

WASPA Member (SP)	Sybase 365 / AMV
Information Provider (IP)	Bling Mobile
Service Type	Various irregularities
Source of Complaint	Andy October
Complaint Number	#4499
Code of Conduct Version	6.1
Date of Adjudication	09/09/2008

Complaint

The Complainant in this matter lodged the following complaint:

"Last night while surfing on WAP I did a Google search and when the results were returned there was a Google add for "hunk and celebrity" pictures. I clicked on the link. The next page had a banner on it that read something like "R10 per image - 3 images per page". Then there were a list of links.... now on a phone screen all one sees are the links.

I proceeded to click on several of these links and viewed a series of pictures of the guy from Prison Break, Vin Diesel and Brad Pitt amongst others. Quite frankly truly boring.

But then, as I reached the bottom of the list I noticed more copy, which I then read. There it explained that I would be billed R10x3 per page VIEWED. Yes, VIEWED. So irrespective of whether or not I had downloaded, I'd still be billed R30 for each page I opened.

Typically, one is warned before one proceeds to a pay-for service and one is offered an acceptance link. No such links were displayed.

I emphasise again - I did not download any content. (Goodness I sound like Bill Clinton).

The SEVEN SMSes that followed all simply read:

<from +2782004842231931> This is a billing confirmation for yr content access. See portal for terms.

Note again... no customer service number offered. No price included.

Surely, this cannot be right.

My number used: XXX-XXX-XXXX"

The Complainant further escalated his complaint and stated the following:

"I am NOT happy with this as the page layout of the concerned WAP site is misleading for the following reasons:

1. the full explanation of how the billing works is placed beneath the charged links, very clearly out of sight and only coming within sight after several links have already been viewed.

2. there is no pre-charge warning - it is the accepted practise that a consumer be warned when they are about to incur a charge. There is no such warning.

3. the premium-rated SMSes were sent to me within seconds not allowing me any time to issue a STOP response. The rate at which the messages were received made it impossible to respond.

This is not satisfactory and continuing to allow this WASP to operate a service of this nature serves only to undermine the integrity of the entire industry including WASPA. This practise should be stopped without delay!"

SP Response

The SP was quick to respond to the matter and also contacted the Complainant and made sure he / she became unsubscribed. From the three responses received by the SP the Adjudicator only feels it is necessary to reproduce the following:

"On the 3rd July 2008 the user accessed our mobile content site through an advertisement on an affiliate's website.

While browsing the internet on their **SonyEricssonW960i** cellphone the user responded to an advert for our Naughty Celebrity WAP site.

The site states that:

*3 ITEMS PER PAGE
R10 PER ITEM
PAGES YOU CLICK AND VIEW*

CHARGED AT R30 EACH

The user has to actually scroll past these terms in order to access content.

The terms are also stated on each billable page thereafter.

The user then proceeded to access the following billable pages within the site”

The SP then provided proof of the logs and continued its response stating the following:

“As a result the user was sent billing confirmations on 31931.

This is a billing confirmation for yr content access. See portal for terms.

We received no stops from the user.

We regret that the user did not fully understand the service pricing model, which we feel is clearly stated throughout the site.

This is a pay-per-page viewed service. Our statement "pages you click & view cost R30 each" are the clearest possible terms in our opinion.

We believe the service is operating within the terms of the present WASPA code of conduct.

We are happy to issue the user with a full refund of charges, given the misunderstanding and will contact him to arrange this.

I have now ensured the number is removed from all future messages.”

The Adjudicator then further requested a copy of the said advertisement of which copy was provided.

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.

6.2.11. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

(a) If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.

(b) If the transaction is billed at less than R10, the price for the transaction must be clearly indicated as part of, or immediately next to, the link or option that will initiate the transaction.

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.

Decision

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

After thoroughly reviewing the advertisement in dispute, the Adjudicator is of the opinion that the use of the word “free” and the associated use of the words “sexy celeb videos” are misleading.

Although the Adjudicator does not dispute that the SP has provided enough clarity with regards to the general pricing structure, he / she is of the opinion that there are indeed certain other irregularities.

If one analyses the link from where one can access these free videos, it merely states: “free celeb vids”. This is different from the statement provided at the top of the advertisement: “scroll down for your free **sexy celeb** videos”. The point made is that exactly underneath the “free **celeb** vids”, there is a link that is worded as follow: “**Sexy celebs**”. An impression is therefore created that these videos might be associated with the free link. It must also be noted that the confusing use of these words were placed directly underneath the link where content was provided for free.

Although better clarity is created in the terms and conditions at the bottom of the screen, the initial words at the top are misleading and in the opinion of the Adjudicator, blatantly structured to trap an unsuspecting customer into making the assumption that the content directly underneath the free content, are also provided for free.

The Adjudicator is of the opinion that such use is deceptive and finds the SP in breach of section 4.1.2 of the WASPA Code of Conduct.

Further, at no stage did the SP obtain **specific** confirmation from the SP to conclude the transaction. Since the transaction is billed at R10 or more, the Adjudicator finds the SP in breach of section 6.2.11(a) of the WASPA Code of Conduct.

The Complaint is upheld.

In determining an appropriate sanction, the following factors are considered:

- Any previous breaches of sections 4.1.2 and 6.2.11(a) by the SP;
- Rectifying actions taken by the SP in resolving the matter informally.

The SP is fined R 5 000-00. This amount has to be paid within 5 (five) working days to the WASPA Secretariat from the date of adjudication.

The SP is further instructed to refund the Complainant in full within 5 (five) working days from the date of adjudication and to ensure its compliance with sections 4.1.2 and 6.2.11 in all current and future advertisements.

The WASPA Secretariat is requested to forward a copy of this report to the WASPA Media Monitor, together with a request to review the SP's compliance with sections 4.1.2 and 6.2.11 of the Code of Conduct.
