



REPORT OF THE ADJUDICATOR

WASPA Members (SP)	Mira Networks, Integrat
Information Provider (IP) (if any)	Blinck Mobile
Service Type	Commercial SMS, Subscription service
Source of Complaints	WASPA Adjudicator
Complaint Number	4847
Date received	15 September 2008
Code of Conduct version	6.2
Advertising Rules	1.6

Complaint

The Complaint relates to the receipt of commercial SMS messages which the complainant believes to have been unsolicited and in breach of, *inter alia*, section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct. The Complaint is comprehensive and is set out in full below.

"I received the following SMS messages on my mobile phone number 082 773 xxxx on 3 September 2008 at approximately 16:00.

All messages arrived in very quick succession.

Message 1

From: +2782004842831631

Message Content: Fill in this pin 95895 to get ur downloads!Or reply OK.You also get a FREE BONUS TONE in the WVIEW club to!
Info:za.celldorado.com/0800980963 R10/sms3sms/wk

Message 2

From: +2782004842831631

Message Content: Fill in this pin 95895 to get ur downloads!Or reply OK.You also get a FREE BONUS TONE in the WVIEW club to!
Info:za.celldorado.com/0800980963 R10/sms3sms/wk

Message 3

From: +2782004842831631

Message Content: Fill in this pin 95895 to get ur downloads!Or reply OK.You also get a FREE BONUS TONE in the WVIEW club to!

Info:za.celldorado.com/0800980963 R10/sms3sms/wk

Message 4

From: +27820070303020

Message Content: Your Pin is 4442, enter it on the site now!You will receive: polyphonicrington499 every day(s) at a cost of R4.99 per delivery.

Message 5

From: +2782004842831631

Message Content: Fill in this pin 95895 to get ur downloads!Or reply OK.You also get a FREE BONUS TONE in the WVIEW club to!
Info:za.celldorado.com/0800980963 R10/sms3sms/wk

I am unsure if the fourth message is related to the remaining messages, however it receipt in close proximity to the others seems to indicate that it may be.

I have never had any previous interaction with this SP or IP using this number.

A phone call to the IP (Blinck Mobile Ltd trading as Celldorado) was made and they indicated that two messages were sent to my number following that number being entered onto their web site from IP address 196.35.158.182

This was certainly not done by me and this fact can be confirmed by WASPA Chairperson Leon Perlman who was sitting next to me in Parliament most of the day.

I am unable to locate details for this IP address range - however it does not appear to be within the ranges used in South African IP address space. I doubt that any one would intentionally insert my mobile number from either a local or international IP range.

I assert that the IP is using this as an excuse in an attempt to justify its practice of spamming individual mobile numbers.

Other than the offences committed to the English language, a complaint is submitted in respect of the following alleged breaches of the WASPA Code of Conduct and WASPA Advertising Rules:

Sections of Code of Conduct:

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.

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

All messages. The SMSs received create the impression of a prior existing relationship, which is incorrect. The reference to a PIN to access downloads is also deceptive and misleading.

Pricing is also confusing and bears no relation to pricing on the IP's web site.

No place to enter the PIN number provided.

5.1. Sending of commercial communications

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

All messages lack this information.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

Not indicated in any of the messages.

5.1.3. Any mechanism for allowing a recipient to remove him or herself from a database must not cost more than one rand.

Unsure - requires investigation by the Secretariat.

5.1.4. Notwithstanding 5.1.3, for SMS and MMS communications:

1. A recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply "STOP" procedure must be included at the start of any messaging service, for example: "reply STOP to opt out".

2. Recipients of premium rate or non-replyable messages must have the option to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). This opt-out instruction must be included in every commercial premium rate or non-replyable message, for example. "sms STOP to 32xxx to opt out".

Not provided in any of the messages

5.2. Identification of spam

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

1. the recipient has requested the message;
2. the message recipient has a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator;
- or 3. the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

No request, prior relationship or explicit consent, hence all messages are spam.

5.3. Prevention of spam

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.

All these messages are spam sent in contravention of the Code.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

None indicated.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

6.2.8. Pricing on any promotional material must use one of the following generally accepted formats for prices in Rands: "\Rx\" or "\Rx.xx\".

