

REPORT OF THE ADJUDICATOR

WASPA Member (SP): Miranetworks

Information Provider
(IP):
(if applicable)

Service Type: TV advert for subscription service

Complainant: eXactmobile (Pty) Ltd

Complaint Numbers: 0312, 313 and 314

Adjudicator: Kerron Edmunson

Code version: Code v4.3, Ad Rules v1.6

Complaint

I have considered these 3 complaints together as they address substantially the same issue.

#312

The complainant submitted a complaint regarding a television ad for Sweetie the Chick run on etv on the weekend of 20-21 May 2006.

#313

The complainant submitted a complaint regarding a television ad for Sweetie the Chick and Crazy Frog run on etv on the weekend of 20-21 May.

#314

The complainant submitted a complaint regarding a television ad for Crazy Frog run on etv on the weekend of 20-21 May.

The Complainant states that each of the advertisements complained of is in breach of section 11.1.2 of the Code which states that a request to join a subscription service must be an independent transaction and should not be bundled with a request for specific content. The advertisements offer specific content however when a person purchases this content they are subscribed to a service.

In my preliminary finding on this matter I asked the SP to respond to certain questions. The SP has referred me to their response in relation to complaint 0291. Whilst the two complaints actually deal with 2 different issues – this complaint deals with subscription services whilst the complaint in 0291 dealt with pricing – I have decided to accept that response in relation to this complaint as the advertisements complained of are identical, and have introduced the response here.

SP Response

The SP's response in each case was initially, very light. The SP states merely that a previous email had been sent to WASPA on 26 May "when had (sic) picked up various factors on the service offering by Jamster and had suspended all services. In light of this please can it be noted that this complaint is being dealt with."

I have now considered the response to complaint 0291 which deals with pricing, but which is sufficiently detailed to apply here.

By way of background, the SP states that "Jamba, the content provider in question, aired five different television ads for subscription services during the weekend of 22/23 April. The ads, are identified as: Sweetie, Frog, Charts, Movietheemes and Ying Yang Twins. The services were all priced at R30 per month for the subscriber with WAP access required."

The SP's detailed response followed:

".... although the complaint does not specify any particular ad during the weekend in question, we can confirm that all ads aired carried the following "fine print" – in line with requirements (font size etc) laid out by the WASPA Code of Conduct:

"Jamster Int.Sarl. R10/SMS + WAP charges. Premium rates. Free SMS do not apply. This is a subscription service, currently only available to Vodacom customers. You will be automatically charged R30 (3 SMS) every month until you unsubscribe..WAP required. Only available for compatible handsets. For help, contact info@jamster.co.za or 0800991481. Errors charged. We may contact you with offers from time to time. All prices includes VAT. Obtain bill payers consent before using this service".

No where in this copy, or in the voiceover, is there any mention of an additional R10 per item over and above the R30. The confusion the complainant may refer to is the question of "3 SMS's" which is how the R30 is collected from the subscriber each month. The copy above is intended to explain how the R30 is collected from the subscriber. The ad was freely tested with a range of subscribers and the resulting copy was understood to have the most clarity. We do not feel this is a legitimate complaint but would appreciate any feedback from the complaints committee on this point.

.....Based on the above responses, we do not believe the complaint to be valid For your reference, attached is a copy of one of the ads run over the weekend in question."

Consideration of the WASPA Code

Section 11 of the Code deals in detail with subscription services as follows:

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.

11.1.3: where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.4: customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

The complainant does not refer to the Ad Rules but I have also looked at section 1.4 of the Ad Rules in relation to mandatory information for disclosure on television advertisements, and point 3 provides as follows:

“indicate if subscription service and nature thereof including price and (minimum) frequency e.g. “this is a subscription service. You will be automatically charged R—every week until you unsubscribe.”

Section 2.2.1 deals with display rules for cost and t&c information and in relation to subscription services provides as follows:

“any advertisement for a subscription service component must include:

- (a) the periodic subscription charge; AND
- (b) the charging frequency; AND
- (c) any additional premium-rated charges that might be applicable to access particular content”.

Decision

I have accepted the response from the SP in matter 0291 as if it applied to this complaint, since the complaints concern the same advertisements. I have therefore applied the SP’s response to the subscription service provisions as follows:

Code:

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.

11.1.3: where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.4: customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

Ad Rules:

“indicate if subscription service and nature thereof including price and (minimum) frequency e.g. “this is a subscription service. You will be automatically charged R—every week until you unsubscribe.”

“any advertisement for a subscription service component must include:

- (a) the periodic subscription charge; AND
- (b) the charging frequency; AND
- (c) any additional premium-rated charges that might be applicable to access particular content”.

SP response:

“...we can confirm that all ads aired carried the following “fine print” – in line with requirements (font size etc) laid out by the WASPA Code of Conduct:

“Jamster Int. Sarl. R10/SMS + WAP charges. Premium rates. Free SMS do not apply. This is a subscription service, currently only available to Vodacom customers. You will be automatically charged R30 (3 SMS) every month until you unsubscribe..WAP required. Only available for compatible handsets. For help, contact info@jamster.co.za or 0800991481. Errors charged. We may contact you with offers from time to time. All prices includes VAT. Obtain bill payers consent before using this service”.

No where in this copy, or in the voiceover, is there any mention of an additional R10 per item over and above the R30. The confusion the complainant may refer to is the question of “3 SMS’s” which is how the R30 is collected from the subscriber each month. The copy above is intended to explain how the R30 is collected from the subscriber. The ad was freely tested with a range of subscribers and the resulting copy was understood to have the most clarity. We do not feel this is a legitimate complaint but would appreciate any feedback from the complaints committee on this point.”

From the video clip provided to me it would appear that the services are advertised clearly as subscription services. It would also appear that the advertisements use a sample of the service’s content, namely Sweetie Chick, or Crazy Frog, to indicate the nature of the subscription service. This is not print – a static series of images would not be valuable in this media, and it is not possible to display a menu of content on screen – the menu is the screen.

I was not able to access the service since it would appear from the SP’s response that it was terminated quite quickly. However, on the facts presented to me by the complainant and the SP it would appear that the advertisements are not intended to subscribe a person to a specific service, but to a subscription service which will entitle the subscriber to then choose 3 types of content to receive via SMS at R10 per piece of content, the total cost of which is R30. The SP appears, from the facts presented to me, to have complied with the requirements of the Code and the Ad Rules in relation to subscription services.