



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Blinck Mobile
Information Provider (IP): (if applicable)	N/A
Service Type:	Subscription
Complainant:	Competitor
Complaint Number:	6070 & 6071
Code version:	Code v6.2 and Ad Rules v3.2
Date of Report:	18 August 2009

Introduction

1. While Complaints 6070 and 6071 were both made by anonymous competitors, the fact that they were made on the same date as well as the similarity of the complaints creates the overwhelming impression that they were brought by the same person. Whether they were or not, the factual similarity militates towards their being dealt with together.

Complaint 6071

2. On the 21st of March 2009 an anonymous competitor lodged the following complaint against the Member:

Complaint #6070 (lodged via the WASPA website):

Affiliations: Complainant wish to remain anonymous.

Name_WASP: Blinck Mobile

OtherID: 31631

Code_Breached: Code of Conduct Version 6.2

11. Subscription services

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: At 7:35PM on 21 March a TV advert was played on GO TV advertising a song by Beyonce called All the Single Ladies. The advert plays the music video of the popular song and tells people to sms the keyword SINGLE to 31631. Only one item of content is shown and the instructions and keyword used indicate only that one item of content. Unfortunately this a subscription service [sic] and people who respond to get the song advertised get subscribed to other products they are not aware of.

Response

3. On the 30th of March the Member responded to the complaint as follows:

Blinck's Response:

The complaint implies that the advertisement tries to sell a subscription service while offering a single product ("bundling").

First of all, in order to make the customer aware they are signing up for a subscription service we clearly display the words "subscription service" in the disclaimer of the commercial, as we always do.

Second of all, the cost per week e.g. R60/week, clearly appears in a rectangle in the top right hand corner of the display screen, which indicates that it is a subscription service.

Last but not least, the voice-over in the commercial states:"New! The Hottest Hits Right from the Charts! Get them all on your Cell phone!"

Blinck is therefore of the opinion that the TV-commercial makes it very clear to a viewer that SMS'ing SINGLE to 31631 will result in the viewer joining a subscription service.

Considering the above, Blinck is of the opinion that no breach of article 11.1.2 the Code of Conduct has taken place.

Portion of the Code Considered

4. As the conduct complained of took place on the 21st of March 2009, the provisions of version 6.2 of the Code of Conduct apply.
5. The following section of the Code of Conduct applies to this complaint:

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.

6. For the sake of completeness, version 7.0 of the Code of Conduct came into effect on the 25th of March 2009. It contained a new section 11.1.3 which reads as follows:

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

7. No copy of the advertisement was provided with this complaint, so as adjudicator I have to depend upon the submissions by the parties. The Complainant highlights the fact that only one item of content is displayed, while the consumer is subscribed to a subscription service if he/she orders that content item. This is the only substantive allegation that the Complainant makes in support of the allegation of an infringement of section 11 of the Code of Conduct.
8. The Member avers that there is sufficient protection afforded to consumers by the clear notice on the advertisement that this is a subscription service and the statement in the voiceover that viewers should “get them all”. The Member also states that the display of the price per week in the top right of the screen in the advertisement clearly indicates a subscription service is being advertised.
9. The emphasis the Complainant placed on the fact that only one content item is displayed in this advertisement would have been most pertinent if the advertisement in question had been aired a few days later. This complaint was however brought mere days before the commencement date of version 7.0 of the Code of Conduct, section 11.1.3 of which compels Members to include at least two content items in circumstances such as the one described, so as to minimise the risk of confusion on the part of consumers. If the advertisement in question had been aired after the 25th of March the Member would have been in breach of the Code of Conduct.
10. Notwithstanding the failure of the Complainant to further motivate the complaint, the Member’s response is worthy of examination. The Adjudicator in complaint number 6240 found the Member to have infringed section 11.1.2 of the Code of Conduct where the Member screened a very similar advertisement. The material difference between the advertisement in that complaint and the advertisement in this is the presence of the voiceover “get them all” which creates the dominant impression that this is a series of content items being offered, and is hence a subscription service. See also the report in complaint number 5718 where the same Member in very similar circumstances was found NOT to be in breach of section 11.1.2. The aspect of the advertisement that swayed the Adjudicator in that complaint was the presence of the voiceover “get them all”.
11. In the circumstances I find that the advertisement was sufficiently clear as to the nature of the offering that consumers would most probably not have been confused into believing that they were downloading a single content item when they were in fact subscribing to a subscription service.

