



ADJUDICATOR'S REPORT

WASPA Member (SP):	Buongiorno SA
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainant:	WASPA Monitor
Complaint Number:	11582
Code Version:	10.0
Advertising Rules Version:	2.3

Complaint

This Complaint, lodged by the WASPA Monitor ("the Monitor"), is similar to Complaint 11258 which was assigned to me along with this one. The Complaint concerns a banner depicting a silhouette of a ballerina turning in a particular direction and asks the viewer to answer which direction the ballerina is turning. Answering correctly yields another banner confirming the correct answer and stating "NOW YOU CAN GET AN IPHONE 3G S*". There are two lines of text at the very bottom of each banner mentioning the shortcode (represented as an image) as follows:

35050 + 3D images, RudeBoy & more

The bottom line of text states the following:

*R3/day - Subscription Service. Not subscribed 4 answer T&C's apply**

The copy of the banners the Monitor supplied in the attachment to the Complaint (annexed to this report, marked Annexure "A") indicate a line of text which seems to be at the top of the third screen a prospective subscriber is faced with and which reads as follows:

*subscription service R3/day the best music in on your mobile *available through the 35050 loyalty program*

Its not clear from the banners whether the asterisk at the end of "IPHONE 3G S" is a

reference to the “T&C’s apply” qualification at the bottom of the same banner or to the qualification “available through the 35050 loyalty program”. The Complaint cites sections 11.2.2 and 11.2.3 of the WASPA Code (detailed below) and is essentially that the SP is making an offer of an iPhone 3Gs to entice consumers into subscribing to the SP’s content subscription service (“the Service”).

Service provider’s response

The SP initially requested an extension of time to enable it to submit a response to the Complaint. The extension was granted and the SP made further submissions on 24 January 2011. In one email the SP asked that this Complaint be combined with complaints 11258 and 11626 and adjudicated as a single complaint given their similarities. I don’t believe this proposal was accepted and, instead, these three complaints were submitted to me to be adjudicated in their appropriate context.

In another email, the SP made lengthy submissions in response to this Complaint. A copy of the SP’s email is annexed to this report and marked Annexure “**B**”.

Preliminary procedural point

The SP raised a preliminary procedural point in its email with two aspects. The first is that it objected to the Monitor being placed in a position where she could determine whether the SP should be granted an extension to enable it to respond to the Complaint. The second aspect is that the Monitor sought to impose conditions on an extension: the banners were to be taken offline pending the final determination of the matter. The SP believed the banners complied with the Code and disagreed that the Monitor was empowered to make such a determination while the Complaint was still in the process of being ventilated and dealt with. The SP referred to various items of correspondence which I have not included with Annexure “**B**” in the interests of brevity but which ought to be reasonably available from the Secretariat. This correspondence documents its requests for consolidation of these related complaints, requests for a postponement, responses to the Monitor’s feedback (I dealt with this in my report on complaint 11258) and being advised that the matter was referred to formal adjudication at the Monitor’s request.

Complaint generally

The SP's submissions are lengthy and I have elected not to repeat them in this report word for word. Instead I refer to Annexure "B" for the detailed responses. The SP's responses to the Complaint are, essentially, as follows:

- The iPhone offer is not an enticement to subscribe to the Service but rather an indication of the benefits available to existing subscribers;
- The rationale for the iPhone offer was made clearer by subsequently adding the "available through the 35050 loyalty program" qualification I mentioned above;
- The ballerina quiz is a device which was intended to act as an "eye-catcher" to introduce the SP's services to the public;
- The ballerina quiz is presented before a subscription takes place and "no subscription takes place when the public are interacting with the online banner before the answer to the ballerina question is provided";
- The banners display various content items and there is therefore no breach of section 11.2.2;
- Prospective subscribers are presented with all relevant information and should they subscribe, they do so fully informed;
- The ballerina quiz is not a competition as section 11.2.3 contemplates;
- It is apparent to prospective subscribers that the iPhone offer is part of a loyalty program available to subscribers;
- It is similarly apparent to prospective subscribers that the banners introduce and provide a mechanism to subscribe to the SP's service.

Sections of the Code considered

Version 10.0 of the Code applies to this complaint. I have considered the following provisions of the Code:

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.

11.2.3. Notwithstanding the above clause, 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. In such a case, it must be clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

11.6.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

The Monitor highlighted sections 11.2.2 and 11.2.3 specifically.

