



## 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>	7047
<b>Date received</b>	16 July 2009
<b>Code of Conduct version</b>	7.4

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### Complaint

The complaint relates to a web advertisement campaign and service offering that is believed to be in breach of the following clauses of the WASPA Code of Conduct: 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; and the following Advertising Rules: 9.2.1.1 and 9.3.1.

The complainant accessed the following link:

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

They then chose a product, entered their cell phone number and clicked on the "submit" button on the web page. An SMS was received as follows:

***Your pin is: 7123***

The complainant then entered the pin number on the web page and received a further SMS in their inbox and two browser messages:

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**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+**

The complainant checked their cell phone balance and discovered that R30.00 had been deducted for joining the service.

The complainant believes that the advertisement does not explicitly identify a subscription service. The T&Cs at the bottom of the page are smaller than the stipulated size in the Code, and there is no link to the full version of these T&Cs. There is no other way for a consumer to be made aware that this is a subscription service.

The pin number SMS notification is missing all valid information stating that a user will be joined into a subscription service, and the costs thereof. The complainant believes that the welcome message is also extremely confusing and is missing vital information. There is no unsubscribe or STOP mechanism, or other instructions on how to unsubscribe from the service.

The complainant states that the SP is also using 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 believes that this is a serious offence that cannot be resolved informally.

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### **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:

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**“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 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.

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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:*

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*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).

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**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.

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**Decision**

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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.

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### **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.