



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Blinck Mobile
Information Provider (IP) (if any)	
Service Type	Subscription service
Source of Complaints	E Marais
Complaint Number	6867
Date received	23 June 2009
Code of Conduct version	7.4

Complaint

The complainant logged an unsubscribe request via the WASPA unsubscribe system on 18 June 2009. The complainant was not satisfied with the SP's response and requested that the complaint be escalated to the formal complaint procedure.

The complainant states that he is alleged to have received 50 SMS messages from the SP, which he denies receiving.

SP's response

The SP advised that it had investigated the matter in detail and concluded that there are no justifiable grounds in this case for a return of the subscription fees incurred by the complainant.

With regard to the frequency and volume of messages received, the SP confirmed that there were no irregularities here. The volume and frequency of the messages

have been agreed upon in association with the SP's partners Sybase and Vodacom.

The SP also confirmed that charges are only applied for successful delivery of the messages to the mobile phone. The SP cannot determine whether the messages were saved or stored on the handset.

The SP also stressed that the owner of the mobile phone is responsible for all usage of the handset, even if it was not authorized by them. It is the owner's responsibility to investigate the abuse of their phone and to take this up with the relevant user.

The SP's records indicate that the subscription was activated on 9 March 2009. The complainant's phone number was initially entered onto the SP's website. The SP's server then sent an invitation message to the complainant, which outlines all relevant information such as the cost of the service, along with a unique PIN code. The service was activated when the PIN code was re-entered onto the SP's website.

The SP has provided a copy of the traffic report of all messages sent to the complainant's number.

Sections of the Code considered

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2. Members are committed to lawful conduct at all times.

4.1. Provision of information to customers

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

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

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.

4.1.4. Members must make the terms and conditions of any of their services available to customers and potential customers, on request.

4.1.5. Terms and conditions of members' services may not contain clauses that contradict the requirements of the WASPA Code of Conduct.

4.1.6. 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.

4.1.7. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

4.1.8 . Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

4.1.9. Customer support may not be provided via premium rated numbers, and may only be provided via standard-rate or VAS-rate numbers.

4.1.10. Members undertake to inform their wireless application service customers that they are bound by this Code of Conduct. Members also undertake to make these customers aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer wish to do so.

4.1.11. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

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". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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.

11.1.3. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.

11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

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.

11.1.6. 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.

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

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.

11.1.9. 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.

11.1.10. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing].

11.1.11. If a subscription service can be initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.

Decision

In the absence of any evidence presented by the complainant other than his own denial that he received the relevant messages, I must accept the logs provided by the SP as evidence that the complainant's phone number was used to validly subscribed to the SP's WFriend subscription service.

The service was activated via a double opt-in procedure and the relevant welcome message was sent to the number. It also appears that a valid unsubscribe link was furnished.

I have noted the complainant's account of certain discussions he had with a representative of the SP when the two tried unsuccessfully to resolve the matter. Reference is made to a web browser inbox as the technical destination for the sent messages. However it would appear that the representative in question unnecessarily confused the issues.

According to the best evidence rule, I must accept that the written log of all messages sent, and the relevant dates and times of transmission, are correct unless the contrary is proved.

The complaint is accordingly dismissed.