



ADJUDICATOR'S REPORT

WASPA Member (SP):	Buongiorno SA
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainant:	Media Monitor
Complaint Number:	10815
Code Version:	10.0
Advertising Rules Version:	2.3

Complaint

This complaint originated from the WASPA Media Monitor ("the Monitor") who escalated an informal process to a formal complaint in November 2010. The complaint stems from the format of an ad the SP had posted on the Web and which the Monitor noticed when accessing her Web-based email on Yahoo!. The Monitor's complaint was as follows:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as subscription services. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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.

Breaches of the Advertising Rules:

9.2.1 Cost OF ACCESS DISPLAY 9.2.1.1 Formatting Of Access Cost Text: Access cost text must be of a size access number on the page, or 15 point font access cost text must be in a nonserif font that is at least 80% of the largest size, whichever is the greater. The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.

The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.

All access cost information must be placed horizontally

Detailed_Description_Complaint: When logging into my Yahoo account on Monday, October 11th 2010, the "Love Match" banner popped up. This is a repeat offence for Buongiorno as we came across this in July.

I will be sending the original screenshot to complaints@waspa.org.za where you are able to see the breaches and infringements on the page.

In July Buongiorno showed us that the subscription information on the banner was made much more clear and changed into the horizontal format as required by the Advertising Rules, however the banner that popped up on my screen showed once again the unclear subscription and pricing information shown vertically across the banner in tiny print.

Buongiorno is still using the "Love Match" test as a hook to get the consumer to subscribe to a Content (Games/wallpaper/pictures etc) subscription service.

From the beginning when clicking on the banner the consumer is interested in doing a Love Match, not subscribing to a Content Subscription Service which is made clearer once you start to fill in the Love Match information.

This is like I said a repeat offence against Buongiorno.

The Monitor included screenshots of the advertisement with her complaint, a copy of which is annexed to this report, marked "A".

Service provider's response

The SP became aware of this complaint's escalation through a "heads up" email which it received from the Monitor and which it understood to be part of a process to address the Monitor's concerns informally. The SP amended its ad format, sought approval from the Monitor and made the amended ad format available to its media placement agency for publication online. It appears from the SP's reply to the complaint (also annexed to this report and marked "B") that the original ad which forms the subject matter of this complaint was not removed by the SP's agency.

The emphasis of the complaint and responses to the complaint was on the orientation of the pricing information of the SP's service as well as an advisory that the service is a subscription service. The items that are available through the subscription service appear to be mobile applications and one example is the "Love Match" application which was promoted in the offending ad as well as the corrected ads.

The SP sought to assure WASPA on a number of occasions in its correspondence with

WASPA that the publication of the offending ads was contrary to its instructions to its agency and that it had addressed this with its agency. That said, the timeline is revealing:

- The Monitor referred the ad to WASPA in June 2010;
- The SP received the “heads up” notification on 30 June 2010;
- The offending ad was still in use in October 2010 when the Monitor submitted the complaint.
- The Monitor wrote to the SP on 17 November enquiring about the new ad formats and stated that the offending ad was still online.

I find the SP’s statements (that it was taking steps to address this “oversight” with its agency and that it would have removed the offending ad “without question” had it been made aware of the offending ad’s continued publication) somewhat disingenuous given that the offending ad remained in place for approximately 5 months after the Monitor raised it with the SP.

The SP replied to the Monitor’s 19 November 2010 email advising that it had added further content items to the revised ad (this appears to be intended to address a further aspect of the claim relating to what is known as “bundling” and which is further prohibited by the Code) and that it had “addressed the current banners with the advertiser in the meantime”.

Stating that it was addressing the offending ad with its advertisers roughly 5 months after the Monitor raised the issue is not an adequate response.

Sections of the Code considered

The following sections of the Code are relevant to this complaint:

- *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.*
- *11.1.2. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that*

content clearly displayed, except as provided for in 11.1.3.