Sections of the Advertising Rules considered

Not considered

Decision

Preliminary procedural point

The SP raised a valid concern about the discretion the Secretariat gave the Monitor regarding the SP's request for a postponement as well as the Monitor's conditions for such a postponement. The Monitor has been tasked with reviewing WASPs' services and reporting irregularities or suspected non-compliance with the Code to the Secretariat to be addressed with the members concerned. Where the members fail to address the irregularities or non-compliant aspects of their services adequately, the matter may be referred to adjudication by independent adjudicators empowered to consider the matters and make determinations on the facts and compliance with the Code. In a sense the Monitor is a public interest complainant engaged by WASPA to maintain a watchful eye on these services.

The Monitor does not have a judicial or quasi-judicial function and while it may give WASPs guidance where their services are non-compliant, the Monitor appears to lack the authority

to make binding determinations on Code compliance. That remains the adjudicators' function and this has been borne out in the interaction between the Monitor and adjudicators when complaints are referred for formal adjudication. In other words, the Monitor is empowered to prepare a complaint and submit it for consideration by an adjudicator under the Secretariat's auspices, where informal resolution is not possible or feasible.

Having regard to the correspondence between the SP, the Secretariat and the Monitor, it is apparent that the Monitor exceeded her authority in determining whether the SP should have been granted an extension of time to respond to complaint 11258 as well as this Complaint. The Monitor further exceeded her authority by demanding that the banners which formed the subject matter of complaint 11258 as well as this Complaint be taken down as a condition for an extension of time. The Secretariat incorrectly deferred to the Monitor to the extent it did and ought to have retained and exercised its discretion whether to grant the postponement. Where the banners' continued availability to the general public posed an immediate risk to consumers, the matter ought to have been referred to an adjudicator for urgent review and a determination whether the banners should have been taken down pending this adjudication.

In short I agree with the SP that the Monitor exceeded her authority but I do not believe that doing so is material to this Complaint or my findings below.

The SP raised a further concern that complaint 11626's similarity with this Complaint is evidence of the Monitor's collusion with an anonymous competitor and is both irregular and an abuse of her position. I have considered this issue in my report on complaint 11626 and do not deal with it in this report.

Complaint generally

Given the similarities between this Complaint and complaint 11258, my findings regarding the banners' compliance in that complaint are substantially the same as in this Complaint and bear repeating:

I will, instead, focus on the bundling issue. In this regard I have confined my comments to the banners which were the cause for this Complaint in the first place, namely the ballerina banners which are clearly reproduced in Annexure "B". The most prominent feature of these banners is the quiz about which direction the ballerina is turning (in the first banner) and the declaration of the correct answer and large text stating "NOW YOU CAN GET AN IPHONE 3G S". There are two lines of text at the very bottom of each banner mentioning the*

shortcode (represented as an image) as follows:

35050 + 3D images, RudeBoy & more

The bottom line of text states the following:

*R3/day - Subscription Service. Not subscribed 4 answer T&C's apply**

If I understand the SP's submissions correctly, the asterisk at the end of "IPHONE 3G S" is supposed to reference the text on the bottom of the banner and indicate to a prospective subscriber that the iPhone is a loyalty reward which could be awarded to subscribers who have been with the service for a period of at least three months.

The next page a prospective subscriber sees, presumably after selecting a network provider option below the large iPhone offer text, is a the page reproduced on page two of Annexure "B". The terms and conditions do not appear to make any reference to the loyalty reward for existing subscribers. The text associated with the checkbox on this page states the following, however:

I accept the full loyalty program just for three rands per day don't miss this fantastic opportunity

This checkbox is part of the SP's opt-in mechanism and immediately above it are fields for the prospective subscriber's mobile phone number and network selection. This confirmation makes no reference to the Service as a subscription service. It either implies that the consumer is submitting his or her phone number in order to obtain an iPhone 3G S or that the loyalty program is the same as the subscription service. References to subscription pricing in the banners suggest that the first impression is not correct but the iPhone offer confuses the subscription offering. In addition the checkbox text uses the unusual currency format "three rands per day" instead of the pricing format required by the Code as represented in section 6.2.8, 11.6.5 and elsewhere in the Code and Advertising Rules. In short, this text is misleading and unnecessarily so. The text on the banners simply does not convey what the SP contends it conveys and the prospective subscriber's likely impression from the banners is that answer the question about the ballerina's turning direction (and, possibly, subscribing) correctly entitles the would-be subscriber to an iPhone 3G S.