Message 4 breaches this requirement.

6.5. Use of the word "free"

6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

Messages 1, 2, 3 and 5

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services".

All messages lack such an identification.

WASPA Advertising Rules:

11.2.4 Contact details of the sender are obligatory. The contact details must not use any premium rated fax, PSMS, USSD, WAP, or IVR lines. A web site address is the preferred method Message 4 is in breach

11.3.2 The SMS must contain contact details of the sender, preferably a web site address

Message 4 is in breach

11.7 BEARER REQUIREMENTS & CHARGES: Indicate need for and possibility of additional bearer charges eg WAP
If any additional bearers (eg WAP and/or GPRS) are required for full access to the advertised service/Content, and where charges will be incurred by a user over and above the cost of the Content or service offered by the advertiser, then the display text in both the body of the advertisement as well as in the T&C must indicate that additional bearer charges may apply.
eg "R10/Game + WAP charges"

All messages in breach

11.9 CONTACT DETAILS: Provide web site address AND helpline number/shortcode // Advertisers must include a helpline number or a working web site address that has direct applicability and linkage to the advertiser

Message 4 in breach

11.15 PRICING: Show component, bearer and total cost // Cannot use term Standard Rate when no free/discounted SMS/Minutes cannot be utilised Overview:
The display text must show the full or potential cost of access for fully obtaining the advertised Content and/or service.

All messages in breach

11.15 (a) Bearer Costs:
If additional WAP/GPRS bearer charges may be incurred over and above any other Access Channel costs, the possibility thereof must be indicated.
eg "2x R5 SMS = Total R10 + WAP Charges"

All messages in breach

11.15 (d) SMS:

- . The cost of a single (or component) SMS used for access to a service must be indicated.
 - . If more than one SMS is required to access the service/Content, then the number of SMSs so required and their individual cost for access must be indicated. The total cost involved in accessing the full service based on the cumulative number of SMSs required must also be disclosed. For example, if a number of SMSs are required for registration before full access and use of an advertised service becomes available to a user, then the possibility thereof and then the number of required SMSs must be indicated.
- Eg "2x R5 SMS = Total R10 + WAP Charges"
 Eg "3 x R5 SMSs required for service registration. Total cost R15"

All messages in breach.

11.16 SUBSCRIPTION SERVICES: Show Total Subscription Charge, Frequency of Charge, any bearer charges and any additional charge/s

(i) Must Use The Words "Subscription Service"

If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words "Subscription Service" must be prominently displayed at the top section of the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed. No acronym, letter (eg "S"), number, abbreviation (eg "Subs"), icon, or any other mark may be used as an alternative to the words "Subscription Service" anywhere in the advertisement when that Content is only available at all and/or at a particular cost as part of a subscription service.

(ii) Must Indicate Charge/s:

The advertisement must indicate:

- (a) The TOTAL charge that the consumer will incur for the subscription component of their access to that subscription service.
- (b) The frequency (and the minimum frequency, if applicable) at which they will be charged for the subscription component of access to that subscription service.
- (c) Whether, in addition to the periodic subscription charges in (a) & (b) above, there are any additional charges applicable to obtaining any particular service, Content or class of Content on the advertisement. [See (iii) below]

This indication must include the potential and cost of any (additional) bearer charges.

(iii) Must Indicate Cost Of Any (Additional) Per-Content Access

If in addition to a periodic subscription charge the consumer could additionally be charged on a per-access basis for access to any particular service,

Content or class of Content on the advertisement within the subscription period and terms, then the advertiser must make it clear to the consumer that access this Content or service will, over and above the periodic subscription cost, incur additional charges per Content or service access.

