



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Teljoy Group (Pty) Ltd

Information Provider

(IP): Buongiorno UK
(if applicable)

Service Type: Subscription service

Complainant: Gavin Penkin, eXactmobile

Complaint Number: 0080

Adjudicator: Kerron Edmunson

Complaint

The complainant submitted a complaint by email on 23 November 2005 concerning an advertisement published in a booklet called Loadin' which was distributed in Huisgenoot of 24 November 2005. Specifically the complainant alleged that the breach was sufficiently sufficient to invoke an emergency procedure as it was "mass distributed" and "misleading advertising" and "has potential to cause massive damage to the market."

The key elements of the complaint are the following:

- "The service is exclusive to Vodacom subscribers which is not stated clearly enough as these services are usually available to all subscribers.
- The service is a subscription service which users are subscribed to by means of requesting content.
- There is no support number for users to call for clarification or assistance with the service.
- The pricing appears once on the front cover and no where else in the booklet. The inside pages all state that you can get 60 items per month, but do not mention the pricing.
- Section 1.1.2, section 6.2.5 and section 11.1.2 have been breached in the result."

SP Response

The SP replied:

- "The service is not in breach of the code of conduct, the advert is not misleading and the service does not have potential to cause "massive" damage to the market, as suggested.

#0080

- Before I reply to the other complaints on a point by point basis I would like to explain how the service works. Hopefully this will illustrate why we believe that NO damage would be caused to the industry.
- LOADIN is a subscription based service that is exclusive to Vodacom users. The service enables users to subscribe at R30 per month and download up to 60 items of content. All MO requests to 30123 are FREE – this is a ZERO rated shortcode. Using OBS a user is billed R30 once they agree to subscribe to the service.
- In our adverts we state that this is a subscription service, we send an MT confirming same, and ask for confirmation that they agree to subscribe for R30. Only once we receive acceptance (ie an SMS with the word YES) do we subscriber the user (sic).
- The fact that the service being exclusive (sic) to Vodacom users is not clear enough. On the cover, in the logo, we clearly indicated that the service is exclusive to Vodacom users. On page 2 this is indicated in the logo as well as in the body copy. On every second page we've included a logo stating EXCLUSIVE TO VODACOM USERS. Furthermore as the shortcode is zero rated, MTN and Cell C user would not be changed (sic) for the service, they would in no way be affected and we send a reply MT stating that this service is exclusive to Vodacom users.
- Regarding the fact that no customer care number is provided. We accept responsibility for this oversight, we've taken the necessary measures to remedy this by including our customer care number in an MT message, as well as in any error message(s).
- Section 1.1.2 of the code stipulates that a subscription service must be an independent transaction – we took cognizance of this point. As both Teljoy and Vodacom's reputation is on the line, we decided not to try to hide the fact that this is a subscription service (as so many others do). We decided to ensure that the user clearly understands the terms of our service. We therefore use a "double confirmation" in policy: we state clearly in the ad that it's a subscription service. The client requests content. We send an MT, confirming that this is a subscription service, and request the user to opt in by replying YES to 30123....
- Section 6.2.5 states that if a premium rated short code is advertised the WASP would need to advertise clearly the cost of the MO. As previously mentioned the shortcode 30123 is zero rated. We therefore felt that if stated that MOs are FREE we would mislead the public and therefore no price was displayed by the shortcode. We clearly state that a subscription rate of R30 per month would allow one to download any 60 items."

Consideration of the WASPA Code

The complainant has listed the sections of the Code he is relying on in his complaint, namely section 1.1.2 (which should be 11.1.2) (manner of subscription) and 6.2.5 (pricing of services). In addition the complainant refers to the requirement under section 11.2 (customer support). Considered in full, these sections state:

6.2.5: the price for a premium rated service must be easily and clearly visible in all advertisements. The price should appear with all instances of the premium number display.

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.

#0080

11.2: assistance, such as 'help' information, for subscription services must be easily available to customers, and must not be limited to a medium that the customer is unlikely to have access to.

