



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Blink Mobile Ltd

Information Provider (IP)

(if any)

Service Type Subscription service

Source of Complaints C Naude

Complaint Number 5477

Date received 6 January 2009

Code of Conduct version 6.2

Complaint

The complainant initially lodged an unsubscribe request via the unsubscribe facility on the WASPA website. The complainant was unsubscribed but the requested refund has been refused by the SP. The complaint has now been escalated for formal adjudication.

The complainant states that she entered her cell phone number on celldorado's website and clicked 'ok'.

(link:<http://za.celldorado.com/ZA/ADS/1187604250/index.php?trackid=564523&tick=0&zanpid=1185279140052339712>)

She then received no less than 6 sms's to her number, advising that she had been subscribed to a subscription service for R45/week. The complainant also alleges that it costs R15 to unsubscribe from the service.

SP's response

The SP has responded by stating that due to a technical fault with the subscription activation, the complainant did not receive the relevant confirmation message to activate her subscription and was therefore automatically subscribed to the service.

She has been unsubscribed and sent the complainant an email requesting her banking details to process a refund. The complainant had not given the SP any bank account details so the refund had not yet been processed when this complaint was escalated to the formal complaint procedure.

The SP also disputes that it charges a cancellation fee of R15.

Sections of the Code considered**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. A request from a subscriber to join a subscription service may not be a request for a specific content item.

11.1.3. Where possible, 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 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.*

11.1.8. *A monthly reminder SMS must be sent to all 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.*

11.1.11. The format of the both the initial notification message and the monthly reminder should comply with the relevant section of the WASPA Advertising Rules.

11.2. Termination of a service

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

11.2.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.2.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

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

11.2.5. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

11.2.6. If a user ports their number from one operator to another, that number must be removed from all subscription services.

11.3. Subscription service directory

11.3.1. Members must register all subscription services with WASPA, by providing the following information:

- (a) the name of the service;*
- (b) the shortcode or access method (e.g. WAP) the service uses;*
- (c) the price and frequency of billing for that service;*
- (d) the customer support number associated with the service; and*
- (e) unsubscribe instructions for the service.*

11.4. Marketing of subscription services to children

11.4.1. Promotions for subscription services must not appear in publications or other media specifically targeted at children.

Decision

The SP has complied with the unsubscribe request and has tendered the relevant refund to the complainant. However, the complainant has escalated the complaint anyway. Although she has not referred directly to the provisions of the Code which she believes have been contravened, the complainant's cause for complaint appears to be that she intended to receive an individual content item when entering her number on the webpage and not to be subscribed to a subscription service.

Section 11.1.1 of the Code requires all promotional material for subscription services to prominently and explicitly identify the services as "subscription services". The promotional material on the relevant webpage states clearly in the top right corner of the page and in the accompanying terms and conditions at the foot of the page that the content advertised is part of the Celdorado subscription service offered by the SP.

The SP has stated that it usually sends a confirmation sms to the subscriber who must then expressly activate the service. However in the present matter, this additional activation mechanism was not functioning correctly and the complainant was automatically subscribed after entering her number.

A compulsory welcome message in terms of section 11.1.7 was sent to the complainant on 14 December 2008.

I am satisfied that the SP's promotion complies with section 11 of the Code. The complaint is accordingly dismissed.

The SP is encouraged to still provide the complainant with the refund should its tender be accepted.