



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	TotalTimWE
Service Type	Subscription
Source of Complaints	Public
Complaint Number	#1126
Date received	15 March 2007
Code of Conduct version	4.8

Complaint

The Complaint alleges breaches of sections 4.1.1, 4.1.2, 4.1.7 and 11.1.1 of version 4.8 of the WASPA Code of Conduct in relation to a subscription service offered by the IP through the SP. The Complainant viewed an online advert for the service, designed and facilitated by the IP, at the following address

<http://www.valentinstones.com/ws/acp?sp=27022>.

The nub of the Complaint is that the IP “clearly advertise[s] \“Free Valentine Card\” in order to attract customers to subscribe to an unwanted subscription service” which advertisement is “misleading and deceptive”. The implication is that the subscription nature of the service was not made apparent or was misrepresented. The Complainant specified a mobile number which was allegedly subscribed to the service on 14 February 2007 (the service related to Valentine’s Day).

As a separate issue the Complainant pointed out that the link to the WASPA website contained on the webpage on which the advertisement was viewed specified www.waspa.co.za and not www.waspa.org.za as the web address for WASPA. The Complainant queried whether this was intentional conduct on the part of the IP.

SP Response

The SP provided a detailed response dealing with allegation raised against both itself and the IP.

The SP denied that the advertisement states "Free Valentine Card" and pointed out that the only mention of the word "free" is made in relation to the SMS sent to activate the subscription. According to the SP this was displayed as:

'Subscription for R4.99/day' and right beneath it 'Send free SMS'.

According to the SP the Terms and Conditions of the service state "This is a Daily subscription service" and the SP uses a "double opt-in" rule as required by the network operators. The SP explained the service in the following terms:

"Mention should also be made that there are two steps involved in the online registration process. The foregoing corresponds to the "Double Opt-In" rule from the Network Operators. On the first screen, the user is asked to enter the user cellphone number and relevant Network Operator. A pin is then sent to the user cellphone, a second screen is then activated and the pin is entered on the second screen. The second screen also clearly states 'Enter your password and subscribe'."

The SP further provided the text of the message sent to activate the subscription viz.:

"Enter password xxxxxx and accept subscription to subscribe LoveTipsWeb.Find love only for R4,99per day until you send STOP LTIPS to 31606.Helpline:0822350466"

as well as the text of the welcome message:

"Welcome to LOVETIPS!Receive on your mobile LoveTips and poems+2tones every week,for R4,99p day until you send stop ltips to31606.Helpline0822350466.TotalTIM"

In summary as regards the allegation of misleading advertising the SP states:

“There can be no doubt that this service is a subscription service. There was no wrongdoing from [the IP] and WASPA’s advertising guidelines were implemented in the advertisement as required. “

As regards the incorrect link to WASPA the SP acknowledged and expressed regret over what it characterised as an “unintentional typo”. In amplification the SP states:

“This error was precipitated by the fact that, the foregoing link did link to the WASPA website in the past. It was a bona fide mistake and to prove this assertion, there are two links on Integrat's website to WASPA's website; one which is incorrect and one which is correct as in www.waspa.org.za . Integrat maintains that it is not in breach of the code, because this second link was available at all material times. (Please see Best practice conduct for WASPs):

<http://flash.integrat.co.za/documentation/public/Best%20practice%20conduct%20for%20WASPS.doc>.”

The error on the website has been corrected.

Sections of the Code considered

The following sections of version 4.8 of the WASPA Code of Conduct were considered:

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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.

4.1.7. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

Decision

As regards the allegation of misleading advertising of a subscription service the Adjudicator has reviewed the webpage on which the service is advertised. No screenshots were supplied by the Complainant so the review was of the webpage as it existed on 20 June 2007.

The following comments flow from the review:

- “SUBSCRIPTION FOR R4.99/DAY” appears in the top right hand corner and is reasonably prominent
- “SEND FREE SMS!!!” appears as an animated graphic just below this
- The first term and condition displayed at the foot of the advertisement reads “This is a Daily subscription service.”
- The words “Free Valentine’s Day Card” do not appear
- The title of the webpage displayed by the browser is “FREE SMS”

Section 11.1.1 of the Code of Conduct requires that the identification of a service as a subscription service must be “prominent and explicit”. The SP appears, without reference being had to the Advertising Rules (which were not referred to in the Complaint) to have complied with this requirement. The Adjudicator has reviewed the subscription process and confirms that this is as outlined by the SP.

[It should be noted that this review does not in any way constitute approval of all aspects of the service. It is suggested that the SP review the service against the requirements of the Advertising Rules.]

While the Adjudicator, subsequent to reviewing the service and the advertising in respect thereof, believes there are aspects of both which are potentially problematic, it is important to note that the Complaint raises allegations of misleading information and a failure to deal honestly and fairly with customers within the specific context of the alleged failure of the advertisement to indicate that the service is a subscription service. This narrow aspect cannot be sustained as it cannot reasonably be said that the webpage specified does not “prominently and explicitly” identify the service as a subscription service.

As regards the incorrect display of the WASPA URL the Adjudicator accepts the explanation of the SP and rejects the intimation of intentional conduct raised by the Complainant. If there is indeed a breach of the Code of Conduct in this regard, it is of such a minimal and technical nature that it should not, as a matter of policy, attract any sanction.

In the circumstances the complaint is dismissed.