



REPORT OF THE ADJUDICATOR

Complaint reference number:	10756
WASPA member(s):	Buongiorno SA
Membership number(s):	N/A
Complainant:	WASPA Monitor
Type of complaint:	Subscription Services & Competition
Date complaint was lodged:	2010-10-06
Date of the alleged offence:	2010-09-13
Relevant version of the Code:	9.0
Clauses considered:	4.1.2, 11.2.2, and 11.4.1
Relevant version of the Ad. Rules:	2.3
Clauses considered:	9
Related cases considered:	9508, 9502, 9334, 10479

Complaint

The Complainant in this matter alleged that the SP breached certain provisions in the Code by offering subscription services bundled with a quiz.

Service provider's response

The SP in its response denied any of the allegations levelled by the Complainant and re-iterated that it does not form the opinion that the IQ Booster conforms to what is labelled a quiz in the WASPA Code of Conduct. It further suggested that it has complied with all the relevant sections of the Code. It further stated that it does not believe that its advertising is misleading in any way.

Sections of the Code considered

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.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

11.4.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
 - (b) The cost of the subscription service and the frequency of the charges;
 - (c) Clear and concise instructions for unsubscribing from the service;
 - (d) The service provider's telephone number.
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Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent reply.

A subsequent version of the Code states in its section 11.2.3 that notwithstanding the above clause (11.2.2), it is permissible for a customer to be included as a participant in a promotional draw or competition as an **additional benefit** to being a subscription service customer.

Although this decision is made after the Code was changed to include section 11.2.3, the Adjudicator, although having regard to the abovementioned amendments, will only rule on the Code as was relevant in its version 9.

In its review of the disputed advertisement, the Adjudicator's first impression is that it has all the hallmarks of a quiz. From accessing the banner, right through to the webpage concerned, the reasonable user would be brought under the impression that he or she is about to enter a quiz, supplemented by obtaining an IQ Booster.

The whole purpose of section 11.2.2 was to prevent service providers from misleading users into subscription services.

Without going into all the details of the Complaint, the Adjudicator has taken note of the fact that the SP does bring it to the attention of the potential subscriber that he or she will be subscribed to a service.

However, the IQ Test seems to be portrayed as a specific content item. The argument then for the IQ Test to be a quiz or not, would be deemed irrelevant.

What is relevant is whether the IQ Booster can be seen as a subscription service. The SP in its response contended that the results of the IQ test are given prior to the user being subscribed; therefore suggesting that it can be seen as a completely independent transaction from the IQ Booster.

The SP therefore suggests that the initial IQ Test is a specific content item, while the IQ Booster is a subscription service and completely independent from the IQ Test.

The Adjudicator is not in agreement with the above assumption.

If the IQ Booster is portrayed as a subscription service, then it is very difficult for the Adjudicator to ascertain which part of the subscription service, in its current form of mp3s, songs, wallpapers etc, should be interpreted as the IQ Booster.

The IQ Test in its current form suggests that the IQ Booster would contain some similar methodology of enhancing the user's test results. None of the content sampled to the Adjudicator, showed any related characteristics.

The Adjudicator therefore, is of the opinion that the two (IQ Test & IQ Booster) are not independent from one another and that the actual IQ Booster subscription is misleading.

The IQ Booster is in fact nothing less than a subscription to content, very dissimilar to what might be construed as an IQ Booster, having regard to the IQ Test.

A user is also, on the landing page (IQ Test), already confronted with wording indicating "Subscription Service". This would therefore strengthen the opinion that the two are not independent of one another.

The Adjudicator is therefore of the opinion that there was a breach of sections 4.1.2 and 11.2.2.

The Adjudicator is further of the opinion that the allegation made in terms of section 11.4.1 (c) was resolved in the "Heads Up".

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's subsequent response.

The SP is required to suspend the service until such time as it complies with the orders set out below.

- The SP shall clearly indicate at the first point of contact with the service and all subsequent services (irrespective of medium) that the service is a subscription service and further precisely what the subscription entails. These indications must be clearly visible and unambiguous.

The SP is further fined R 50 000-00 (fifty thousand rand) for its breach of section 11.2.2 read with 4.1.2 which must be paid to the WASPA Secretariat within 7 (seven) days after having been notified by WASPA hereof.