A subscriber to this service would probably become a subscriber as a result of this iPhone offer and not solely with the specific intention of becoming a subscriber.

The one difference between complaint 11258 and this Complaint is the SP's addition of the line:

*subscription service R3/day the best music in on your mobile *available through the 35050 loyalty program*

The SP has stated that the phrase “available through the 35050 loyalty program” clearly qualifies the iPhone offer as one being available solely to existing subscribers. While this may have been the SP’s intention, I do not believe that this qualification adds much more clarity to the overall offer than existed before it was added. The primary issue with the banners is that the dominant impression is an offer of an iPhone 3Gs in exchange for a correct answer to the quiz. I do not accept the SP’s explanation of the quiz’s role. The SP does not emphasize its content subscription offering nearly as much as the quiz and the iPhone offer and it is unreasonable to expect a consumer to look beyond such prominent devices to the underlying subscription service and somehow contextualize the quiz and iPhone offer in the manner the SP intends.

The banners are not compliant with the Code. A prospective subscriber could not reasonably be expected to look beyond the quiz and iPhone offer as the SP would expect. I therefore uphold this Complaint and find the banners non-compliant with sections 11.2.2, 11.2.3 and, having regard to the pricing format referred to above, 11.6.5.

Sanctions

One of the SP’s primary concerns and its motivation for asking that complaints 11258, 11626 and this Complaint be adjudicated together is that it should not be penalised more than once for what it contends are the same or similar complaints. This is assuming that the complaints are all upheld, of course. That said, I have upheld complaint 11258 and that report will likely be made available by the WASPA Secretariat in the ordinary course. Where there are similarities between this Complaint and complaint 11258, I have pointed these out. I have further remained mindful of the SP’s “double jeopardy” concerns.

I therefore reiterate my order which I made in my report on complaint 11258, in part:

The SP is ordered to -

1. Desist from publishing the banners which form the subject matter of this complaint and any derivatives of those banners which fail to address the cause of this Complaint as described above;
2. Send a reminder message to all subscribers to the Service in the format specified by section 11.6.2 of the Code within 48 hours of being notified of these findings.

Client: Buongiorno

Date: 11 January 2011

I found the following banners on the internet. After clicking through from the first to the second banner and inserting the correct answer, the banner informs the customer that he/she can now get and Iphone 3G S* by choosing their operator "NOW YOU CAN GET AN IPHONE 3G S*".

This process is not compliant as it makes use of a competition to mislead customers into a subscription service.

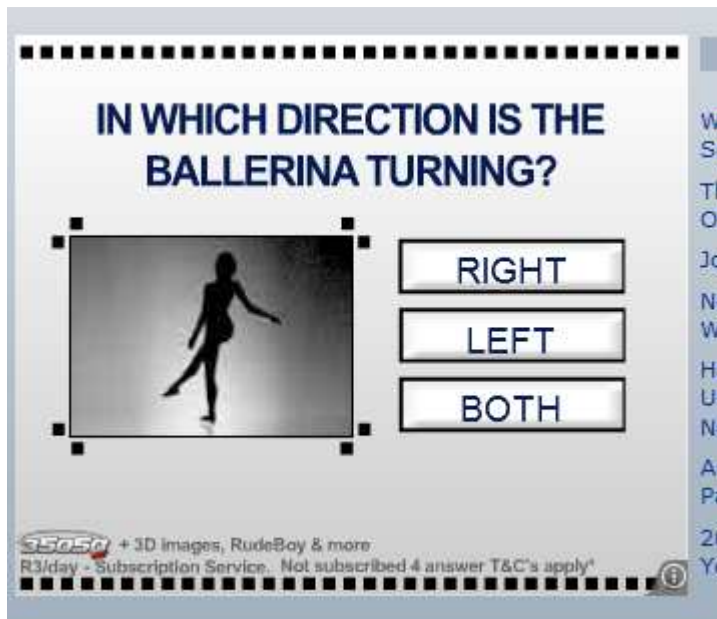
Breaches of the Code of Conduct:

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.

11.2.3. Notwithstanding the above clause, 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. In such a case, it must be clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

Requirements:

This campaign must be removed from internet sites.



