

WASPA Member (SP)	Sybase 365
Information Provider (IP)	Blinck Mobile Ltd
Service Type	Subscription
Source of Complaint	Anonymous
Complaint Number	#2454
Code of Conduct Version	5.3
Date of Adjudication	15/01/2008

Complaint

The Complainant in this matter, who requested and was granted anonymity, issued the following complaint against a TV Advertisement ran by the SP in this matter:

1. It is clearly contravening the bundling clause in the code.
2. The pricing is also misleading as it should simply be R30 per week not the cryptic R10/ 3 screensaver/week, which is unnecessarily complicated and could be interpreted in two different ways: a) R10 for 3 screen savers each week e.g. R3.33 each or b) 3 screensavers at R10 each per week i.e. R30.
3. The size of the words "Subscription Service" cannot possibly be big enough.

SP Response

The IP in this matter is also a member of WASPA. The SP's response includes a comprehensive response from the IP to the complaint and deserves to be reproduced in full:

"Blinck Mobile Ltd ("Blinck") wishes to respond to the complaint number 2454 submitted through the WASPA website on the 30th October 2007 regarding the "RADAR" screensaver television advertisement. The complaint number 2454 addresses three different issues, those being issues of:

1. Bundling (Articles 11.1.2 of the code);
2. Pricing (Articles 6.2.4-5 of the code); and

3. Display of Access Costs (Article 6.1.1 of the code).

Below we will reply to those issues separately.

Issue 1 – Bundling

1. It is clearly contravening the bundling clause in the code.

In relation to this issue the WASPA Code of Conduct states:

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 bundled with a request for a specific content item.

Blinck's Response:

The complaint implies that the advertisement tries to sell a subscription while offering a single product ("bundling"). The item shown in this advertisement is an example of content that a customer can expect when he subscribes to one of our services, in this case the "RADAR" screensaver. In order to make the customer aware they are signing up for a subscription we display the words 'subscription service' in the both the top right corner (for the entire duration of the advertisement) and in the disclaimer (for the first 6 seconds), as can be seen in the attached screen captures (see *screencap1* and *screencap2*). Additionally the voice-over of the advertisement states (approximately 7 seconds in) "Get them all!" clearly indicating that there are other similar Radar screensavers available through the subscription service (for example the "Love Radar" screensaver, screen capture attached below).

Blinck would also like to draw the adjudicator's attention to the WASPA decision of the 9th August 2007 regarding complaint number 1761, dealing with this exact issue, which found that a materially similar "Radar" advertisement was not in breach of the bundling prohibition.

In consideration of these facts Blinck considers that it is not breaching the bundling restrictions of the Code of Conduct.

Issue 2 – Pricing

2. The pricing is also misleading as it should simply be R30 per week not the cryptic R10/ 3 screensaver/week, which is unnecessarily complicated and could be interpreted in two different ways: a) R10 for 3 screen savers each week e.g. R3.33 each or b) 3 screensavers at R10 each per week i.e. R30.

In relation to this issue the WASPA Code of Conduct states:

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.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

Blinck's Response:

The complaint states that the advertisement is misleading with regard to price, however the pricing information is as required by the WASPA guidelines. The advertisement clearly mentions the price per item, number of items per week, as well as the words 'subscription service' for the entire duration of the advertisement, in the top right corner (see *screencap1* and *screencap2*). The frequency of the service is mentioned in the disclaimer (see *screencap1*) which says: "Radar is a screensaver subscription service, Unsubscribe? Text radar stop to 31631. You will be charged R10 per screensaver until you unsubscribe. 3 screensavers/week R30. IP: Blinck. Helpline: 0861115152. www.text1.tv".

If the advertisement were altered as suggested by the complaint Blinck considers that it would be more misleading as it would imply that a subscriber was unable to cancel the subscription and associated costs mid-week.

Additionally Blinck also informs subscribers of the frequency and price in the first SMS message a subscriber receives (the Welcome Message). Therefore Blinck consider that the subscriber was at all times fully and correctly informed about the costs.

Issue 3 - Display of Access Costs

3. *The size of the words "Subscription Service" cannot possibly be big enough.*

In relation to this issue the WASPA Code of Conduct states:

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

And the WASPA Advertising Rules state:

From Section 2.2.

Display of Access Cost ... Must be displayed statically for 100% of entire ad time in **18 point** 'Zurich' font and placed in a special box or triangle on a top corner of the screen. If advertising a subscription service, the word "subscription" must **also** be placed in the access cost box/triangle in **12 point** 'Zurich' font size. No CAPS or *Italics* are permitted for the word 'subscription'.