The periodic subscription cost, the frequency of the periodic charge, and where applicable, the additional access cost must all be displayed clearly and TOGETHER, in a position immediately above, below, or to the side of the Content, service, or class of Content. There must in particular be an indication whether bearer charges are included or not in the access cost.

o [See also 'BEARER CHARGES' above]

All messages in breach

11.17 TECHNICAL CONDITIONS FOR ACCESS: Indicate which users and/or phones can access services

- . The display text must indicate whether the service can only be accessed by:
 - . Phones with any particular technical specification(s)
 - . Any particular time period [See also "AVAILABILITY OF SERVICES/CONTENT" above]
 - . Any particular bearers [See also "BEARER CHARGES" above]

- . Any particular mobile operator networks [See also "NETWORK COMPATIBILITY" above]
- . Any particular mobile operator subscription types [See "also NETWORK COMPATIBILITY" above]

However, because there are numerous phones on the market each with different technical specifications, it may be impractical to list all these handsets in media which is non-permanent (eg TV/Radio). These must however be shown in permanent media (eg Web/Print)

All messages in breach

In the case of messages 1, 2, 3 and 5 - I have already contacted the service provider concerned regarding this complaint, but the service provider has not resolved the complaint to my satisfaction.

In the case of message 4 - I have not contacted the service provider concerned because I believe that this complaint cannot be resolved by the service provider, and instead needs WASPA's attention.

I hereby declare that the information provided above is to my knowledge true and correct, and that I am submitting this complaint in good faith.

SP Response

After investigation by the WASPA Secretariat it was ascertained that the 4th message originated from Integrat while the balance originated from Mira Networks with the responsible IP being Blinck Mobile ("Blinck"). Integrat and Blinck's responses are set out below.

Integrat

"Integrat Response.

Message 4

From: +27820070303020

Message Content: Your Pin is 4442, enter it on the site now! You will receive: polyphonicrington499 every day(s) at a cost of R4.99 per delivery.

1. This is not a case of an unsolicited commercial message. This is a pin message used as a verification method for people using web registration to start a subscription service. The message would be of no value to the recipient or the sender of such a message as the message as such has no commercial value as it discloses no advertising or contact information. The receiver can't utilize the pin because he did not initiate the process on the website.
2. It is clearly a message sent after the MSISDN was entered in on a website where the website uses a registration mechanism when a customer enters a MSISDN on a website.
3. The only logical explanation for the complainant receiving this message is that someone (who could be anyone in possession of the complainant's MSISDN) entered the MSISDN on the website. It is reiterated that anyone in possession of the complainant's cell phone number could have entered it on the website. To determine who such a person might be is an impossible task as it could be one of a countless multitude in possession of the complainant's cell phone number i.e. a competitor of the SP and/or IP, prankster or foe.
4. Therefore the SP and IP would have no control of the sending of such a website activated message.
5. The website activation was also designed in this manner so that it still requires the person that receives the pin message to enter such a pin on the website before the subscription is activated. This mechanism ensures that the person that receives the pin message is the person who wants to activate a subscription. Therefore any friend or foe of the complainant could have entered the complainant's cell phone number on

a website and the pin message would be sent to anyone who's number is entered on the website and the IP and SP would have no control over anyone who enters such a number, but the double opt-in mechanism created by the pin message ensures that only the person who receives the pin message can therefore start such a subscription service - if that is their intention and they have done the other steps required for such an activation.

6. The pin message also discloses to the recipient that the service is at a cost of R4, 99 per day. The website discloses that the service is a subscription service as well as the costs and terms and conditions as required by WASPA.
7. The SP and IP did not send any unsolicited commercial message to the complainant.
8. The SP and IP cannot be held liable for people in possession of the complainants MSISDN entering it on websites or using it in any way because the SP and IP has no control over the dealings of other people in possession of the complainants MSISDN.
9. To be expecting from the SP and IP to manage such a measure of control is extreme, unreasonable, impractical and completely impossible.
10. As such there is no reasonable ground for this complaint and it should be dismissed as the SP and IP are clearly not at fault.
11. We trust you find the abovementioned in order and await your adjudication in due course."


Blink Mobile

"Our records show that [the Complainant]'s telephone number, +27827731288, was entered into the Blink website signup page, located at <http://sa.celldorado.com>, and then the submit button was clicked. Please see the attached MO/MT report of the event. It is unfortunate that [the Complainant] had an negative experience, but I can assure you that this telephone number was not spammed by our service. Blink will not send out any SMS without a prior request either by an Internet request or by a keyword being sent to our short code. Once a request has been received by our system we will send out a SMS asking the customer to confirm the request for a subscription, if there is no response to this message, the system will send out 1 more message. If we do not receive a confirmation on this reminder SMS no further messages will be sent out to the telephone number, and of course the subscription will not be started. Our records show that a maximum of 2 SMS was sent from our system to [the Complainant]'s telephone, we cannot detect in our system why 4 SMS were received by his phone. (please see attached MO/MT report).

