



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	eXactmobile & AMV Holdings Ltd
Information Provider (IP) (if any)	Bling Mobile
Service Type	Subscription service
Source of Complaints	Mr A Nortjie
Complaint Number	4845
Date received	15 September 2008
Code of Conduct version	6.1

Complaint

This complaint was escalated from an unsubscribe request. The complainant has been unsubscribed from the subscription service and proof of subscription has been provided by the SP. However the complainant disputes that he downloaded certain content and has requested a refund. He also states that he is “extremely perturbed by the manner in which large companies can manipulate contract holder”.

SP Response

The SP has responded by providing full details of the transaction history relating to the complainant’s account since he subscribed to the service. They have included details of all sms correspondence that has been sent to him as well as details of each transactions where the complainant has downloaded various content items. Based

on this information, the SP believes that the complainant has chosen to download the content for which he has been charged and is therefore not entitled to a refund.

In response to the complainant's allegation that he has been manipulated, the SP has provided the text of its promotional messages and adverts to which the complainant has responded. One example is the "Free Sexy Videos" promotion which reads as follows:

Free Sexy Videos

Free Videos Terms: The free videos must be downloaded from the Free Sexy Videos link above.

Free videos are 100% free to download, no obligation and no questions asked!

All other items on this page are charged at the standard rate of R30.

The complainant would be entitled to free content if he used the link provided. All other items were charged at the standard rate of R30, which is what the complainant was charged.

The SP also sent billing confirmation sms's to the complainant after each download.

Sections of the Code considered

6.5. Use of the word "free"

6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

Section 11 – Subscription services

Decision

Based on the information provided by the SP, which has not been contradicted by the complainant, it appears that the latter did subscribe for the service and also downloaded the content for which he has been charged.

I also cannot agree with the complainant that he has been manipulated or misled in any way. The promotional message for the content which was downloaded by the complainant clearly states that the user must use the advertised link to access the free items. All other items are charged for. The complainant also received billing

confirmations each time he downloaded content, thereby giving him a further opportunity to refrain from downloading chargeable items in future.

In light of the foregoing, I am of the view that the complainant is not entitled to a refund. The SP has not breached the provisions of the WASPA code and the complaint is accordingly dismissed.