**RIGHT ANSWER!
RIGHT**

**NOW YOU CAN GET AN
IPHONE 3G S***

CHOOSE YOUR OPERATOR

MTN **vodacom** **cell**

35050 + 3D images, RudeBoy & more
R3/day - Subscription Service. Not subscribed 4 answer T&C's apply*

subscription service R3/day the best music is on your mobile *available through the 35050 loyalty program

35050 **RIGHT ANSWER**

THE BEST MUSIC AND IPHONE 3GS* JUST FOR YOU

DON'T STAY WITHOUT IPHONE

YOUR MOBILE NUMBER

VodaCom

SEND

I accept the full loyalty program subscription for three rands a day (2011) miss this fantastic opportunity

35050 **vodacom** **cell**

Subscription service. 35050 Vip. By entering the PIN that was sent to your cellphone you will be entered into 35050 VIP subscription service, and you acknowledge that you are subscribing to the service. This subscription service is available to MTN, Vodacom and Cell C users. You will be billed R3 every day. You will receive a WAP link in your welcome messages. By clicking on the WAP link you will be able to download unlimited items for you phone. These items are not charged for separately from your daily subscription fee. Download charges apply and standard text messaging rates may apply. The shown item(s) form(s) part of the subscription service and is/are indicative of the content items that will be received. You may stop this subscription service at any time by sending a text message with the words STOP VIP to 35050. You must be the owner of the device or you need to acquire the bill payers permission to join this subscription service. For help call 0214178001. Your cellphone handset must be WAP enabled to download the products. You will have the option to download as many items as you like from the wap.35050.co.za wap site, this includes but is not limited to ringtones, animations, videos, wallpapers and games. Content downloads are subject to handset compatibility. You are also agreeing to receive occasional promotional messages. Member of the 35050 service will be added into the VIP loyalty program. Random draws are done to allocate members. Members must have been successfully billed for 30 days and must have downloaded at least 3 items of content during that period. Please visit wap.35050.co.za for full Loyalty program terms and conditions. *Loyalty program T&Cs apply.

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct complaint Ref:#11582
From: "Sharief Holt" <sharief.holt@buongiorno.com>
Date: Mon, 24 Jan 2011 17:42:23 +0200
To: <complaints@waspa.org.za>, "'Rosalinda van Rooyen'"
<rosalinda.vanrooyen@buongiorno.com>, "'Hans Mol'" <hans.mol@buongiorno.com>

Dear Waspa,

Re: BUONGIORNO SOUTH AFRICA (PTY) LTD / WASPA COMPLAINT NUMBERED #11582

We refer to the above complaint and confirm that it is, for all intents and purposes, the same as complaint numbered #11626, and markedly similar to that of complaint #11258.

That being the case we did request that WASPA consolidate the three abovementioned complaints. WASPA declined such request. Copies of our request and WASPA's response are annexed hereto, marked "B1"

WASPA did however agree that the same adjudicator would be appointed to adjudicate on all three complaints. We trust that the adjudicator will bear in mind the principle of "double jeopardy" (not being punished for the same infringement twice) when considering these three complaints.

Events leading up to this complaint:

1 On 1 December 2010, we received a formal complaint, numbered #11258, from WASPA's, wherein the complainant (the WASPA Media Monitor (the "monitor") accused us of breaching clause 6.2.2. and, mirroring this complaint, 11.2.2. of the WASPA Code of Conduct (version 10) (the "Code").

2 After an informal discussion between our attorney and the WASPA Secretariat (the secretariat"), complaint #11258 was converted from formal to informal on 3 December 2010.

3 On 9 December 2010, we provided our response to informal complaint #11258. Such response is annexed, marked "B2".

4 In 13 December 2010, the monitor reverted to the secretariat stating that our response was unacceptable. She made suggestions on how she viewed we should be marketing the product under question (i.e. the loyalty programme rewards). Furthermore, she found fault with the example links we had utilised in our response - links which did not form part of her original complaint.

5 To this end she insisted on receiving our further response to #11258 before 16 December 2010, as she was planning to go on leave thereafter. This deadline was not in accordance with section 14.2.3. of the Code, which section affords us (as a WASPA member) five working days within which to effect an appropriate remedy.

6 Due to the fact that it was the festive season and, like the monitor, since most of our marketing staff were already on leave as at the time of her response on 13 December 2010, we were not in a position to deal with such substantively.