We can only speculate how and why [the Complainant]'s telephone number was entered into our website; it is possible that a potential customer typed the wrong telephone number or for any number of other reasons the number was entered into our internet signup page. We can assure you and [the Complainant] that the telephone number is now blocked for all services offered by Blink. We can also advise [the Complainant] if he wishes to ensure that the number is blocked to visit our website Mobileguardian.tv, which offers our customers the opportunity to block their MSISDN for all Blink services.

We want to ensure you that no costs were incurred by [the Complainant] for our services, or that that an SMS was sent to his telephone without a prior request. "

Blink Mobile further provided the following log:

+27827731288  MO / MT Messages				
<u>Sent / Received</u>	<u>Line</u>	<u>AppName</u>	<u>Message</u>	<u>ZAR Tariff</u>
2008-09-03 17:04:32	31631	ZA_31631_MOVE_W1_WVIEW	Fill in this pin 95895 to get ur downloads!Or reply OK.You also get a FREE BONUS TONE in the WVIEW club to!Info:za.celldorado.com/0800980963 R10/sms3sms/wk	0.00
2008-09-03 16:59:33	31631	ZA_31631_MOVE_W1_WVIEW	Fill in this pin 95895 to get ur downloads!Or reply OK.You also get a FREE BONUS TONE in the WVIEW club to!Info:za.celldorado.com/0800980963 R10/sms3sms/wk	0.00
2008-09-03 16:59:28	31631		WVIEW ON PIN=95895 54751215 1429085612 196.35.158.182 subscribe	
Total			0.00 (Maximum possible spend)	

Sections of the Code considered

These are set out in full under the Complaint section. For the sake of convenience the following sections of the Code of Conduct and Advertising Rules have been raised:

- 4.1.1 – honest and fair dealings
- 4.1.2 – dissemination of false or deceptive information
- 5.1.1 read with 11.2.4, 11.3.2 & 11.9 of the Advertising Rules – commercial messages must contain a valid originating number / name / identifier
- 5.1.2 – opt-out facility
- 5.1.3 – cost of opting-out limited to maximum of R1
- 5.1.4 – STOP opt-out mechanism
- 5.3.1 read with 5.3.1. – prohibition on sending of spam
- 5.3.2 – requirement to have mechanism to expeditiously deal with spam
- 6.2.3 read with Advertising Rules 11.7, 11.15 & 11.16(ii) – pricing must be transparent
- 6.2.6 – name of SP or IP to appear in advertisements for premium-rated services
- 6.2.8 – prescribed format for pricing on promotional material
- 6.5.1 – use of the word FREE
- 11.1.1 read with 11.16(i) of the Advertising Rules – identification as subscription services
- Advertising Rules 11.17 – technical conditions for access

DecisionSection 5.3.1 read with 5.2.1.: Sending or promotion of sending of spam or failure to take reasonable measures to prevent the SP's facilities from being used for the sending of spam

1. The central issue is the alleged unsolicited nature of the SMS messages received by the Complainant and this is considered first. A related query is whether the messages could be regarded as commercial messages for the purposes of the Code.
2. The assertion of the Complainant that no consent, direct or indirect, to the receipt of the communications had been given or could be inferred is accepted. It follows that there is a *prima facie* breach of section 5.3.1 to be answered.
3. The response from the SPs can be summarised as follows:
 - 3.1. The message was received as a result of the Complainant's MSISDN being used on a website to register for their service.
 - 3.2. This could have been achieved by anyone with knowledge of the Complainant's MSISDN and it was not possible to ascertain who this might be. It may even have been done for malicious purposes.
 - 3.3. Neither an SP nor an IP would have any control over this.
 - 3.4. The PIN message constitutes a protective "double opt-in mechanism".
4. The Adjudicator accepts that the messages originated from the Complainant's MSISDN being entered in web registration forms.
5. The Adjudicator noted that pointing to the means by which the Complainant's MSISDN was entered into their systems cannot be equated with showing the forms of consent required by the WASPA Code of Conduct to send a commercial message to a consumer.
6. The messages received were accordingly spam as defined in section 5.2.1 of the Code. Note, however, points 10 – 13 below, where, although the defence was not raised in Integrat's response, it is found that message 4 was not a "commercial message" and can therefore not be regarded as spam.
7. Section 5.3.1. of the Code requires not only that members not send or promote the sending of spam, but also that they take reasonable measures to ensure that their facilities are not used by others for this purpose.
 - 7.1. The Adjudicator is of the view that the SPs/IPs created a risk of this type of event occurring through their use of web registration forms and that there may accordingly be a duty upon them to take reasonable steps to mitigate such risks. The creation of risk through these forms is recognised by both SPs in their responses when they refer to their "lack of control" over the use of the forms.
 - 7.2. The creation of the risk of misuse must, however, be balanced against the rights of the SPs to carry on business and this form of sign-up mechanism has not been found *per se* contrary to the provisions of the Code.