- *11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.*
- *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.*

Sections of the Advertising Rules considered

The following rules in the Advertising Rules are especially relevant to this complaint:

9.2 DISPLAY RULES FOR COST AND T&C INFORMATION

9.2.1 Cost OF ACCESS DISPLAY

9.2.1.1 Formatting Of Access Cost Text:

Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a non-serif font

- *The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.*

- *The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.*

- *All access cost information must be placed horizontally*

9.2.1.2 Position of Access Cost Text

- *For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font.*

- *If the ad and/or offer is on a third party web site as a graphic or display text, then the display text with pricing and contact info must be displayed on immediately below, above or to the side of the access number to show the FULL cost to consumer. This includes for example, text- based ads placed on Google-based (or similar) advertisements.*

- *The T&C text must be placed close as possible to the unique access number.*
- *T&C information must be placed horizontally.*
- ...

Decision

Both versions of the ad, the offending ad and the revised ad are problematic. The offending ad has terms and conditions and pricing text placed vertically in contravention of the Advertising Rules which require horizontal text. The revised ad contains black terms and conditions and pricing text against a red background which does not appear to be readable on the screenshots WASPA was furnished with, although the text is now horizontal. The pricing information is not placed “immediately below, above or to the side of the access number” as the Rules require and is rather on the opposite corner to the access number in the two ad versions.

The Monitor did not furnish WASPA with screenshots of the subscription page which is loaded when clicking on the offending ad and I am therefore unable to comment on whether that page was in contravention with sub-sections of section 11 of the Code which I quoted above and which relate to the additional aspect of the complaint. The screenshot the SP furnished WASPA with appears to comply with those sections of the Code, assuming the “Love Match” item on offer is indeed one of a number of mobile applications on offer and which are promoted on the subscription page on the left and right hand sides.

The offending ad is clearly in violation of the Advertising Rules and the revised ad appears to be similarly problematic. The SP’s repeated assurances that it was addressing the cause of the complaint while taking no apparent steps to have the offending ad removed is unacceptable. The SP’s statements in this regard were disingenuous and not in keeping with its obligation to conduct itself professionally in its dealings with WASPA.

Sanctions

I find the SP’s offending ad and its conduct to be in violation of the Code and impose the following fine which is payable on demand by the WASPA Secretariat:

- In respect of the offending ad, a fine of R20 000;

- In respect of the SP's conduct in its dealings with WASPA, a fine of R30 000.

Subject: [WASPA.complaints] FW: WASPA Code of Conduct Complaint #10815
From: <cgraycom@mweb.co.za>
Date: Wed, 13 Oct 2010 15:55:36 +0200
To: <complaints@waspa.org.za>
CC: 'Ilonka Gray' <ilonka.gray@telkomsa.net>

Hi Lorraine.

Here is the screenshot to go with the complaint I lodged below.
 Once again a repeat offence: Buongiorno...Love Match

The screenshot shows a Yahoo! Mail interface. At the top, there's a navigation bar with 'Hi, Claudia', 'Sign Out', 'All-New Mail', and 'Help'. Below that is the 'YAHOO! MAIL Classic' logo and a search bar. A prominent advertisement for 'TEST YOUR LOVE MATCH' is displayed, featuring a man and a woman with buttons for 'HIS NAME', 'FIND OUT', and 'HER NAME'. The main content area shows the 'Trash' folder selected, with a list of messages. One message is visible: 'Hill's Pet Nutrition' with the subject 'Is it normal for a cat to be a fussy eater?' dated 'Fri, 8/20/'. The left sidebar shows folders like 'Inbox (5909)', 'Drafts (1)', 'Sent', 'Spam (12)', and 'Trash'. There's also a 'Chat & Mobile Text' section showing 'I am Available' and a contact list.

Best regards,

Claudia Cutino
 cell: 082 439 7282

-----Original Message-----

From: cgraycom@mweb.co.za [mailto:cgraycom@mweb.co.za]
Sent: Wednesday, October 13, 2010 3:54 PM
To: complaints@waspa.org.za
Cc: cgraycom@mweb.co.za
Subject: WASPA Code of Conduct Complaint # 10815

Complaint #10815 (lodged via the WASPA website):

Full_Name: Claudia Cufino WASPA Tester

Cellular: 0824397282

Alternate_Contact_Number:

Email: cgraycom@mweb.co.za

PhysicalAddress: Tamboerskloof
 Cape Town

PostalAddress: Tamboerskloof
 Cape Town

PostCode: 8001

Affiliations: I am employed by, or otherwise associated with one of WASPA\'s member companies

Affiliation_Information: I am the WASPA Tester

WASPName: Buongiorno

OtherID: short code: 35050

Code_Breached: Breaches of the Code:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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.