7 On 15 December 2010 we therefore requested that we be afforded to the 14 January 2011 to respond to these additional complaints received from the monitor. In any event, if we had responded within the time period afforded to us by the Code, had it been after 16 December 2010 then the monitor would have been absent from her post and unable to properly deal with such response until her return from leave.

8 On same said date an email was received from the secretariat's office, communicating that the monitor would not agree to an extension unless the - allegedly - offending banners were taken down until 14 January 2011, otherwise changes needed to be made immediately to such banners to avoid "continuation of non-compliant banner [sic] being available to consumers".

8.1 On a specific point of procedure we fail to understand why the media monitor was allowed to dictate whether or not we were afforded an extension or not. We understand that decisions of this nature can only be made by the secretariat.

8.2 Even if the monitor were allowed to determine whether or not we were to be afforded an extension, her conduct is not permissible - it attempts to impose a

result before our client has been given an opportunity to be heard, or for its position to be considered. We did not agree that we were infringing the Code in the manner the monitor was alleging, and therefore viewed our banners as compliant. Furthermore, despite believing that, in their original form, they were compliant, we had agreed to amend same - we refer to our response described above.

9 We did not take the banners down as we did not believe that they were non-complaint, as alleged by the monitor. When addressed on this again by the secretariat's office on 20 December 2010, we again requested an extension to 14 January 2011 (for the same reasons as previously stipulated) to deal with the matter substantively.

10 We did not, after our request on the 20th of December 2010, hear from either the secretariat's office or the monitor on this matter (until 14 January 2011) and therefore, with respect, could reasonably have assumed that we have been afforded the extension - reasonable requests for extensions are ordinarily granted..

11 Attached, as "B2" hereto is the correspondence between WASPA and ourselves up to 20 December 2010.

12 On 14 January 2011, we provided our response to the additional comments made by the WASPA monitor on the 13 December 2010. A copy of this response is annexed hereto as "B3".

13 To our surprise, and without prior warning, we were advised by the secretariat that our response - to what we still believed to be an informal complaint - had been sent as part of the case file to independent adjudicator for review (i.e. the complaint had been converted to a formal complaint). We reiterate that at no point in time before then, had we received any official correspondence from WASPA stipulating that they had converted the informal complaint to a formal complaint.

14 Furthermore, it had been converted to informal before the deadline of close of business 14 January 2011 as requested by our client.

15 Then on 11 and 17 January 2011 respectively we received two more complaints (numbered #11582 and #11626) - one from the monitor again and one from an "anonymous" source - regarding the same advertisement and accusing us of breaching clause 11.2.2. and 11.2.3. of the Code.

16 It is obviously frustrating to have received further complaints regarding the breach of clause 11.2.2 on the exact same advertisement that was been dealt with in complaint #11258 because we were in the process of addressing same, and the monitor was fully aware of this, as was the secretariat. In our view the secretariat should have either combined the complaints (for the reasons stated in our letter annexed hereto as "B1"), and/or told the complainant that the matter was already being addressed. Nevertheless, we will now address complaint #11582.

BREACH OF 11.2.2.

17 We have dealt substantively with this specific issue in our response to complaint number #11258 and incorporate our responses, in so far as they pertain to the infringing "iPhone" advertisement (as the advertisements in question in the current complaint). For the adjudicator's ease of reference we annex hereto all the correspondence in #11258, marked "B3".

18 In amplification to our responses in complaint #11258 - on the banner referring to the "iPhone 3G S*", the *(star) refers the public to our loyalty programme terms and conditions attached, and outlined within the terms and conditions on the subsequent landing page. In addition, we have amended our landing page, at the top right-hand corner, to emphasise that the iPhone reward is only available through our loyalty programme. Annexed hereto is the sequence leading the public to the landing page, marked "B4".

19 The complaint raised by the monitor in complaint #11258 was inter alia in terms of an alleged infringement of section 11.2.2. as regards to the "iPhone" loyalty reward specifically - not the dancing ballerina.

20 It is not clear whether or not the monitor is now, in the complaint under reply, also referring to the "quiz" referring to the ballerina, we address same as follows:

20.1 We do not believe that we are in breach of clause 11.2.2 in this instance either. The ballerina question is used as an "eye-catcher" to introduce our services to the public.

