



REPORT OF THE ADJUDICATOR

Complaint reference number:	13361
WASPA member(s):	Integrat (SP) / TIMwe (IP)
Membership number(s):	SP (0030) / IP (1067)
Complainant:	Competitor
Type of complaint:	Subscription Services & Display
Date complaint was lodged:	2011-06-07
Date of the alleged offence:	Not mentioned
Relevant version of the Code:	10.0
Clauses considered:	6.2.1, 6.2.2, 6.2.3, 6.2.4, 11.5.1 and 11.5.2
Relevant version of the Ad. Rules:	2.3
Clauses considered:	9.2.2.1 and 9.2.2.2
Related cases considered:	N/A

Complaint

The Complainant in this matter alleged that the IP breached various aspects of the WASPA Code and Advertising Rules. The Complaint was mainly directed at the various banner ads.

Various requests were made to the Complainant to provide further details but none was forthcoming.

Only after the IP submitted its formal response, the Complainant forwarded further details.

Service provider's response

The IP and SP in this matter at several instances requested further information from the Complainant.

The IP and SP alleged that the information provided was vague and from its own observation, struggled to find any breaches as was alleged by the Complainant.

It specifically requested further information on the banner ads.

In its response it focused its defence on the web or landing page.

The IP admitted to having breached section 11.5.2 but immediately rectified the error.

Sections of the Code considered

6.2.1. All advertised prices must include VAT.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information:

- (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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Clauses of the Advertising Rules considered

9.2.2.1 Formatting & Font Criteria For T&C Text

- The T&C text must be in **12 point font** size, or 50% of the largest access number on a Web page, whichever is the greater. The T&C must be in a non-serif font
- All T&C information must be placed horizontally

9.2.2.2 Position of T&C display 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 in a non-serif font.
- This T&C text must be placed close as possible to the unique access number.

If multiple offers are made on the same advertisement and the cost and T&C differ with each offering, each offering must show the cost & T&C separately and clearly.

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 and IP's subsequent replies.

The Adjudicator can only adjudicate on matters raised in the formal complaint and to which the IP and / or SP have had the opportunity to respond.

Subsequent matters raised by the Complainant will not be considered for this matter as the IP and / or SP did not have an opportunity to respond.

The only sections relevant to this Complaint will be those indicated above and in the formal Complaint.

The Adjudicator is also not satisfied that the Complainant provided enough material to deduce any breaches pertaining to the banner-ads. Although more thorough evidence was provided in a later response, such response cannot be allowed due to the reasons provided above.

Should the Complainant wish to have those included, it should submit a new complaint whereby the IP and / or SP would be afforded an opportunity to respond.

At its own admission, the IP is found to be in breach of section 11.5.2, although the wording causing the breach cannot be construed as wording that would have caused irreparable harm.

The Adjudicator is of the opinion that the IP's response to the remainder of the breaches was sufficient enough, justifying its allegation that no breach pertaining its website or landing page occurred.

The Complaint is partially 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 IP is formally reprimanded for its use of wrong wording and the subsequent breach of section 11.5.2.