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- 7.3. The risk created must also be seen in the context of the SMS functioning as a safeguard against the greater harm of a consumer being billed for a subscription resulting from a third party maliciously or negligently entering that consumers MSISDN into a web registration form.
- 7.4. After perusing precedent the Adjudicator was also unable to establish that unsolicited commercial mail received under circumstances such as those in play in the current matter is encountered often in the formal dispute resolution process.
8. Accordingly the Adjudicator does not find that either SP has promoted the sending of spam or that either SP failed to take reasonable measures to ensure that their facilities were not used by others for the sending of spam.
- 9. As a result neither SP is found to have breached section 5.3.1 read with section 5.2.1 of the Code.**
- 10. The Adjudicator is further unable to make a finding in respect of the alleged breach of section 5.3.2 on the evidence presented.**

The commercial nature of the messages

11. The Adjudicator further noted that the function of the messages received could not be simply classified as protective in the sense that they served as a “double opt-in mechanism”.
12. “Commercial message” is defined in the code as meaning “a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient”.
13. Messages 1, 2, 3 and 5 contain further content which is clearly commercial in nature and the Adjudicator is of the view that these should be independently assessed against the requirements of the Code. It is evident from an examination of these messages that there is partial compliance with the Code which seems to indicate that Blink was aware it was undertaking promotional activities.
14. It should be clear that, while the results of applying the Code to what the SP regards as a confirmatory message may appear anomalous, they flow directly from the decision by the SP to use this confirmatory messages for commercial or promotional purposes.
15. The message originating from Integrat (Message 4) is more in the nature of a confirmatory message functioning as a further opt-in and without an additional commercial element. The Adjudicator is of the view that it does not constitute a “commercial message” as defined in the Code.
16. It follows that Integrat is not required, in the sending of this message, to observe provisions of the Code which apply to commercial messages.

Sections 5.1.1. – 5.1.4: Sending of commercial communications

17. Under these sections a commercial message is required to have:
- 17.1. a valid originating number and/or the name or identifier of the message originator;

-
- 17.2. an opt-out facility costing less than R1 to exercise; and
- 17.3. the STOP facility set out in section 5.1.4.
18. Having found that messages 1,2,3 & 5 were commercial in nature it follows that the above features needed to be present in the message. It further follows that message 4 is not subject to the following examination.
19. No facility as required by section 5.1.2 is present nor is the STOP mechanism promoted as required by section 5.1.4.
20. The Adjudicator is aware that the SP states that it sends only an initial message pursuant to a web registration and then a single prompt if no response is received, i.e. the number of communications is capped at two. It accordingly appears incongruous to require an opt-out facility or promotion of the STOP mechanism. The Adjudicator reiterates in this regard that the obligation to include these elements flows inevitably from the Code's provisions on commercial messages and is ultimately linked to the decision by the SP to include commercial content.
21. The Adjudicator also considered that the interaction between a consumer and the IP/SP as detailed in the complaint may be cited in future by the latter as evidence of a prior commercial relationship and the consumer should have a clear opportunity to refute this.
- 22. Blink is found to have breached sections 5.1.2 and 5.1.4 of the Code. No findings can be made on the evidence presented as regards sections 5.1.1 and 5.1.3.**

