



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	AMV Holdings
<b>Information Provider (IP)</b> (if any)	
<b>Service Type</b>	Subscription service
<b>Source of Complaints</b>	WASPA Monitor
<b>Complaint Number</b>	7046
<b>Date received</b>	16 July 2009
<b>Code of Conduct version</b>	7.4

---

### Complaint

The complainant accessed the following web link:

<http://zatones.blingmob.com/?src=saggltones;>

and chose a product, entered their cell phone number and clicked on submit.

An SMS PIN notification message was then sent and the complainant entered the given pin number on the website.

The complainant then received the following message:

***Thanks 4 using PLAY ON!Content link on way!Click on it 2 get ur content!Problems?Call 011 461 0317.Txt stop to unsub.content R30.5d.16+***

An amount of R30.00 had been deducted for joining the service.

The complainant alleges that this advertisement does not explicitly identify the service as a subscription service. Other than the short T&Cs at the bottom, which are smaller than the stipulated size in the Code, and which do not have a link to a complete version, there is no way at all a consumer would know this is a subscription service.

The PIN notification message is missing all valid information stating that you will be joined into a subscription service, and the costs thereof.

The welcome message is also extremely confusing, missing vital information, and communicates no STOP instructions on how to unsubscribe from the service.

The advert also contains abbreviations which are not allowed as stipulated in the advertising rules. The only way the customer will know that "**R30.5d**" actually "means R30 for 5 days" is by reading the unclear print in the T&Cs. Also the only way the customer will be able to know "**Txt stop to unsub**" means "sms stop to unsubscribe" and to find what number they should sms stop to is by referring once again to the unclear T&Cs.

The complainant alleges that a number of provisions of the Code and advertising rules have been breached.

---

### **SP's response**

The SP delivered a comprehensive response to the complaint. The SP refers to the prompted action on the webpage where the complainant purposefully checked a tick-box after entering their number which aligns with the terms:

*"I agree to join this subscription service billed at R30.00 per 5 days until you send STOP to 31434".*

The SP states that this is an explicit action that a subscriber must complete in order to proceed. The complainant did not mention this step in the test information provided.

With regard to the landing page, the SP states that the advertising terms clearly state the price and subscription charge in two separate places, one of which requires the user to check a tick-box to confirm the terms. This is a Google policy, and the splash/landing page was also reviewed by Google before the campaign was allowed to go live.

The page also mentions frequency of charge, contact details and STOP instructions.

The PIN entry page also displays the usage terms again:

*Check-Box Terms: I agree to join this subscription service billed at R30.00 per 5 days until you send STOP to 31434.*

Terms at the foot of landing page:

*Bling Mobile is a subscription service billed at R30.00 per 5 days until you send STOP to 31434. 16+ standard operator charges apply. BSM, PO Box 2952, London, WC1N 3XX. 011 461 0317. © Bling! 2009 All rights reserved.*

The SP argues that the tick box mechanism on the home page, which contains a very clear statement directly adjacent to it regarding the subscription, taken together with the PIN entry, where pricing is repeated, and with a third repeat of pricing on the welcome message, that its model does constitute a valid and explicit request to join to a subscription service.

The SP does however suggest that it plans to add a further notification of the pricing in the PIN delivery message. A user will then have had three explicit pricing reminders before subscribing with an additional fourth immediately upon subscribing.

The SP has admitted that its welcome message and the abbreviations used do not comply with the Code. The cause of the error with the wording stems from the SP's practice of duplicating services designed for the UK market, and then making the required localization changes to fit the regulations of the South African marketplace.

---

In mitigation, the SP states that it has just started advertising the relevant sites and had only generated 28 customers before the date of the complaint. It has terminated the subscriptions of these 28 users due to its non-compliance with the Code.

The SP has also taken both sites down and will not re-launch them before they have been through internal sign-off, and have been vetted by WASPA.

With respect to the specific provisions of the Code, the SP has responded as follows:

*Re. section 6.2.3:*

The SP's terms do state that "standard operator charges apply". It has suggested that it change this statement to "standard operator charges and bearer data charges apply".

*Re. section 6.2.4:*

The SP believes that its pricing is standard, uniform and clear and the pricing information is placed adjacent to the tick-box that must be checked by users before subscribing.

*Re. section 6.2.12:*

The SP believes its campaign is compliant in light of the tick box functionality on the landing page.

*Re. section 11.1.1:*

The SP states that the fonts used for both the terms and the user tick-box are standard size 12 font. The sizing can depend on the browser being used, but the SP believes the font used and lay-out is clearly legible.

