



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Blinck Mobile
Information Provider (IP): (if applicable)	N/A
Service Type:	Subscription
Complainant:	Competitor
Complaint Number:	6367
Code version:	Code v7.0 and Ad Rules v2.3
Date of Report:	16 February 2010

Complaint

1. On the 4th of May 2009 the Complainant, a competitor of the Member, lodged the following complaint via the WASPA website against the Member:

Name_WASP: Blinck Mobile

OtherID: This is the information provider BLINK on short code 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.

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.

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.

Detailed_Description_Complaint: WASPA has recognised the risk of misleading users by using a single item to advertise a subscription service. This gives many users the impression that they are requesting a once off

item rather than a recurring subscription. To avoid this practice, clauses 11.1.2 and now 11.1.3 we introduced into the code.

Blink is advertising a subscription using a single item as the hook. This is in contravention to both the principle of 11.1.2 and the letter of the word of 11.1.3.

In their advert sms POKER to 31631– they are promoting ONLY a single Lady Gaga song “Poker Face” in the visuals. In the voice over they subtly mention “get them all” but a user would need to concentrate carefully to understand that they are not requesting the specific song in the video. The keyword (“POKER”) ONLY identifies the song in the video.

In their advert sms HALO to 31631– they are promoting ONLY a single Beyonce song “HALO” in the visuals and in the voice over. The keyword (“HALO”) increases this confusion as it ONLY identifies the song in the video.

In their advert sms DOLLS to 31631– they are promoting ONLY a single PussyCat Dolls song in the visuals. In the voice over they subtly mention “get them all” but a user would need to concentrate carefully to understand that they are not requesting the specific song in the video. The keyword (“DOLLS”) increases this confusion as it would appear to identify the song in the video.

In their advert sms JAMES to 31631– they are promoting ONLY a single James Morrison and Nelly Furtado song in the visuals. In the voice over they subtly mention “get them all” but a user would need to concentrate carefully to understand that they are not requesting the specific song in the video. The keyword (“JAMES”) increases this confusion as it would appear to identify the song in the video. There is only this one James Morrison and Nelly Furtado song that this could be referring to i.e. 1 single item.

In their advert sms CAR to 31631– they are promoting ONLY a single item in their visuals and in the voice over . The keyword (“CAR”) also ONLY identifies that specific item.

In their advert sms FLOWER to 31631– they are promoting ONLY a single image of FLOWER in visuals and in the voice. The keyword (“FLOWER”) also ONLY identifies that specific image.

In their advert sms Ducky to 31631– they are promoting ONLY a single item in their visuals and in the voice over. The keyword (“DUCKY”) also ONLY identifies that specific item.

In their advert sms POLICE to 31631– they are promoting ONLY a single item in their visuals and in the voice over. The keyword (“POLICE”) also ONLY identifies that specific item.

In their advert sms Truck to 31631– they are promoting ONLY a single item in their visuals and in the voice over. The keyword (“TRUCK”) also ONLY identifies that specific item.

In their advert sms MARIO to 31631– they are promoting ONLY a single item in their visuals and in the voice over. The keyword (“MARIO”) also ONLY identifies that specific item.

In their advert sms VIRUS to 31631– they are promoting ONLY a single item in their visuals and in the voice over. The keyword (“VIRUS”) also ONLY identifies that specific item.

This is exactly what those two clauses are trying to prevent.

In some of the above examples, Blink are attempting to get away with this ‘bundling’ of a subscription service with a single item in the advert by including “Get them all”. Where this might technically allow them to circumvent 11.1.2 in those adverts, they are still in direct contravention of 11.1.3. They are certainly in contravention to the spirit and intention of 11.1.2 too.

Many of the adverts e.g. POLICE, VIRUS, CAR and FLOWER are very misleading as to their product. These are simply sounds or images. They DO NOT DO anything. This would appear to be in contravention to 4.1.1 and 4.1.2.

Recordings of the adverts to follow via email.

2. The Complainant provided copies of the advertisements as promised, which the Adjudicator viewed.
 3. The Complainant moreover did not find the Member’s response as set out below satisfactory, and elected to add further heads to the complaint: a disparity between the Member’s advertised price on certain of the advertisements and the price quoted in the corresponding welcome messages, use of the abbreviation “wk” in place of “Week” in contravention of the Advertising Rules, and unclear unsubscribe instructions. As the Member has not been given the opportunity of responding to these new accusations however, I cannot in all fairness consider their merits.
 4. The complaint has two elements: firstly that the Member has infringed sections 11.1.2 and 11.1.3 of the Code of Conduct by providing only one content item rather than the two required, and secondly that several of the advertisements are misleading in that the items downloaded do not do anything but are merely sounds or images. Presumably the complainant is making the point that has been made in previous adjudications that the Member misleadingly advertises wallpapers as “applications”.
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Response

5. In response to the first element, the Member referred to its response in complaints 6240 and 6242 and repeated that response: it was unable to revise its advertising before the commencement of version 7.0 of the WASPA Code of Conduct. It contended that it had advised the WASPA Secretariat that it would be unable to meet the deadline.
 6. In response to the second element, the Member made the assertion that there was not enough information given it to allow for a response, and that in its view the advertisements were not misleading.
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Portion of the Code Considered

7. The conduct complained of took place during or about May 2009 (no precise date is given), version 7.0 of the WASPA Code of Conduct applies to this complaint.
 8. The relevant portions of the Code of Conduct are correctly reproduced in the complaint, as cited above.
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Decision

Requirement for examples of two content items

9. The member does not deny that it has infringed clause 11.1.3 of the Code of Conduct, merely stating that it was not able to change its programming timeously. As this Adjudicator has stated in a number of reports, including those for complaints 4240 and 6242, this is not sufficient to excuse the Member's conduct. I do not feel it is necessary to repeat my reasoning in those reports. As the Member has *prima facie* infringed clause 11.1.3 of the Code of Conduct, and has made no defence, I find that the Member has infringed that clause.
10. The complaint also alleges an infringement of clause 11.1.2 of the Code of Conduct, but as clause 11.1.3 in effect qualifies clause 11.1.2, there is little purpose in doing so.

Misleading Advertising

11. In its rejoinder to the Member's response, the Complainant submits that the "POLICE" and "FLOWER" advertisements are not misleading after all, and I will hence not deal with them further. However, the Complainant furnishes further analysis of the "CAR" and "VIRUS" subscription services to the effect that they both promise to be functioning application while they are in fact merely moving wallpapers. The "CAR" and "VIRUS" services have been dealt with in this respect under complaint numbers 6240 and 6478 respectively, and the Adjudicator can consequently not re-adjudicate on this matter.
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Sanction

12. The facts surrounding the infringement of clause 11.1.3 of the WASPA Code of Conduct were the same as those surrounding several other complaints. In previous complaints this Adjudicator has declined to punish the Member twice for the same offence, and I will take the same line in this complaint as I took in for example in complaint 4262. While the Member has clearly infringed the Code of Conduct as set out above, it has already been sanctioned for the same conduct in previous reports, and consequently this Adjudicator cannot impose a further sanction.

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