



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Blinck Mobile Ltd
Information Provider (IP):	Not applicable
Service Type:	Advertising Irregularities / Bundling
Complainants:	Anonymous
Complaint Number:	5065
Code Version:	6.2
Advertising Rules Version:	N/A

Complaint

The Complainant lodged the following complaint:

“This service is running their BABY advert heavily on TV. Clause 11.1.2 the code was specifically changed to avoid services 'bundling' i.e. pretending that they are selling a single item but subscribing the user instead. The copy of the advert states categorically that you will get the laughing baby on your phone that is the overriding offer. In the Voice over throw “get them all” in order to bypass the clause. BUT the advert is clearly advertising a single item. They are certainly contravening the spirit of the code and blatantly ignoring the intention of the rule.”

Service provider's response

In its final response the SP stated the following:

“In short, the complainant accuses Blinck through the ‘Laughing Baby’ TV-commercial of trying to sell a subscription service while offering a single product (“bundling”).

Blinck strongly denies these accusations.

First of all, in the top right hand corner of the screen of the TV-commercial, Blinck clearly displays, for the entire duration of the commercial, that the service will cost the customers R30/Week and that this is a subscription service (thereby followings WASPA's guidelines regarding fonts and fonts sizes).

Second of all, in the disclaimer we clearly state that this is a subscription service (thereby followings WASPA's guidelines regarding fonts and fonts sizes). This disclaimer is shown during the first 6 seconds of the commercial.

Third of all, the voice-over mentions "Get them all" to illustrate to the Customer that this is a Subscription Service of 'Laughing Baby' sounds, thereby clearly indicating that there are other similar 'Laughing Baby' sounds available through the subscription service. That is the reason that this phrase in the voice-over was added to the commercial, and clearly not, as the complainant states, to bypass Section 11.1.2 of the Code.

Fourth of all, we would like to stress that the subscriber to this Service will only get 'Laughing Babies' sounds on his or her phone and no other content items.

Blinck would also like to draw the adjudicator's attention to the WASPA decision of 9th August 2007 regarding complaint number 1761, to the WASPA decision of 10th September 2007 regarding complaint number 2047 and to the WASPA decision of 15th August 2008 regarding complaint number 2454, all dealing with (a.o.) this exact same issue. In all cases these complaints against Blinck were not upheld.

Considering all of the above, the 'Laughing Baby' TV-Commercial is clearly promoting a Subscription Service and not, as defended by the complainant, a single content item. Blinck is therefore of the opinion that it is not breaching Section 11.1.2 of the WASPA Code of Conduct.

Closing Remarks

The complainant furthermore accuses Blinck of contravening the spirit of the Code and blatantly ignoring the intention of Section 11.1.2. of the Code. To this we would like to reply that Blinck is very aware of its continuing obligations to comply with the WASPA Code of Conduct and the WASPA Advertising Guidelines. At all times Blinck has done its very best to comply with these requirements.

Sections of the Code considered

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. An advert for a subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the SP's response and has reviewed the advertisement in question.

The Adjudicator has also reviewed the Adjudications referred to by the SP. Although the Adjudicator can not rule on a direct breach of section 11.1.2, the Adjudicator is of the opinion that the display of a single content item might create the impression with customers that they will only receive a single content item. The Adjudicator is however aware of the words "get them all" and has also taken note of the reference on the advertisement that it is a subscription service. The Adjudicator would however like to draw the SP's attention to section 11.1.3 of version 7 of the Code for future references.

It might also be advisable for the SP to indicate on the advertisement that it makes part of more applications.

The Complaint is dismissed.
