



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch in respect of its Jippii brand
Service Type	Subscription service
Source of Complaints	Competitor
Complaint Number	#0054

Complaint

A complaint was received in respect of the subscription service offered by the SP. In particular the complaints concerned whether subscribing to a subscription service is an independent transaction, as evidenced by an advertisement for the service placed by the SP.

The complainant alleged:

“The ad states that to join the club (a subscription service) you must SMS the code of one of the content items. You are not able to request content without joining the club, as by downloading an item, you are automatically joined.”

The following clauses of the WASPA Code of Conduct were considered:

2.20. A “**subscription service**” is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

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.

SP response

The Secretariat received the following response from the SP:

The information provided by Mr. Penkin in his complaint is incorrect. I have attached a copy of the ad for your reference.

The ad complies fully with all the requirements set out in the WASPA advertising guidelines (sic. An incorrect reference to the WASPA Code of Conduct) as communicated to us in August 2005:

The opening statement of the ad (first sentence) specifically names Jippii as a subscription service: "Sluit by die Jippii-Superspaarklub Subskripsie Diens aan....."

Subscription instructions in the ad clearly ask users to sms SUB and the category keyword to the number provided. Users are required to subscribe via an independent transaction and are not allowed to request content in the same sms as their request for subscription:

"...Sluit by een van ons klubs aan deur die sleutewoord na 31516 te sms.

<i>Mono's & Poli's</i>	<i>SUB TONE</i>
<i>Ware Tone</i>	<i>SUB TRUE</i>
<i>Prentjies</i>	<i>SUB PICS..."</i>

After that users are required to sms a keyword for the specific content they require and only then they receive their request:

"Om to bestel sms WALLPAPER en sleutelwoord, bv: WALLPAPER GSTEFANI2"

With the above in mind, I wish to bring it to your attention that Mr. Penkin was clearly confused about Jippii's advertising as no where in the ad do we mention subscription via content request.

Decision

The Adjudicator noted that the scanned copy of the advertisement provided by the complainant had partially obscured the wording at the top of the advertisement indicating the nature of the service of the SP as a subscription service and accepted the electronic version provided by the SP as definitive (as it concurs with the scanned version provided by the complainant in all other respects).

The advertisement which gave rise to the complaint is yet another example of an SP advertising specific content for those users of the MTN and Cell C networks which (at the time of this report) do not allow for subscription services and users of the Vodacom network, which does allow for subscription services. It attempts to attract Vodacom users to subscribe to the subscription service by giving examples of content available. The SP's Jippii-branded subscription service operates on a so-called "club" basis in terms of which no content is specifically "pushed" to a subscriber but rather payment of the subscription amount (a fortnightly payment of R5) entitles a subscriber to a 50% discount on content which falls within the subscription type. The advertisement accordingly operates to inform subscribers of a selection of the content items available to them at the discounted rate.

The Adjudicator noted that the initiation of a subscription service requires the use of the term "SUB" and the category of service, such as "TONE" or "GAMES" and the like. Thereafter and once the subscription had been confirmed in accordance with clause 11.1.7. of the WASPA Code of Conduct, a subscriber would request specific content with a keyword (such as "GAME ATTACK" or "TRUE BELLY") at the discounted price. Where a customer has not subscribed as aforesaid, use of the keyword initiates access to the content requested, at the full price and without a subscription being initiated.

The SP does invite Vodacom users who download content without having subscribed to its subscription service, to subscribe to such service and the message containing the invitation appears to accord with the WASPA Code of Conduct (specifically clause 5. thereof).

The Adjudicator noted, without making any finding in respect thereof:

- Advertisements combining the promotion of a subscription service as well as specific content have previously been considered by the Adjudicator and have been noted as neither specifically prohibited nor permitted in terms of the WASPA Code of Conduct, provided that such an advertisement does not contravene the Code in other respects. Such advertisements have a far greater potential to cause confusion in the minds of consumers than advertisements only for content or only for a subscription service.
- The complainant declaring in submitting the complaint that information provided is true and correct and the complaint is made in good faith. Notwithstanding the repeated submissions of many SP's to the contrary, the Adjudicator has no basis to dispute this. The Adjudicator further accepted that the partial cropping of the advertisement in question by the complainant was an error. As the complainant is a competitor of the SP and as such must be presumed to be familiar with practices in the WASP industry, the Adjudicator was surprised that the complainant had submitted this complaint with no clear foundation. The Adjudicator agreed with the submission of the SP that the complainant was confused by the advertisement in question.
- The advertisement in question does indicate that Vodacom users who are not subscribed to the subscription service may access content at full price, however this is only contained in the small print terms and conditions contained at the bottom of the page. It is possible that this omission from the main content of the advertisement is the reason that the complainant may have been confused by the advertisement in question. As the question of confusion was not raised by the complainant or put to the SP, it was neither investigated nor reported on.
- It may benefit consumers and avoid future complaints without foundation, were the SP to indicate more clearly in its advertising (and particularly in the body thereof, rather than in "small print" terms and conditions) that Vodacom users may choose either to obtain content at the full price or to subscribe to the subscription service offered by the SP and that the two options are not mutually exclusive.

As such, it was the view of the Adjudicator that subscription to the SP's subscription service is an independent transaction and not linked to any other transaction.

Having regard to the foregoing, the service offered by the SP and the processes it employs and the specific content of the advertisement submitted, the Adjudicator did not uphold the complaint.