21 The question posed is answered before the subscription process begins - this therefore cannot be viewed as a breach of 11.2.2 - no subscription takes place when the public are interacting with the online banner before the answer to the ballerina question is provided. Furthermore:

21.1 Clause 11.2.2 further stipulates that the request must not be for a specific content item - other content items are clearly displayed, and therefore we cannot be found to be in breach of 11.2.2 on this basis.

21.2 It is evident that any user who undertakes to join the service is well informed in order to make an informative decision before continuing to enter his or her mobile number within the space provided.

INFRINGEMENTS OF CLAUSE 11.2.3.

22 "11.2.3. Notwithstanding the above clause, 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. In such a case, it must be clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition."

23 With all due respect, we are confused as to the reason we are found to be in breach of this section. No detail is provided by the monitor and we believe that we are fully compliant.

24 Buongiorno is providing an additional benefit to its subscribed customers by entering each member into our service loyalty programme - in which they are eligible to win rewards. This is an added benefit to being a subscriber. We are therefore compliant with the Code ..

25 Our response to 11.2.2 should also be read as our response to this alleged infringement. It is made clear to customer and potential customers (on the landing page, and in our terms and conditions) that the loyalty rewards (advertised specifically as such) are only available to existing customers qualifying for the loyalty programme.

26 No competition takes place -the user has to be an existing member of the service and have downloaded and billed successfully, in order to be chosen to be awarded a loyalty incentive. These conditions are outlined within the terms and conditions of the service - readily available and referred to.

27 Each member has complete and unrestricted visibility during the subscription process and initiates the service solely for the benefit of wanting the service as well as be part of the loyalty programme initiative.

SAME COMPLAINTS:

28 We would like to place on record that in receiving complaints #11582 and #11626 we are concerned that these appear to be collusion between the monitor and our competitors. The text of these complaints is virtually identical, even though the "anonymous" complaint appears to post-date the monitor's complaint.

29 The only inference that can reasonably be drawn is that the monitor furnished the text of her complaint to the so - called "anonymous" complainant - if this is what happened then the conduct of the monitor is highly irregular. The monitor is not entitled to abuse her position to attempt to procure complaints against our client. This is an issue our client will take up with the secretariat, but an adjudicator dealing with these matters should take into account this apparent conduct by the monitor in these matters. We would be interested to receive an explanation from the monitor as to how the so-called "anonymous " complaint came about.

In the meantime, we trust that our response is sufficient in proving that we in no way infringed the Code as alleged by the monitor or the anonymous complainant. However, should the adjudicator not be clear on anything and wishes us to provide anything further to assist him/her in their deliberation of this matter, we are more than willing to provide same.

Yours faithfully
Buongiorno SA

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

From: WASPA Complaints (Lorraine Hartzler) [mailto:complaints@waspa.org.za]
Sent: 11 January 2011 11:37 AM
To: Sharief Holt; 'Rosalinda van Rooyen'; Hans Mol
Subject: [formal] WASPA Code of Conduct complaint Ref:#11582

Dear WASPA member,

The attached complaint has been lodged with WASPA against Buongiorno SA. 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 ---

Date of breach: 11 January 2010

WASP or service: Buongiorno

Clauses breached: 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.

11.2.3. Notwithstanding the above clause, 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. In such a case, it must be clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

Description of complaint:

Buongiorno are promoting a subscription service making use of a competition to

promote the sub service.

Buongiorno have previously been informed that this practice is in breach of the WASPA Code.

Web campaigns are requested to be removed with immediate effect.

The WASPA Monitor has indicated that this is a repeat offence and cannot be resolved informally. The service provider is requested to provide a formal response to the alleged breaches so that this matter can be reviewed by an independent adjudicator.

Attached file : buongiorno web campaign 11 jan 2011.docx

Annexed B1.docx	Content-Type: application/vnd.openxmlformats-officedocument.wordprocessingml.document Content-Encoding: base64
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— Annexes B3.docx

Annexes B3.docx	Content-Type: application/vnd.openxmlformats-officedocument.wordprocessingml.document Content-Encoding: base64
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— Annexes B4.docx

Annexes B4.docx	Content-Type: application/vnd.openxmlformats-officedocument.wordprocessingml.document Content-Encoding: base64
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— Annexes B2.docx

Annexes B2.docx	Content-Type: application/vnd.openxmlformats-officedocument.wordprocessingml.document Content-Encoding: base64
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