Sections 6.2.3, 6.2.6 & 6.2.8: Pricing

23. Under these sections of the Code pricing must be clear and transparent, showing the total cost to be paid for access to a service and any potential bearer charges. Pricing must be in a standard format and the name of the SP/IP must appear in all advertisements for premium rated services.
24. The Complaint is levelled only at message 4, which has already to be found to be non-commercial in nature and is not an advertisement for a premium rated service.
- 25. Integrat is found not to have breached sections 6.2.3, 6.2.6 & 6.2.8.**

Section 6.5.: Use of the word "Free"

26. WASPA's members are prohibited by this section from using the keyword "FREE" or words with the same or similar meaning unless the service being promoted has no associated charges other than variable network bearer charges.
27. This aspect is raised in respect of messages 1,2,3 and 5.
28. The Adjudicator notes that the relevant SP has not addressed this issue in its reply.
29. The word FREE appears in the message but the Adjudicator has no evidence before him of the fact that there are any charges associated with the BONUS TONE represented as being FREE. While the Adjudicator holds a strong suspicion from the use of the word BONUS that there are indeed associated charges (and cautions the SP in this regard) this is not sufficient basis for a finding of a breach.

30. Blinck is accordingly found not to have breached sections 6.5 of the Code.

Section 11.1.1: Identification as subscription services

31. This section requires that promotional material for subscription services clearly identify the services as “subscription services”.
32. This aspect of the complaint lies in respect of all 5 messages.
33. In this section the term “promotional material” is utilised as opposed to “commercial message”. Without making any finding as to whether these constitute the same thing in respect of SMS messages, the Adjudicator is satisfied that message 4 is not promotional material.

34. Integrat is accordingly found not to have breached section 11.1.1 of the Code.

35. Messages 1,2,3 & 5 do constitute promotional material and should reveal the words “subscription service”.

36. Blinck is accordingly found to have breached section 11.1.1.

Advertising Rules sections 11.2.4, 11.3.2. & 11.9: Contact details of the sender

37. The Complainant alleges that message 4 as received from Integrat did not provide the required contact details of the sender.
38. Chapter 11 of the Advertising Rules applies to all SMS and MMSs to the general public where Access Channels are displayed. An access channel is defined as “the common PSMS, SMS, IVR, USSD, MMS, 3G or WAP methods of obtaining Content or Content Services or such other methods of obtaining Content or Content Services as may be introduced by the Mobile Network Operators from time to time”.
39. Version 1.6 of the Advertising Rules further notes that WASPA, while cognisant of the limited space in an SMS, nevertheless requires senders to abide by the General Terms.
40. The Adjudicator holds that, while the term “commercial message” is not to be found in these sections of the Advertising Rules, the use of the term “advertiser” in section 11.9 indicates that there must be an element of promotion before an SMS will fall to comply with these sections.
41. The Adjudicator has accepted that message 4 constituted a confirmatory message without further promotional or commercial content and that as such it is a reasonable step to take in mitigation of allowing consumers to sign up for subscription services through web registration forms.

42. Integrat is accordingly found not to have breached sections 11.2.4, 11.3.2 and 11.9 of the Advertising Rules.

Advertising Rules sections 11.7, 11.15(a): Bearer requirements & Charges

43. The Complainant alleges that all of the messages fail to disclose the need for and possibility of additional bearer charges or to show the full or potential cost for fully obtaining the advertised content.

44. Message 4 is not promotional material or a commercial message and is not required to display the above regarding bearer charges.
- 45. Integrat is accordingly found not to have breached sections 11.7 or 11.15(a) of the Advertising Rules.**
46. Blinck has gone so far as to set out the basic pricing of the service but has failed to make any statement as to whether bearer charges apply. It is self-evident that further bearer charges will apply in this case.
- 47. Blinck is accordingly found to have breached sections 11.7 and 11.15(a) of the Advertising Rules.**

