



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	<b>Blinck Mobile</b>
<b>Information Provider (IP): (if applicable)</b>	<b>N/A</b>
<b>Service Type:</b>	<b>Subscription</b>
<b>Complainant:</b>	<b>WASPA Monitor</b>
<b>Complaint Number:</b>	<b>6391</b>
<b>Code version:</b>	<b>Code v7.0 and Ad Rules v2.3</b>
<b>Date of Report:</b>	<b>23 March 2010</b>

### Complaint

1. On the 6<sup>th</sup> of May 2009 the WASPA Monitor lodged the following complaint against the Member:

Date of breach: 5 May 2009

WASP or service: 31631 - Blinck

Clauses breached: 3.3.1. Members will not offer or promise services that they are unable to provide.

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.

Description of complaint:

The service levels of the "Virus" subscription service is not up to standard.

The service was tested 8 times, with the incorrect content being sent to the customer.

2. In an annexure to the complaint the Monitor expanded on the complaint, to the effect that she had tested the Member's subscription service using two separate MSISDNs and that:
  - 2.1. On subscribing to the "virus" service, which purports to provide wallpapers to subscribers, she was sent a ringtone as her first download. She undertook this test no less than eight times. It is not clear whether she waited for subsequent downloads from the service.
  - 2.2. She noticed that while the confirmation SMS listed the subscription price as being R10 per SMS, the service welcome message listed the price as R20 per SMS.

### **Response**

3. The Member responded on the 12<sup>th</sup> of May, and conceded the facts of the complaint.
4. On the provision of the wrong content, the Member apologised for the mistake and undertook to deliver the correct content to the relevant subscribers in the following week. The number of subscribers affected was listed by the Member as 4229.
5. On the pricing error, the Member contended that the price actually charged to subscribers was R10 per SMS, and that the R20 per SMS cited in the welcome message was erroneous.
6. In both cases the Member contended that there was no malice intended, and its conduct was the result of a mere oversight. I have been given no reason to doubt the Member's version.

### **Portion of the Code Considered**

7. As the conduct complained of took place during May 2009, version 7.0 of the WASPA Code of Conduct applies to this complaint.
8. The relevant portion of the Code of Conduct is as reflected in the body of the complaint, with the addition of the following:
  - 3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

### **Decision**

9. There is no dispute on the facts of this complaint. It remains only to decide which clauses of the Code of Conduct the Member has infringed, if any.

10. In examining the clauses cited in the complaint itself, it is apparent that none of them cover the conduct complained of. I am satisfied that the Member's conduct was the result of an oversight, and consequently the Member had no intention in respect of its acts. Applied to each of the clauses cited:
  - 10.1. Clause 3.3.1: the Member is certainly capable of providing the services it advertised and which form the subject of this complaint, it merely negligently failed to provide the correct content; consequently there can be no infringement of this clause.
  - 10.2. 4.1.1: it is not possible to be dishonest as the result of a genuine oversight. "honest and fair dealings" contemplates actions that are intentional. If the Member had intentionally provided the incorrect pricing information to subscribers I would have no hesitation in finding an infringement of this clause; as it happens however it did not intend to do so, and consequently there can be no infringement.
  - 10.3. 4.1.2: this clause starts with the words "Members must not knowingly disseminate information..." which clearly mean that intention is an requirement for infringement of this clause; consequently this clause has not been infringed either.
11. The above notwithstanding, the Member has acted in a most unprofessional manner in its conduct here, to the extent that it has made itself guilty of a breach of clause 3.1.1 of the Code of Conduct.

### **Sanction**

12. I am satisfied that the Member's conduct was the result of an oversight only; the steps that Member undertook to take to remedy the position would be adequate in my view. Consequently the following sanction is imposed:
  - 12.1. The Member is issued with a formal reprimand
  - 12.2. The Member is to confirm with the WASPA Secretariat that all subscribers who received the incorrect content were indeed provided with the correct content free of charge.

-----oooOooo-----