It is possible to use larger fonts, or to include a pricing bubble that mentions SUBSCRIPTION R30 per 5 days in a large, stand-out section of the landing-page.

*Re. section 11.1.4:*

The SP believes its campaign is largely compliant. It only refers to subscription pricing on the web.

It does state again that its welcome message needs to be changed to comply with the Code.

*Re. section 11.1.8:*

The SP has acknowledged that its welcome message does not include the following required information:

- (a) The cost of the subscription service and the frequency of the charges;
- (b) Clear and concise instructions for unsubscribing from the service.

The SP states that it regrets putting this small web trial live without a 100% compliant welcome message.

*Re. section 11.1.10:*

The SP has acknowledged non-compliance and has undertaken to update its PIN delivery message to reflect the required format.

*Re. section 11.1.11:*

It is the SP's understanding that the PIN entry mechanism (together with capture of the user's web domain address) is sufficient to confirm a web-based subscription. If this is incorrect, the SP is prepared to change its opt-in mechanism as appropriate to the regulations in force.

*Breach of the Advertising Rules:*

*Re. Rule 9.2.1.1:*

The SP states that it was using a size 12 font for its user tick-box pricing. It has undertaken to amend this to a size 15 font, unless the page starts to carry an access number, in which case it will comply with the Advertising Rules applicable.

*Re. Rule 9.2.1.2:*

The SP does not feature an access number and therefore does not believe that this rule is relevant to it.

*Re. Rule 9.2.2.1:*

The SP acknowledges that its terms and conditions section is written in a size 12 font size.

Going forward, the SP intends to amend its campaign as follows:

- 1) Increase the tick-box font size to 15.
  - 2) Amend PIN opt-in to SMS opt-in should it be required
  - 3) Change PIN delivery SMS to the required format
  - 4) Change Subscription Welcome Message to the required, standard format
  - 5) Get WASPA approval for the site(s).
- 

**Sections of the Code considered**

The following sections of the code were considered:

6.1.1; 6.2.3; 6.2.4; 6.2.12; 11.1.1; 11.1.4; 11.1.8; 11.1.10; 11.1.11.

The following Advertising Rules were considered:

9.2.1.1 and 9.3.1.

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

---

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.2.12. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

(a) If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.

(b) If the transaction is billed at less than R10, the price for the transaction must be clearly indicated as part of, or immediately next to, the link or option that will initiate the transaction and must be visible on the same screen as the link.

(c) If the transaction is to initiate a subscription service, then the price and frequency of the service must be included directly in the text of the WAP link or immediately adjacent to it and must be visible on the same screen as the link.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.8. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;

(d) The service provider's telephone number.

11.1.10. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing].

11.1.11. If a subscription service can be initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.

#### 9.2.1.1 Formatting Of Access Cost Text:

Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a non serif font

The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.

#### 9.2.1.2 Position of Access Cost Text

For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font.

While cost information associated with an access number may be displayed elsewhere on a web site (for example cost information also placed in the T&C page of a web site), this must be done as part of a duplication of the pricing. Hence, cost information cannot solely be placed on, for example only the T&C page where

---

accessing the T&C page requires that the user click away from the initial page that displayed the access number

#### 9.2.2.1 Formatting & Font Criteria For T&C Text

The T&C text must be in 12 point font size, or 50% of the largest access number on a Web page, whichever is the greater. The T&C must be in a non-serif font

---

### **Decision**

I have noted the tick box mechanism in the body of the web page which has a notification adjacent to it that the user is subscribing to a subscription service. I am satisfied that the SP has complied with sections 6.1.1 and 11.1.1 in this regard.

However, the SP has contravened the following sections of the code:

1. Section 6.2.3 and 6.2.4 – the required format for pricing information has not been used.
2. Section 11.1.8 – the required message is not compliant.
3. Section 11.1.10 – the required notification message is not compliant.
4. Section 1.1.11 – a separate confirmation message has not been sent.
5. Advertising rules – the SP has not used the correct font as prescribed.

The complaint is accordingly upheld in these respects.

---

### **Sanction**

The contraventions in question are regarded as serious offences. However, the factors put forward by the SP in mitigation have been taken into account.

The following sanctions are given:

1. The SP is issued with a formal warning to comply with the requirements of the Code and Advertising Rules when launching any web based campaigns.
2. The SP must refund all subscribers in full.
3. The SP must notify all subscribers that they are entitled to a refund.
4. The SP is fined the sum of R 50 000 which is suspended for a period of 3 (three) months.