Advertising Rules sections 11.15(d): Pricing

48. This section requires that an SP must indicate the cost of any SMS or required combination of SMS messages required to access a service.
49. This aspect of the complaint lies in respect of all 5 messages.
50. The Adjudicator does not see how this complaint can relate to message 4.
- 51. Integrat is accordingly found not to have breached section 11.15(d) of the Advertising Rules.**
52. At first blush the complaint is also difficult to apply to the balance of the messages as there is no indication that more than one SMS will be required to access the service (unless this is taken in the sense of bearer charges which is specifically dealt with elsewhere in the Code and Advertising Rules). On closer inspection there is, however, no cost specified in respect of replying "OK" to the message received so as to "get ur downloads", i.e. it is not clear whether this will constitute a cost to access the service.
53. The Adjudicator is not in possession of sufficient evidence to make a finding in this regard.
- 54. Blinck is accordingly found not to have breached section 11.15(d) of the Advertising Rules.**

Advertising Rules section 11.16: Subscription services

55. Under this section an SP providing subscription services must
- 55.1. use the term "Subscription Service";
 - 55.2. the total charge that the consumer will incur for the subscription component;
 - 55.3. the frequency of the periodic charge; and
 - 55.4. any additional access or related charges.
56. The Complainant alleges that all messages are in breach of this section.
57. It has been previously held that message 4 cannot be subjected to analysis against sections dealing with commercial messages or promotional material.
- 58. Integrat is accordingly found not to have breached section 11.16 of the Advertising Rules.**
59. Blinck has complied with points 55.2 and 55.3 above but not the balance.

60. Blink is accordingly found to have breached section 11.16 of the Advertising Rules but the Adjudicator is of the opinion that these breaches are subsumed in points 22 and 47 above.

Advertising Rules sections 11.17: Technical Conditions for Access

61. Under section 11.17 of the Advertising Rules an SP is required to indicate which users and/or phones can access services.

62. The Complainant alleges that all messages are in breach of this section.

63. It has been previously held that message 4 cannot be subjected to analysis against sections dealing with commercial messages or promotional material.

64. Integrat is accordingly found not to have breached section 11.17 of the Advertising Rules.

65. The Adjudicator is unaware as to whether there are any technical conditions for access and is not in possession of sufficient evidence to make a finding in this regard.

66. Blink is accordingly found not to have breached section 11.17 of the Advertising Rules.

Sections 4.1.1 & 4.1.2: Honest & fair dealings

67. The Complainant bases this complaint on the fact that, notwithstanding there being no prior relationship, the messages received intimated that such a relationship did exist. These sections also function as a catch-all in respect of the general conduct of the SPs as revealed by the Complaint and their responses thereto.

68. The Adjudicator, having accepted the versions of the SPs to the effect that the Complainant's MSISDN was entered by an unknown third party, cannot find that there was any intention on the part of the SPs to mislead or deceive the Complainant nor any other act or omission sufficient to trigger a breach of the relevant sections.

69. To the extent that messages 1,2,3 and 5 may have misled or been non-compliant the Adjudicator regards this as flowing from a lack of appreciation of the rules applying to commercial messages rather than any nefarious intent.

70. The Adjudicator is unable to make a finding on the information provided with regard to the relationship between pricing contained in the SMSs received and pricing on the SPs' websites nor as to whether a consumer would be able to enter a PIN on such websites.

71. As a result neither SP is found to have breached sections 4.1.1 and 4.1.2 of the Code.

Conclusions and Sanctions

72. All aspects of the complaint against Integrat have been dismissed.

73. Blink has been found to have breached sections 5.1.2, 5.1.4 and 11.1 of the Code and sections 11.7, 11.15(a) and 11.16 of the Advertising Rules.

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74. As noted above it does not appear to the Adjudicator that these are in any sense wilful breaches. It is important, however, that both SPs regard themselves as forewarned that the rules applicable to commercial messages and subscription services must be adhered, notwithstanding the fact that the overall intent of the message may be not directly commercial, e.g. where the message is primarily aimed at confirming a subscription.
75. The severity of the breaches is further mitigated by the presence of standard terms and conditions on the website which no doubt spell out in clear and compliant language those terms and formats specified in the Code and Advertising Rules.
76. The Adjudicator, taking into consideration the above as also the nature of the complaint, orders that Blinck be fined the sum of R10 000,00 payment of which is to be suspended for a period of six months on condition that Blinck is not found to have breached any of the sections set out point 73 above during that period.
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