12. The complaint is accordingly not upheld.

Complaint 6071

13. On the 21st of March 2009 an anonymous competitor lodged the following complaint against the Member:

Complaint #6071 (lodged via the WASPA website):

Affiliations: The complainant wish to remain anonymous

Name_WASP: Blinck Mobile

OtherID: 31631

Code_Breached: Code of Conduct Version 6.2

11. Subscription services

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: At 7:47PM during Idols on 21 March a TV advert was played on GO TV advertising an electric shock application for your phone. The advertisement aired show a shock item of mobile content and instructs people to sms the keyword FRIEND to 31631 to get this item of content on their phone. Unfortunately this is a subscription service and people who respond to get the advertised shock content item get subscribed to other products they are not even aware of.

Response

14. On the 30th of March the Member responded to the complaint as follows:

Blinck's Response:

It seems that the complaint mixes up two different commercials. First of all, there is the Friend tracker TV commercial (keyword FRIEND) and secondly the High Volt TV commercial (keyword VOLT).

The complaint implies that the TV-commercial tries to sell a subscription service while offering a single product ("bundling").

Regardless of the question which TV-commercial the complaint refers to, Blinck is of the opinion no breach has taken place of Article 11.1.2. of the Code of Conduct with respect to both commercials.

First of all, in order to make the customer aware they are signing up for a subscription service we clearly display the words "subscription service" in the disclaimer of our TV-commercials, as we always do.

Second of all, in both commercials the cost per week e.g. R30/week, clearly appears in a rectangle in the top right hand corner of the display screen, which indicates that it is a subscription service.

Third of all, in both commercials the words "Fun applications" are clearly and conspicuously showed, which also clearly indicates that it is a subscription service.

Last but not least, the voice-over in the Friend tracker TV-commercial even states:"Get them all! SMS FRIEND to 31631"

Blinck is therefore of the opinion that both TV-commercial make it very clear to a viewer that SMS'ing the respective keyword to the respective short code will result in the viewer joining a subscription service.

Considering the above, Blinck is of the opinion that no breach of article 11.1.2 the Code of Conduct has taken place.

15. In a response to this letter, the Complainant in an email of the 30th of March made the allegation that both of the advertisements dealt with therein are confusing in that they do not display at least two content items.
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Portion of the Code Considered

16. As the conduct complained of took place on the 21st of March 2009, the provisions of version 6.2 of the Code of Conduct apply, and the same sections are applicable to this complaint as to complaint 6071.
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Decision

17. No copy of the advertisement was provided with this complaint, so as Adjudicator I have to depend upon the submissions by the parties.
18. There seems to have been some confusion as to the advert complained of, as the complaint itself described the content of one subscription service product, but cited the keyword for another. The Member chose to respond as if both services had been complained of.
19. The Complainant at first gave no reasons why the Member was infringing section 11.1.2 of the Code of Conduct. In its further submission, the Complainant made the same allegation as that made in complaint 6070 – that only one content item was displayed, while the consumer is subscribed to a subscription service if he/she orders that content item.

20. The Member again maintains that there is sufficient protection afforded to consumers by the clear notice on the advertisement that this is a subscription service and the statement in the voiceover that viewers should “get them all”. The same submission regarding display of the weekly price is also made.
21. I am not clear how the words “fun applications” assist the consumer in recognising the advert as being for a subscription service. The Member is probably of the view that use of the plural implies a series of items and hence a subscription service. This is a rather tenuous argument.
22. Again, if the advertisement had been aired a few days later, this complaint would have fallen under the ambit of version 7.0 of the Code of Conduct and my decision may have been different. In the circumstances however, I am compelled to find that the advertisement was sufficiently clear as to the nature of the offering that consumers would not have been confused into believing that they were downloading a single content item when they were in fact subscribing to a subscription service.
23. The complaint is accordingly not upheld.

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