Blinck's Response:

The complaint states that the words “Subscription Service” do not conform with the text size requirements of WASPA, presumably by comparison with the text above these words. However the “Display of Access Costs” information in the top right hand corner of the advertisement is consistent with the requirements set down by WASPA, as stated in Section 2.2 of the WASPA Advertising Rules. For convenience of comparison between 12 and 18 point Zurich font please see the below font comparison (taken from the website of an online vendor of the Zurich font).

In consideration of these facts Blink considers that it complies with the display requirements set down in the Code of Conduct and the Advertising Rules.

Sections of the Code considered

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

2.5.1. “**Bundling**” means automatically subscribing a consumer to a subscription service in response to a request from that consumer for a single content item.

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

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.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display

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 bundled with 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.

Sections of the Advertising Rules considered

Section 2.2

Display of Access Cost:

Must be displayed statically for 100% of entire ad time in 18 point 'Zurich' font and placed in a special box or triangle on a top corner of the screen. If advertising a subscription service, the word "subscription" must also be placed in the access cost box/triangle in 12 point 'Zurich' font size. No CAPS or Italics are permitted for the word 'subscription'.

2.3.13 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 in the font size, position and type as indicated:

(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.

Decision

In the reviewing the matter at hand the Adjudicator had to rely on the screenshots given to him, the advertisement in mpeg format and further apply his mind to the subsequent response received from the SP. The adjudication will be done in three segments, dealing with each of the three sub-complaints.

1. In its Complaint the Complainant stated that the referred advertisement is clearly contravening the bundling clause in the Code. In reviewing the definition of bundling in section 2.5.1, read with sections 11.1.1 to 11.1.4 of the Code and further studying section 2.3.13 of the Advertising Rules and then applying this to the mpeg in which the advertisement was displayed, it is very difficult for the Adjudicator to see from where the Complainant has drawn his/her conclusions. From the screening of the advertisement it is clear to the Adjudicator that the IP is offering a subscription service, something that is evident by the continuous and static placing of the words “subscription service” at the top right hand corner of the advertisement throughout its screening time. This is also indicated in the terms and conditions of the advertisement at the bottom of the screen for the first six seconds. The words “Get them all!” are also a further indication of it being a subscription service. This segment of the Complaint is summarily dismissed.
2. The Complainant went further and alleged that the pricing is also misleading as it should simply be R30 per week not the cryptic R10/ 3 screensaver/week, which is unnecessarily complicated and could be interpreted in two different ways: a) R10 for 3 screen savers each week e.g. R3.33 each or b) 3 screensavers at R10 each per week i.e. R30.

In reviewing this segment of the complaint the Adjudicator applied his mind to the various sections of the Code, namely sections 6.2.4 and 6.2.5 as well as section 2.3.13 of the advertising rules. The Adjudicator also took note of the display rules for cost and terms and conditions information as indicated in section 1.2 of the advertising rules.

The frequency of the charges and the total cost of the service appears in the terms and conditions displayed at the bottom of the page. It states inter alia: You will be charged R10 per screensaver until you unsubscribe. 3 screensavers/week R30. At the top right hand corner it displays the price per item and number of items per week. Although on its own this might be construed as misleading, the fact that the terms and conditions give a description of the total charge lends certain clarity to the matter and holds

out to be, in the opinion of the Adjudicator, if read together, not something that is prima facie misleading.

However, the Adjudicator does feel that when one draws your attention to the top right hand corner alone, the five seconds in which the subscription charges are displayed at the bottom would not be sufficient to draw a viewer's attention to the TOTAL charge therein displayed. This might cause the interpretation of the top right hand corner cost to be misleading. This segment of the Complaint is therefore partially upheld.

3. The third and final segment of the Complaint deals with the size of the display. The Complainant stated that the size of the words "Subscription Service" cannot possibly be big enough. After reviewing the advertisement, taking consideration of section 2.2 of the Advertising Rules and doing a study of the various sizes of the font named "Zurich", the Adjudicator is satisfied that the words "Subscription Service" in the advertisement in this matter does conform to the 12 point Zurich font. This segment of the Complaint is dismissed.

In determining an appropriate sanction, for the partially upheld segment of the Complaint, the following factors were considered:

- The prior record of the SP with regard to similar breaches of the WASPA Code of Conduct;
- The detailed response given by the SP; and
- Its clear willingness to co-operate with WASPA.

The SP is instructed to indicate the total cost in the top right hand corner of its subscription services in current and future advertisements.