Breaches of the Advertising Rules:

9.2.1 Cost OF ACCESS DISPLAY

9.2.1.1 Formatting Of Access Cost Text:

 Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif font

- The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.
- The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.
- All access cost information must be placed horizontally

Detailed_Description_Complaint: When logging into my Yahoo account on Monday, October 11th 2010, the \"Love Match\" banner popped up. This is a repeat offence for Buongiorno as we came across this in July.

I will be sending the original screenshot to complaints@waspa.org.za where you are able to see the breaches and infringements on the page.

In July Buongiorno showed us that the subscription information on the banner was made much more clear and changed into the horizontal format as required by the Advertising Rules, however the banner that popped up on my screen showed once again the unclear subscription and pricing information shown vertically across the banner in tiny print.

Buongiorno is still using the \"Love Match\" test as a hook to get the consumer to subscribe to a Content (Games/wallpaper/pictures etc) subscription service.

From the beginning when clicking on the banner the consumer is interested in doing a Love Match, not subscribing to a Content Subscription Service which is made clearer once you start to fill in the Love Match information.

This is like I said a repeat offence against Buongiorno.

Tick_as_appropriate: I have not contacted the service provider and believe this matter requires WASPA\'s attention

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

where_hear_about_waspa: I work for WASPA

send: send

Sent by 41-135-57-247.dsl.mweb.co.za (41.135.57.247)

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaint Ref:#10815
From: "Sharief Holt" <sharief.holt@buongiorno.com>
Date: Wed, 20 Oct 2010 15:24:59 +0200
To: <complaints@waspa.org.za>
CC: 'Hans Mol' <hans.mol@buongiorno.com>, 'Rosalinda van Rooyen' <rosalinda.vanrooyen@buongiorno.com>

Dear Waspa,

We had received a head's up from the Waspa monitor on 30th June 2010.
The mail stated that the purpose of this particular head's up was to assist instead of moving to a formal complaint.
We had thus taken the feedback under advisement and amended the creative accordingly.
Unfortunately the banner in question was not pulled by the media house hosting the banner, as instructed by Buongiorno.

Herewith the banner and pages as amended during our discussions on the creative with assistance from the Waspa Monitor.
These were uploaded on the 8th July 2010, following correspondence with Ilonka Gray. These were as advised acceptable, thus we had made these changes accordingly.
The new banners show the Cost involved and Subscription wording in a horizontal format, as outlined during our discussion.

Banner uploaded for correction.

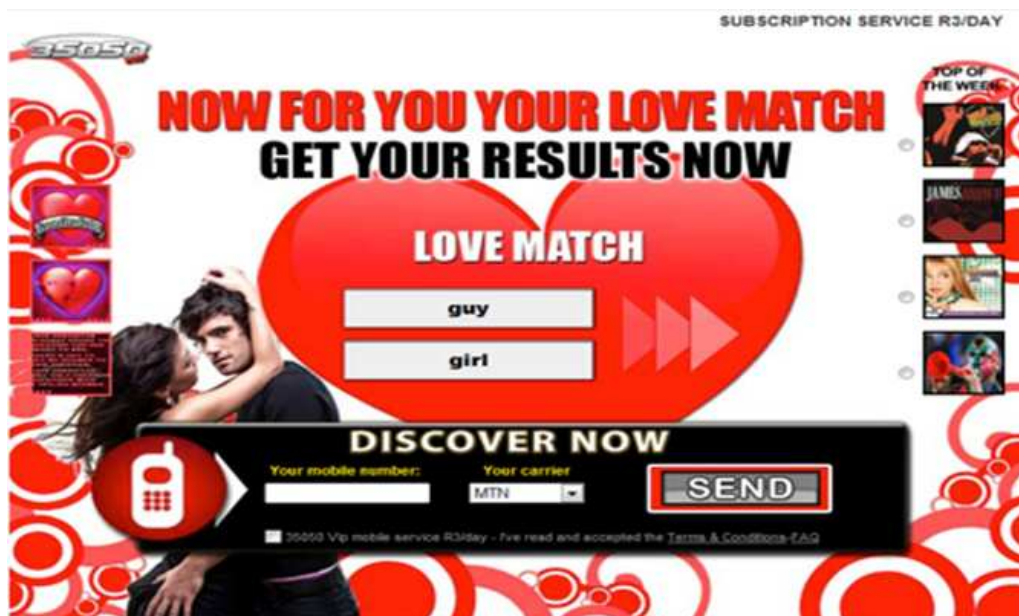


Banner uploaded for correction.



