

WASPA Member (SP)	Sybase 365 / AMV
Information Provider (IP)	N/A
Service Type	Unsolicited content
Source of Complaint	Philip Loxton
Complaint Number	#4511
Code of Conduct Version	5.7
Date of Adjudication	17/09/2008

Complaint

The Complainant in this case was not happy with the complaint's informal resolve and noted that he felt that they were billed for unsolicited items and demanded a refund.

SP Response

The Response provided by the SP is reproduced in full:

"Mr Loxton the complainant is the bill-payer for the handset, which was in possession of one of his employees at the times of usage.

Mr Loxton is claiming the recipient never requested these services, and is disputing his bill on that basis.

The user accessed our Babehouse WAP site on 23rd June at 20:09, 24th June at 23:25, 25th June at 18:29, 27th June at 20:34 and the 29th June at 20:20.

The user also accessed our Naked Celebrity WAP site on 24th June at 22:08 and 29th June at 18:53.

All accesses were made using a Nokia6280 mobile handset.

We are clear that our services have been utilised at the said dates & times, and that the pricing on our WAP sites is compliant with the Code of Practice.

We therefore do not believe that Mr Loxton has a substantiated claim for refund, he is merely trying to avoid paying the bill.

As we have pointed out to Mr Loxton, if his employee is disputing browsing the sites at the dates/times above he should ask his network operator to provide full internet browsing data for these dates so we can prove that access to blingmob.com took place at the above time.”

Sections of the Code considered

Various sections of version 5.7 of the Code of Conduct were considered:

Decision

In adjudicating a matter, the Adjudicator has to rely on the information provided to him/her.

In adjudicating this specific Complaint it is nearly impossible to distinguish between fact and speculation.

On the one hand the Complainant argued that it did not download the content and that it was in fact his employee. Whatsoever the arguing in this specific matter, the Complainant remains responsible for his own handset and should it be argued that his employee did indeed proceed with downloading content, then it remains the Complainant’s responsibility. It is the owner of the handset that is responsible for its use.

However, whether the SP followed all the correct procedures in terms of the Code is also not clarified in the SP’s response. Such procedures might include age verification etc. No detailed logs were provided and the Adjudicator is also not in a position to verify any of the information received.

The Adjudicator has therefore no alternative but to adjudicate on the actions taken by the SP in trying to resolve the complaint. The SP unsubscribed the Complainant; it offered a partial refund and removed it from its database. It basically fulfilled every request made by the Complainant during the informal procedure.

The Complaint is dismissed.
