:27:36	SA WAP Ad Babe House [1411]	<b>SA_Bedroom_Babes</b>
2008-05-26 20:27:59	SA WAP Ad Babe House [1411]	<b>SA_Bedroom_Babes</b>
2008-05-26 20:28:07	SA WAP Ad Babe House [1411]	<b>SA_Bedroom_Babes</b>
2008-05-26 20:29:45	SA WAP Ad Babe House [1411]	<b>SA_Fantasy_Babes</b>
2008-05-26 20:29:55	SA WAP Ad Babe House [1411]	<b>SA_Fantasy_Babes</b>
2008-05-26 20:30:05	SA WAP Ad Babe House [1411]	<b>SA_Fantasy_Babes</b>
2008-05-26 20:30:26	SA WAP Ad Babe House [1411]	<b>SA_Fantasy_Babes</b>
2008-05-26 20:30:36	SA WAP Ad Babe House [1411]	<b>SA_Fantasy_Babes</b>
2008-05-26 20:30:56	SA WAP Ad Babe House [1411]	<b>SA_Fantasy_Babes</b>
2008-05-26 20:31:50	SA WAP Ad Babe House [1411]	<b>SA_Bathroom_Babes</b>
2008-05-26 20:32:05	SA WAP Ad Babe House [1411]	<b>SA_Bathroom_Babes</b>
2008-05-26 20:32:17	SA WAP Ad Babe House [1411]	<b>SA_Bathroom_Babes</b>
2008-05-26 20:32:44	SA WAP Ad Babe House [1411]	<b>SA_Hallway_Babes</b>
2008-05-26 20:32:58	SA WAP Ad Babe House [1411]	<b>SA_Hallway_Babes</b>

As a result the user was sent billing confirmations on 31931:

*This is a billing confirmation for yr content access. See portal for terms.*

We have now Blacklisted the number from any future transactions with our company.”

---

**Sections of the Code considered**

Without the Complainant specifying which sections of the Code were breached, the Adjudicator, after reviewing the Complaint, considered the following sections of version 5.7 of the Code of Conduct:

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

5.1.6. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

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.

---

## **Decision**

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. In this matter the Adjudicator has ascertained that the SP named MIRA Networks has had no involvement in this matter and is therefore found to be wrongfully identified as a respondent.

## **Buongiorno**

The Adjudicator has reviewed the response from this SP. Although ample proof have been provided by the SP in this matter that the Complainant did indeed subscribe to its services, the Adjudicator is of the opinion that some of the procedures followed by the SP in its unsubscribing practices are not on par with the Code of Conduct. In the one instance Complainant send the word "cancel" to unsubscribe and in another instance the word "unsubscribe". The system however returned an error message and disallowed the Complainant to unsubscribe using these words. This is a clear breach of section 5.1.6 of the Code of Conduct.

The Adjudicator is also of the opinion that the use of the word "free" in order to subscribe a user falls foul of the Code and is in itself deceptive and misleading. The Adjudicator therefore finds the SP in breach of section 4.1.2 of the Code.

The Complaint against the SP is partially upheld.

## **AMV**

From the information provided to the Adjudicator it seems clear that there is no evidence of any subscription that took place. It also seems relatively clear that

the user of the simcard with number 0824874355 did indeed download the single content items as was indicated by the IP in its response. There could therefore be no breach of section 11.1.4 of the Code of Conduct.

However, the primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. The current wording of the message in this complaint falls foul of the Code. The use of the word “free” with both the games and videos is deceptive and misleading. Although this sort of use of the word “free” is explicitly prohibited in version 6.1 of the Code of Conduct, it is not the case with version 5.7. However, the Adjudicator still feels that the deceptive use of the word is a breach of section 4.1.2 of version 5.7 of the Code of Conduct.

It is unclear whether the Complainant in this matter downloaded the content on the assumption that the content was free, or whether he actually realized that the content was going to be billed. However, in this matter the Complainant argued that he did not utilize the services, which proves to be contradictory to the logs supplied.

The Complaint is partially upheld.

In determining sanctions against the two providers the following factors are considered:

- The prior record of Buongiorno with regard to breaches of section 4.1.2 and 5.1.6 of the WASPA Code of Conduct;
- The prior record of AMV with regard to breaches of section 4.1.2 and of the WASPA Code of Conduct; and
- The actions taken on behalf of the client.

Buongiorno is fined R 15 000, 00. This fine is payable to the WASPA Secretariat within five (5) days of notification hereof. The SP is also ordered to refund the Complainant R 30-00 within five (5) days of notification hereof.

AMV is fined R 10 000,00. This fine is payable to the WASPA Secretariat within five (5) days of notification hereof. AMV is also ordered to refund the Complainant 50% for content downloaded within five (5) days of notification hereof.

---