

WASPA Member (SP)	Sybase 365
Information Provider (IP)	Blinck Mobile
Service Type	Bundling
Source of Complaint	Anonymous
Complaint Number	#4413
Code of Conduct Version	5.7
Date of Adjudication	07/09/2008

Complaint

The Complainant in this matter lodged the following complaint:

“The following link is of services advertised on the internet in South Africa.

http://za.celldorado.com/ZA/ADS/938601202/index.php?trackid=1429085612&clickid=000gs200V7fa3D3nay2R98ckOYdtvd3f&tick=0&ce_cid=000gs200V7fa3D3nay2R98ckOYdtvd3f

A subscription service is being bundled with a specific content item, a guard dog ring tone, on this website. The customer is prompted to select a specific content item to start the subscription. The code clearly states that this is bundling and therefore not allowed.

The pricing at the top of the website is also not visible as the font colour is the same colour as the background graphics.

This company repeatedly breaches the code on their websites and this shows disregard for the code of conduct.”

IP Response

The IP gave a detailed response which is reproduced here in full:

“BLINCK SUBMISSION TO WASPA REGARDING COMPLAINT 4413

Blinck Mobile Ltd (“Blinck”) wishes to respond to the complaint number 4413 submitted through the WASPA website on the 27th June 2008 regarding the “Guard Dog” ringtone internet landing page.

The complaint number 4413 addresses two issues, being:

1. Non-misleading advertisement for a subscription (art. 11.1.1 WASPA code)
2. Bundling (art. 11.1.2 WASPA code)

As a general note, the complaint is issued under WASPA code version 5.7, we will respond as of this version was still in place.

Issue 1 – Non Misleading advertising

The pricing at the top of the website is also not visible as the font color is the same color as the background graphics.

In relation to this issue the WASPA Code of Conduct (version 5.7, page 11) states:

- 11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

Blinck’s Response

This landing pages states three times that this is a subscription service. All three instances are shown in one screen without the need to scroll down (based on full screen view 17inch). These are:

- First, on the top right corner. The graphics in the background make it difficult to find a good color that stands out. By displaying it in clearly different colors we believe the text is sufficiently visible.
- Additionally, as a non-obligatory statement, a special black banner in direct connection with the submit button, with only one line of text, clearly visible and readable; and
- Thirdly, in the disclaimer, in the first line, black on white background, clearly visible to customers.

Taken together Blinck is of the opinion that this advertisement complies with article 11.1.1 WASPA code.

Issue 2 – Bundling

A subscription service is being bundled with a specific content item, a guard

dog ringtone, on this website. The customer is prompted to select a specific content item to start the subscription. The code clearly states that this is bundling and therefore not allowed.

In relation to this issue the WASPA Code of Conduct (version 5.7, page 11) 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.

And the code defines “Bundling” as

2.5. “Bundling” means automatically subscribing a consumer to a subscription service in response to a request from that consumer for a single 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 “Guard Dog” ringtone. In order to make the customer aware they are signing up for a subscription we display the words ‘subscription’ in three locations on the same website, clearly visible and readable as already stipulated above.

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

Closing Remarks

Blinck is very aware of its continuing obligations to comply with the WASPA Code of Conduct and the WASPA Advertising Guidelines, and at all times Blinck has done its very best to comply with these requirements. Blinck looks forward to providing WASPA with any assistance required in further investigating this complaint and invites WASPA to contact Blinck’s legal team directly with any further inquiries.”

Sections of the Code considered

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.

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

Cost OF ACCESS DISPLAY

9.2.2.1 Formatting Of Access Cost Text:

Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a non-serif font

- The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.
- The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.
- All access cost information must be placed horizontally

9.2.3 T&C DISPLAY RULES

9.2.3.1 Formatting & Font Criteria For T&C Text

- The T&C text must be in 12 point font size, or 50% of the largest access number on a Web page, whichever is the greater. The T&C must be in a non-serif font
- All T&C information must be placed horizontally

9.2.16 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.

