



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	AMV Holdings
Information Provider (IP) (if any)	Bling
Service Type	Subscription
Source of Complaints	Public
Complaint Number	5123
Date received	20 October 2008
Code of Conduct version	6.2

Complaint

The complainant alleged that he was charged R90 for content that he did not download and that he was charged a further R30 when he thereafter went onto the IP's website in order to find the telephone number to contact them.

The complainant was not satisfied with the explanation offered by the IP and their refusal to provide a refund as requested.

SP Response

The following response was received:

"The user accessed the following site using a **SonyEricssonK810i** mobile handset.

o Naughty Celebrity on 19th October at 21:28 and 20th October at 15:00.

As the user has decided to dispute browsing the site at the times above she should ask her network operator to provide full internet browsing data for the above dates so we can prove that access to blingmob.com took place at the above times.

In order to access content and thus be billed a user must click the 'Yes' button, please let me know if you would like to see a screenshot of the site."

The Adjudicator requested further information from the WASPA Member, including screenshots of the site forming the subject of the complaint. This was provided along with the following additional comments:

"Please find attached a copy of the site accessed, by the user, as requested in point 2.

With regard to points 1 and 3 I feel this information was already provided through the information I uploaded onto your site, on the 22nd October, however I have attached this document again for your reference.

If you in anyway feel that information is still absent please let me know and I will be more than happy to provide this to you.

This case is clearly related to a string of cases regarding Pay Per View services that were adjudicated upon in November 2008.

Since that time we have been ordered to cease operation of Pay Per View services, and we have fully complied with this request.

We are, in light of a string of similar / identical cases already adjudicated upon, very keen to ensure this case is settled direct with the consumer.

You may recall it was our policy to offer a refund only in exceptional circumstances, but since the weight of upheld adjudications (regarding Pay Per View) we have changed our policy in relation to Pay Per View refund requests.

We are in this instance now prepared to offer a full refund of the charges to this user. Please let me know if you would like me to contact him directly with this regard? It would seem a fairly pointless exercise bringing forward any remaining Pay Per View related cases, given the history. We would suggest these would be better resolved directly between AMV and the consumers, via our offer of full refunds.

To keep giving us R10,000 - R25,000 range fines for outstanding Pay Per View cases still in the system also risks "double jeopardy", being tried and punished for the same offence many times over.

The sooner you can clarify WASPA's position on this the better, as we would like to draw a line underneath Pay Per View complaints once and for all."

Sections of the Code considered

The following sections of the Code were considered:

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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.

Decision

The WASPA Member is correct with regard to its assertion that this matter forms part of a large number of complaints raised against it as a result of its pay per view WAP service.

In this regard reference can be made to the Adjudications in respect of complaint numbers 4499¹, 4594², 4654³ and 4658⁴ (although there are many more examples).

The Adjudicator is satisfied on the basis of the response provided that there has been a breach of at least the above-listed sections of the Code.

The willingness of the WASPA member to now provide refunds in these complaints is noted in mitigation, as is the fact that the service is no longer provided on a pay per view basis (as a result of corrective action taken by WASPA).

Order

The WASPA Member is found to have breached sections 3.1.1, 4.1.1 and 4.1.2 of version 6.2 of the WASPA Code of Conduct and is ordered to refund the complainant in full and to confirm in writing to the Secretariat that this has been attended to. To the extent that this has already happened the order is discharged.

¹ <http://www.waspa.org.za/code/download/4499.pdf>

² <http://www.waspa.org.za/code/download/4594.pdf>

³ <http://www.waspa.org.za/code/download/4654.pdf>

⁴ <http://www.waspa.org.za/code/download/4658.pdf>