I always find it useful to have regard to section 3.1 of the Code which is of general application, and states "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

Turning to the specifics of the complaint I will consider each element individually with reference to the SP response:

- 1. The service is exclusive to Vodacom subscribers which is not stated clearly enough as these services are usually available to all subscribers.** LOADIN is a subscription based service that is exclusive to Vodacom users. The fact that the service being exclusive (sic) to Vodacom users is not clear enough. On the cover, in the logo, we clearly indicated that the service is exclusive to Vodacom users. On page 2 this is indicated in the logo as well as in the body copy. On every second page we've included a logo stating EXCLUSIVE TO VODACOM USERS. Furthermore as the shortcode is zero rated, MTN and Cell C user would not be changed (sic) for the service, they would in no way be affected and we send a reply MT stating that this service is exclusive to Vodacom users.
- 2. The service is a subscription service which users are subscribed to by means of requesting content.** The service enables users to subscribe at R30 per month and download up to 60 items of content. All MO requests to 30123 are FREE – this is a ZERO rated shortcode. Using OBS a user is billed R30 once they agree to subscribe to the service. Section 1.1.2 of the code stipulates that a subscription service must be an independent transaction – we took cognizance of this point. As both Teljoy and Vodacom's reputation is on the line, we decided not to try to hide the fact that this is a subscription service (as so many others do). We decided to ensure that the user clearly understands the terms of our service. We therefore use a "double confirmation" in policy: we state clearly in the ad that it's a subscription service. The client requests content. We send an MT, confirming that this is a subscription service, and request the user to opt in by replying YES to 30123....In our adverts we state that this is a subscription service, we send an MT confirming same, and ask for confirmation that they agree to subscribe for R30. Only once we receive acceptance (ie an SMS with the word YES) do we subscriber the user (sic).
- 3. There is no support number for users to call for clarification or assistance with the service.** Regarding the fact that no customer care number is provided. We accept responsibility for this oversight, we've taken the necessary measures to remedy this by including our customer care number in an MT message, as well as in any error message(s).

#0080

4. The pricing appears once on the front cover and no where else in the booklet. The inside pages all state that you can get 60 items per month, but do not mention the pricing.

LOADIN is a subscription based service that is exclusive to Vodacom users. The service enables users to subscribe at R30 per month and download up to 60 items of content. All MO requests to 30123 are FREE – this is a ZERO rated shortcode. Using OBS a user is billed R30 once they agree to subscribe to the service. Section 6.2.5 states that if a premium rated short code is advertised the WASP would need to advertise clearly the cost of the MO. As previously mentioned the shortcode 30123 is zero rated. We therefore felt that if stated that MOs are FREE we would mislead the public and therefore no price was displayed by the shortcode. We clearly state that a subscription rate of R30 per month would allow one to download any 60 items.

5. Section 1.1.2, section 6.2.5 and section 11.1.2 have been breached in the result.

In relation to section 6.2.5, I agree with the complainant that in all instances where the advertisement appears the price of the service should appear, it is not sufficient to display it once on one page. I take the SP's point that the text to 30123 is free, but for clarity suggest that the SP could have found an alternative way to describe this factually, for example, "your sign-up texts are free!" I do not regard the omission in relation to the free texts as sufficiently severe to merit a sanction, but find that the SP should have displayed the price of the subscription service on all pages of the advertisement and will address this in the sanction.

In relation to section 11.1.2, the process adopted by the SP clearly requires several actions from a potential customer and confirms that an initial text is a request to subscribe, as opposed to a request for content. From the SP's response it would seem to be clear that no content is returned to the initial sign-up text but only a confirmatory SMS. I dismiss the complaint in relation to section 11.1.2.

Failing to have customer care information which is "easily available" is also a breach of section 11.2 of the Code, although I note the action now taken by the SP to remedy this. I will also address this in the sanction.

Sanction

- For breach of section 6.2.5 I fine the SP R2,000, to be paid to WASPA within 5 days of this adjudication, but suspended for 6 months from the date of the submission of the complaint provided that no other complaints are received in this regard against the SP during that period.
- The SP is directed to include wording in relation to the cost of the initial sign-up texts which is adequate to explain that they and not the service to which they relate, are free, in all future advertisements, including any now with printers which may not already comply in this regard.
- For breach of section 11.2 of the Code the SP is ordered to pay a fine of R1,000 to WASPA within 5 days of this adjudication.