



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Blinck Mobile Ltd
Information Provider (IP):	Not applicable
Service Type:	Advertising Irregularities / Bundling
Complainants:	Anonymous
Complaint Number:	5507
Code Version:	6.2
Advertising Rules Version:	N/A

Complaint

The Complainant lodged the following complaint:

“This service does not display the closing date of the competition on the website.

The service entices people to join a subscription for wallpapers by offering them the chance to win an iphone. This is misleading to the public because only in the fine print is it actually stated that they will actually be receiving wallpapers. This service uses the entry of winning an iphone to subscribe people to something entirely different. This is misleading and not allowed. 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 a request for a specific content item. In this case the entry to win an iphone is the specific content item used misleads customers to join a subscription service.”

Service provider’s response

The SP in its response stated the following:

“Blinck would like to draw the adjudicator’s attention to the disclaimer on all three Landing Pages, copies of which are included with the complaint. The disclaimer on these Landing Pages clearly state that the competition ends on 31-12-2008. Furthermore, the closing date of this competition was also clearly

stated in the special terms of this promotion, to which a link was placed on the Landing Pages.

Blinck is therefore of the opinion that it has not breached Article 9.1.4 of the Code of Conduct.

The complaint implies that the advertisement tries to sell a subscription while offering a single product ("bundling"), and that in this case the entry to win an iPhone is the specific content item used to mislead customers to join a subscription service.

First of all, in order to make the customer aware they are signing up for a subscription service we display the words 'subscription service' in the top right corner of the promotion pages ("Subscription Service - R30/week"), copies of which are included with the complaint. Furthermore, the disclaimer of this promotion clearly states that this is a subscription service. Before a customer signs up (please see screenshot04 that was attached with the complaint), we once again clearly state "Enter your number and subscribe for your chance to win an iPhone".

In the disclaimer we also clearly state that the subscriber will be receiving 3 wallpapers per week.

Blinck is therefore of the opinion that it has not mislead customers into joining a subscription service and has not breached Article 11.1.2. of the Code of Conduct.

However, to show our good will and to avoid any further discussions, Blinck has decided to cancel this specific promotion. In addition, Blinck will change its future promotions by putting more stress on the specific subscription itself, and on the products of the subscription, with which a customers stands a change to win a certain prize.

We trust that this will avoid any further complaints in the future on this matter."

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.

9.1.1. Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

9.1.4. Promotional material must clearly state any information which is likely to affect a decision to participate, including:

(a) the closing date.

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.

Sections of the Advertising Rules considered

9.3.6. COMPETITIONS:

If a prize or reward is offered and the notification of whether the participant to that competition has won a prize (or not) is NOT instant, then a closing date of the competition must be CLEARLY and visibly stated in the T&C text.

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 IP's response and has reviewed the terms and conditions available on its celdorado site.

This in the opinion of the Adjudicator is a clear example of how competitions should NOT be run and further highlights WASPA's motivation behind including section 11.1.2 in its Code.

The SP's attempt in providing mitigating factors in its response to an alleged breach of section 11.1.2 is nothing less but an attempt to decline the existence of something that is prima facie evidence to the contrary.

The SP in this matter had bundled a competition service, which could be seen as a single content item, with its subscription service. The fact that one would be subscribed could be misinterpreted as subscribing to the competition in dispute and by failing to provide any clear entry costs to the competition, the SP has succeeded in misleading its customers into subscribing to a service for wallpapers under the false pretension of entering a competition alone. This is actually clearly explained by the SP's own response, and I quote:

"Before a customer signs up (please see screenshot04 that was attached with the complaint), we once again clearly state "Enter your number and **subscribe for your chance to win** an iPhone""

Not only does it create confusion, but is it also misleading.

The SP goes further and states: "In the disclaimer we also **clearly** state that the subscriber will be receiving 3 wallpapers per week."

The Adjudicator disagrees and failed to find anything in the disclaimer that closely resembles a **clear** indication of that. To the normal or reasonable customer these indicators fail to attract any attention and are clearly obscured in the form of small fonts.

Although the SP contends that it has provided a closing date, it still remains in breach of the Code and the Advertising Rules by not displaying this date in a visible and clear format. Section 9.1.4 of the Code states that promotional material must **clearly** state any information which is likely to affect a decision

to participate, including the closing date. This is also echoed in section 9.3.6 of the Advertising Rules.

Therefore, the Adjudicator finds the SP in breach of sections 9.1.1, 9.1.4, 11.1.2 of the Code of Conduct and section 9.3.6 of the Advertising Rules.

The Adjudicator is also of the opinion that the SP knowingly disseminated information that is deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission thereby breaching section 4.1.2 of the Code of Conduct.

The Complaint is upheld.

Sanctions

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

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's subsequent conduct in eradicating any breaches.

The SP is fined the sum of R70 000, 00 payable to the WASPA Secretariat within five (5) days of notification hereof.

The SP is further ordered to:

- immediately suspend the competition service;
- immediately deactivate the mechanism for the competition;
- provide an appropriate notice that the competition has been suspended to be placed on the web site;
- suspend all billing for the service This includes both charges levied for entering the competition and all billing for subscription services that have been initiated as a result of a customer entering the competition;
- issue a SMS notice to all competition entrants (at the service provider's cost).This notification must offer customers a chance to request a refund.

The Adjudicator further orders that the service provider immediately suspend any similar advertising on any other forum or media until such time as it complies fully with the WASPA Code of Conduct and WASPA Advertising Rules.

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the SP is indeed complying with this.