Additional background to Subscription Services:

Any request to be subscribed to a subscription service must be an INDEPENDENT TRANSACTION (see s11.1.2 of v3.2 of the WASPA Code of Conduct). Hence subscribers cannot be subscribed to a subscription service through having requested specific Content, or having being made to believe by a (practically) confusing ad design that they are requesting Content on a once-off (non-subscription) basis.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her.

After reviewing the disputed website the Adjudicator is of the opinion that the response offered by the IP falls short of various sections of the Code and certain aspects of the Advertising Rules.

When viewing the website with regards to the placement and colour scheme of the words containing “Subscription Service”, it is clear to the Adjudicator that sections 9.2.2.1 and 9.2.16 (i) were not complied with.

The following are clearly stated:

“The **cost text must not be part of a colour scheme** or design that could **obscure (objective) easy reading of complete details of the price.**”

“...the words “Subscription Service” must be **prominently displayed** at the top section of the advertisement...”

The IP’s contention that the *“graphics in the background make it difficult to find a good colour that stands out”* is a poor response and a weak attempt in escaping

responsibility. The fact that a special black banner with the words subscription service on it was also made available is irrelevant. The rules clearly state that the words “Subscription Service” must be **prominently displayed** at the top section of the advertisement. This is most definitely not the case in this matter.

It also came to the attention of the Adjudicator that the IP failed to comply with section 9.2.3.1 of the Advertising Rules with regard to the font size of the terms and conditions on its website. The terms and conditions font size is a far cry from the required 12 point font size.

In the absence of the above, it might be argued that the terms and conditions as well as the words “subscription service”, are rendered obsolete.

This would then re-emphasize that the webpage is advertising a single content item. In reviewing the additional background to subscription services as contained in the Advertising Rules, it is notable that the following is stated:

“...subscribers cannot be subscribed to a subscription service through having requested specific Content, or having **being made to believe by a (practically) confusing ad design** that they are requesting Content on a once-off (non-subscription) basis.”

The Adjudicator is of the opinion that this is indeed the case.

Having reached the above opinion the Adjudicator has no alternative but to adjudicate that here was indeed a breach of sections 11.1.1. This section states that promotional material for all subscription services must **prominently** and explicitly identify the services as “subscription services”. The subscription service on this webpage is most definitely not prominently displayed.

The fact that this is indeed a subscription service would then render the website also in breach with section 11.1.2.

Taking all of the above into consideration, the Adjudicator is of the opinion that the site is misleading and deceptive. Section 4.1.2 of the Code of Conduct clearly states that members must not knowingly disseminate information that is false or deceptive, or that **is likely to mislead by** inaccuracy, **ambiguity**, exaggeration or omission. The IP failed to adhere to this.

The Complaint is upheld.

In the present case the fact that the IP happens to be an affiliate member of WASPA means that sanctions can indeed be directed at the IP, but WASPA is not constrained from directing sanctions at the SP merely because the IP is an affiliate member.

In determining sanctions against the IP the following factors are considered:

- The prior record of the IP with regard to breaches of sections 4.1.2, 11.1.1 and 11.1.2 of the WASPA Code of Conduct;
- The prior record of the IP with regard to breaches of the relevant sections of the Advertising Rules;
- Its suspended sentence under Adjudication 3106 adjudicated 04/02/2008 which reads as follow: *Given the possibility that the report in complaint number 1730 may have confused the IP, R20 000 of the above fine is suspended for a period of 12 months from the date hereof on the condition that the IP does not infringe clause 11.1.1 of the WASPA Code of Conduct or clause 9.2.16(i) of the Ad Rules during that period.*

The IP is fined R 30 000, 00. This fine is payable to the WASPA Secretariat within five (5) days of notification hereof. The IP is also ordered to either withdraw the site or amend it to comply with WASPA's Code of Conduct and its Advertising Rules.

Should the fine set out above not be paid with 5 days, the SP shall be liable to WASPA for its payment.
