

WASPA Member (SP)	AMV
Information Provider (IP)	Bling Mobile
Service Type	Various irregularities
Source of Complaint	Colin Blake
Complaint Number	#4752
Code of Conduct Version	6.1
Date of Adjudication	08/10/2008

Complaint

The Complainant in this matter has asked for his complaint to be escalated to a formal complaint due to the fact that he was not satisfied with the 50% refund he received, based on his assumption that he never gave the SP permission to make any deductions to his account.

SP Response

The SP's response is reproduced here in full:

"The user accessed our Wild Vids WAP site on 21st July at 06.25 using a **Nokia6234** mobile handset.

As the user has decided to dispute browsing the site at the times above he should ask his network operator to provide full internet browsing data for 21st July so we can prove that access to blingmob.com took place at the above time."

Sections of the Code considered

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

11.2.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

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

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

Decision

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

As is made mention of in Adjudication 4674, it has come to the attention of the Adjudicator that the SP in this matter together with the IP has been involved in several complaints arising from the public pertaining to the same issues. Most of these revolve round its "wild vids" campaign. In some cases the SP together with the IP were given the benefit of the doubt. However, after reviewing the various mediums in which the SP and IP have promoted its services, it is the opinion of the Adjudicator that the respective SP and IP have not made any real effort to bring its advertising methods and behavior in line with what is required from them in terms of the WASPA Code of Conduct. In all its responses it would seem that they offer the same response, not necessitating any real effort on its behalf to clarify in no uncertain terms why the same complaints keep on resurfacing.

In this particular case the Complainant seems to have followed procedures in unsuccessfully trying to unsubscribe from a service it denies it subscribed to in the first place. This is a clear breach of section 11.2.3 or in a case of technical failure, a breach of section 11.2.4. By refunding the Complainant with 50% the SP in this matter must have therefore considered itself to be in some form of breach.

The SP has further failed to convince the Adjudicator that the Complainant has indeed subscribed to its services and its response lack sufficient evidence to purport to its claim of not committing any wrongdoing. Based on the various irregularities already committed by this duo, the Adjudicator is reluctant to treat any of its responses as sufficient, and more specifically this one, not just due to the SP's lack of providing sustaining evidence, but also due to a trend that seems to repeat itself.

The Complaint is upheld.

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

- Any previous breaches of sections found to have been breached;
- Rectifying actions taken by the SP in resolving the matter informally.

The SP is fined R 10 000-00. 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 to the WASPA Secretariat from the date of adjudication.

The SP is further instructed to ensure its compliance with the relevant sections considered 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 future compliance with the relevant sections of the Code of Conduct.

Due to the simultaneous adjudication of various other cases relating to this SP, the Adjudicator does not consider immediate implementation of the proposed sanction in Adjudication #4674. A similar approach will however be followed. Should it be found that any further breaches of the WASPA Code of Conduct continue to surface due to any wrongdoings on behalf of the said SP, section 13.4.1 (e) which validates a suspension of the members from WASPA for a defined period will have to be considered, and in the opinion of the Adjudicator must be considered. Similarly, if the IP continue in its breaches, a notice in terms of section 13.5.1 must be considered.
