



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Blinck Mobile
Information Provider (IP): (if applicable)	N/A
Service Type:	Subscription Service
Complainant:	Competitor
Complaint Number:	5988, 5989, 5990, 5991, 5992 & 5993
Code version:	Code v6.2 and Ad Rules v2.3
Date of Report:	17 August 2009

Complaint & Response

1. Complaints 5988, 5989, 5990, 5991, 5992 and 5993 were brought against the Member as the result of several adverts for subscription services which were flighted on television and which were alleged to be in breach of the Code of Conduct. The dates on which the adverts were screened is not given in the complaints, but I gather they were screened in or about February 2009.
2. The complaints were all lodged on the 10th of March 2009 and while the complainant was in all cases an anonymous competitor, the almost identical text of the complaints leads to the inescapable conclusion that the same complainant was responsible for all six complaints.
3. The complaints can be summarised as set out below.

Complaint 5988

4. The text of the complaint reads as follows:

Complaint #5988 (lodged via the WASPA website):

Affiliation_Information: Complainant wish to remain anonymous

Name_WASP: Blinck Mobile

OtherID: Sms GIRL to 31631

Code_Breached: 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 a request for a specific content item.

Detailed_Description_Complaint: When a user smses GIRL to 31631 as prompted in the TV ad, a user is subscribed to a club, as well as sent the ringtone advertised. This contravenes 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 a request for a specific content item.

5. On the 20th of March 2009 the Member emailed a response to all six complaints to the WASPA Secretariat, the pertinent sections of which read as follows:

Blinck's Response:

The complaints were made in relation to the following TV-commercials:

Lux
Girl
Baby
Bear
Glass
Bolly

The issues of these complaints were already subject of the complaints # 5757, # 5800 and #5718, to which Blinck has already formally responded. As a result of these complaints, Blinck has already had the versions of the commercials to which the underlying complaints relate taken off the air and has even had the new versions of the Bolly and Bear commercials, adapted in order to comply with Article 11.1.2. of the WAPSA Code of Conduct, approved by WASPA. In these new versions of the commercials the voice-over was changed as follows: "New! The hottest hits right from the charts! Get them all on your mobile! SMS Bear / Bolly to 31631".

With respect to the commercials which promote an application service, as a result of the complaints #5757, #5800 and #5718 we have clearly and conspicuously added a logo with the words "Fun applications" to the commercials, in order to avoid any future discussion about Article 1.1.2 [sic] of the WASPA Code.

Blinck therefore kindly refers you to the formal responses given by Blinck in relation to complaints # 5757, #5800 and # 5718 and kindly requests WASPA to close this complaint, since the matter was already dealt with by Blinck in a proper manner.

6. In further correspondence with the WASPA Secretariat, the Member advised that this advertisement had been withdrawn in February upon receipt of other "bundling complaints", presumably those dealt with in complaint numbers 5757, 5800 and 5718.

Complaint 5989

7. The text of the complaint, the facts surrounding it and the response thereto are identical to that set out in complaint 5988, other than the service subscribed to:

When a user smses BABY to 31631 as prompted in the TV ad, a user is subscribed to a club, as well as sent the ringtone advertised.

Complaint 5990

8. The text of the complaint is identical to that of complaint 5988, other than the service subscribed to, which relates to the keyword "BEAR".
9. This complaint differs from 5988 however in that the advertisement complained of was amended and rebroadcast.
10. The amended version of the advertisement was provided.

Complaint 5991

11. The text of the complaint, the facts surrounding it and the response thereto are identical to that set out in complaint 5988, other than the service subscribed to:

When a user smses GLASS to 31631 as prompted in the TV ad, a user is subscribed to a club, as well as sent the ringtone advertised.

Complaint 5992

12. The text of the complaint is identical to that of complaint 5988, other than the service subscribed to, which relates to the keyword "BOLLY".
13. This complaint differs from 5988 however in that the advertisement complained of was amended and rebroadcast.
14. The amended version of the advertisement was provided.

Complaint 5993

15. The text of the complaint, the facts surrounding it and the response thereto are identical to that set out in complaint 5988, other than the service subscribed to:

When a user smses LUX to 31631 as prompted in the TV ad, a user is subscribed to a club, as well as sent the ringtone advertised.

Portion of the Code Considered

16. The conduct complained of took place before the commencement date of version 7.0 of the WASPA Code of Conduct on 25 March 2009, and hence version 6.2 is applicable.

17. The Complainant has cited section 11.1.2 of the Code of Conduct, which reads as follows:

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 a request for a specific content item.

Decision

18. In its response to all six complaints the Member referred to complaint numbers 5757, 5800 and 5718 which in its view related to the same subject matter and had already been dealt with. I have read the report in the above complaints, and the report does in fact deal with the Member's method of advertising subscription services, and certainly deals with the very same adverts complained of in complaints 5989 and 5991. Given that the same advertisements were involved, the conduct complained of in those complaints also took place at the same time as the conduct complained of in these six complaints.

5988, 5989, 5991 and 5993

19. In complaints 5988, 5989, 5991 and 5993, the adverts complained of was "pulled" after complaints were made about them. The Member was sanctioned by the Adjudicator in complaints 5757, 5800 and 5718 for infringements of section 11 of the Code of Conduct.

20. The Member in its response to the complaints makes the argument that complaints have already been made in respect of them and that consequently the instant complaints should be withdrawn.

21. It is my view that misconduct in respect of advertising in terms of the code lies in the screening of the advertisement by the Member. There is not a separate infringement for every consumer who sees the advertisement. The subject matter of these complaints has already been adjudicated on. Consequently if I were to adjudicate on these complaints I would in effect be trying the Member a second time for the same offence. The matter has been dealt with by the adjudicator in complaint numbers 5757, 5800 and 5718 and as I am not fulfilling an appeal function, I am unable to take the matter further. Complaints 5988, 5989, 5991 and 5993 are consequently not upheld.

5990 and 5992

22. The facts of complaints 5990 and 5992 are identical to the other four, with the exception that after the adverts complained of were "pulled", these two were amended and put back on air. According to the Member the adverts were updated as of 1 March 2009. It is unclear however whether this is the date on which they were approved for broadcast by the Member, or the date of their first screening.

23. I cannot adjudicate on any alleged infringements of section 11 of the Code of Conduct arising from the original version of these advertisements for the reasons stated above. The question now arises however whether the *amended*

advertisements fall within the ambit of this adjudication. As the complainant only had sight of the original advertisements, my view is that they do not.

24. Accordingly complaint numbers 5990 and 5992 are not upheld.

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