Splash Page the user would enter his or her credentials on.

The page is informative of the subscription service and other content items, as per section 11.1.2 of the code of conduct
11.1.2. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.



Also for your perusal, we have included the actual application screenshot as can be found within the 35050 service offerings.



In essence we had addressed the complaint informally and made the recommended changes. It is rather unfortunate that one of the banners had been overlooked by our media advertiser.

We had informed the media house that it is unacceptable that this had to happen and can assure the secretariat that any changes would be looked at under stringent conditions in or to not have a repeat of what is clearly happening in this here complaint.

We had not done this intentionally but, it is in fact an oversight we had not been made aware of until now.

Should we had been informed of this or had any idea that the banner in question was live during this period, we would certainly had removed the banner without question.

We thank the secretariat for brining this to our attention. The banner in question has been replaced, as shown in the above screenshots.

Best Regards
Sharief Holt
Buongiorno SA

-----Original Message-----

From: WASPA Complaints (Lorraine Hartzer) [mailto:complaints@waspa.org.za]
Sent: 14 October 2010 09:37 AM
To: Sharief Holt
Cc: Hans Mol; 'Rosalinda van Rooyen'
Subject: [formal] WASPA Code of Conduct complaint Ref:#10815

Dear WASPA member,

The attached complaint has been lodged with WASPA against Buongiorno. This complaint is being processed according to the formal complaint procedure described in section 14.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to <complaints@waspa.org.za>. Correspondence sent to any other address may not be deemed to constitute a formal response.
- The WASPA Secretariat will confirm receipt of your response.

It is recommended that your response should include as much as possible of the following information that is relevant to this complaint:

- Logs as stipulated in clause 11.9.2. of the Code of Conduct
- Information on how this service was or is advertised
e.g.: TV, WAP, Internet, SMS, radio
- A copy of the advertisement/marketing material
- In the case of a TV advert please provide flight times and codes
- Statistics on the number of entries/users of this service

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards,
WASPA Secretariat

--- A copy of the complaint follows below ---

Complaint #10815 (lodged via the WASPA website):

Full_Name: Claudia Cutino WASPA Tester

Cellular: 0824397282

Alternate_Contact_Number:

Email: cgraycom@mweb.co.za

PhysicalAddress: Tamboerskloof
Cape Town

PostalAddress: Tamboerskloof
Cape Town

PostCode: 8001

Affiliations: I am employed by, or otherwise associated with one of WASPA\'s member companies

Affiliation_Information: I am the WASPA Tester

WASPName: Buongiorno

OtherID: short code: 35050

Code_Breached: Breaches of the Code:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as subscription services. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

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.

Breaches of the Advertising Rules:

9.2.1 Cost OF ACCESS DISPLAY

9.2.1.1 Formatting Of Access Cost Text:

 Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif font The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.

The cost text must not be part of a colour scheme or design that could obscure (objectively) easy reading of complete details of the price.

All access cost information must be placed horizontally

Detailed_Description_Complaint: When logging into my Yahoo account on Monday, October 11th 2010, the \"Love Match\" banner popped up. This is a repeat offence for Buongiorno as we came across this in July.

I will be sending the original screenshot to complaints@waspa.org.za where you are able to see the breaches and infringements on the page.

In July Buongiorno showed us that the subscription information on the banner was made much more clear and changed into the horizontal format as required by the Advertising Rules, however the banner that popped up on my screen showed once again the unclear subscription and pricing information shown vertically across the banner in tiny print.

Buongiorno is still using the \"Love Match\" test as a hook to get the consumer to subscribe to a Content (Games/wallpaper/pictures etc) subscription service.

>From the beginning when clicking on the banner the consumer is

>interested in doing a Love Match, not

subscribing to a Content Subscription Service which is made clearer once you start to fill in the Love Match information.

This is like I said a repeat offence against Buongiorno.

Tick_as_appropriate: I have not contacted the service provider and believe this matter requires WASPA's attention

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

#10815.pdf	Content-Type: application/pdf Content-Encoding: base64
------------	---