



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Mobilefinger
Service Type	Subscription
Source of Complaints	Competitor
Complaint Number	#1640
Date received	27 June 2007
Code of Conduct version	5.2

Complaint

The Complainant lodged an informal complaint alleging a breach of sections 6.2.4 and 6.2.5 of the WASPA Code of Conduct.

“This is a web site that advertises free horoscopes but on looking further it is a R4.99 subscription service with the price very cleverly hidden:

Astro Reading

100% Free Astrology Predictions Sent Straight to Your Cell Phone!

FreeHoroscopes.mobularity.com

http://www.mobularity.com/horoscope_sa/indexes.php?ref2=adwds&utm_source=adwds&utm_medium=cpc&ref4=split&

...regarding a free service which was advertised: “100% Free Astrology predictions sent straight to your cell phone!” – 6.2.4 states: Pricing contained in an advertisement must not be misleading. 6.2.5 The price for a premium rated service must be easily and clearly visible in ALL advertisements.”

SP Response

Once the matter had been escalated the SP provided a detailed formal Response.

“The complainant found fault with an online link and advert for a horoscope service which was designed and facilitated by the Client.”

.....

“With regards the Complainant’s first allegation which centres on the ad link - the Client outsources marketing to online advertising agents, who drive traffic to the client web site.

Notwithstanding any wording used in the advertising, bringing the user to the page, the actual offer is made abundantly clear to the user upon reaching the page after clicking on the advertising link stating exactly what the client is signing up to, what will be received, when and how much it will cost, conforming to the mandated guidelines.

The Complainant’s second allegation centres on pricing; we submit that the price appears twice on the website; once in the body of the advert (size 12 font in CAPS) and; in the lower part of the screen in white text on a black background (size 11 font). Perhaps the Complainant was motivated by the overall colour scheme of the website, in stating “...it is cleverly hidden”. The colour scheme on the body was a design prerogative, befitting of the mood and feel of the service. There is nothing hidden about the contrast of white text on a white [*assume “black”*] background. Furthermore, the price was visible even before the amendments were made to the site (see attached screen shot).

In addition to this, there is a tickbox which is required to be ticked before the user signs up to the service. This confirms and states to the user ‘I agree to be bound by the terms and conditions...’. Unless this is ticked, the user can not continue. The terms and conditions on the page again state the frequency, cost and method in which to stop the service.

Thereafter, the PIN message is sent to the customer's handset and they are then required to enter the PIN number on the site confirming they are fully aware of what the costs of the service are and what they will be receiving.

Furthermore if the user is on Cell C there is an additional step to follow and that is a handset opt-in confirming their request to sign up.

Therefore at every step of the process, the user is aware of costs, frequency, opt out and what they are agreeing to which is in line with the requirements of best practice and WASPA guidelines."

The SP also wished to highlight the steps it had taken in trying to resolve the Complaint, including:

- "From the time of receiving the complaint, the Client immediately froze the website and began to rework its presentation."
- "The Complainant was contacted both telephonically and via email and asked to indicate what would be a satisfactory resolution to his complaint. The Complainant then indicated that if the points mentioned in his email were attended to, he would be satisfied."
- "The changes were duly made and an email was sent advising him (said email, included updated links to the amended webspot). Furthermore, a telephone call to confirm receipt, was made to the Complainant."
- "The Complainant responded via email indicating further steps which the Client had to take."
- "Further changes were made to the website, in line with the Complainant's wishes. However, when an email was forwarded to the Complainant, notifying him of the changes and a follow up call made, he Complainant responded via email stating:
 '...In fact I will insist that they send me free horoscopes as per their advertisement below – My cell number is listed below as well; as to (sic) the phones of my family – I will supply you with a list of phone numbers...'"
- The Complainant was telephoned, even after his response but we were unable to reach him, and assumed he would not take the call.

Sections of the Code considered

The following sections from the WASPA Code of Conduct were raised and considered:

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.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

The following paragraph from the Introduction to the WASPA Advertising Rules was not raised but considered (my emphasis):

“For subscription services, providers should take all reasonable steps to ensure that all promotional material, whether in print media, on the Internet, television or transmitted via text message, clearly explains how the subscription service works. Consumers should have ready access to an explanation of their “purchase” and what, if anything, they need to do to access the Content. Great care should be exercised in using the word ‘free’.” (my emphasis)

Decision

At the outset the Adjudicator wishes to highlight the following:

- complaints referred to the formal procedure are adjudicated with reference to the provisions of the WASPA Code of Conduct and not with reference to the personal feelings of the complainant, no matter how strongly these may be expressed;
- where a complainant is a competitor there is a strong line of precedent in WASPA Adjudications that Adjudicators in such complaints should adopt a strict interpretation of the Complaint and are not required to give the same degree of latitude as may be provided to a consumer complainant who is unaware of the workings of the industry and who is not expected to having

knowledge of the existence and provisions of the WASPA Code of Conduct and Advertising Rules.

For the purpose of deciding this matter it is necessary to distinguish between the advert quoted in the Complaint and the advert which consists of a web page at the URL specified in the Complaint. While the Complaint itself appears to conflate these two advertisements, the essence of the Decision is that the former is problematic while the latter is, in the aspects complained about, in line with the relevant WASPA rules.

It is not clear what medium the advert quoted in the Complaint was viewed in but, notwithstanding this uncertainty, it seems evident that the advert as provided in the Complaint constitutes a breach of clauses 6.2.4 and 6.2.5 of the Code of Conduct in that:

- the price for the premium-rated service is not present
- the use of the word “free” coupled with the lack of any pricing is misleading given that the service is neither free nor 100% free.

In its Response the SP states “[N]otwithstanding any wording used in the advertising...the actual offer is made abundantly clear to the user upon reaching the page after clicking on the advertising link..”. Having viewed the web page in question the Adjudicator is in agreement with the above but notes that the fact that the Code of Conduct may be complied with on the web page does not absolve the SP of the requirement to so comply in respect of advertising.

The fact that the web page does, in the view of the Adjudicator, clearly set out the pricing of the service offered, together with the procedures to obtain agreement thereto as set out by the SP in its response, significantly mitigates the potential for consumers to sign up believing that the service is free. At worst a consumer would be expected to visit the web page in the belief that there are free services available only to be disabused of this notion once landing on the web page.

The use of the word “Free” on the web page can be distinguished from the usage of the same word in the quoted advertisement. In the former there is a clear indication of actual pricing which counteracts the (still inadvisable) use of the term.

Sanction

Given

- the content of the preceding paragraph,
- the exemplary conduct of the SP in freezing the website and attempting to resolve the issue
- the obvious confusion emanating from the Complaint with regard to the quoted advertisement and the web page advertisement, evidenced by the fact that both parties addressed their efforts at resolution towards the web page,
- and after investigation of sanctions imposed previously in respect of such breaches,

the following order is made:

The SP is issued with a formal reprimand and ordered to pay a fine of R20 000, of which payment of the sum of the entire amount is suspended subject to the SP not breaching section 6.2.5 of the Code of Conduct within the next six (6) months.

The SP is urged to review and strengthen its controls over external advertising agencies and to educate them with regard to the WASPA Code of Conduct and the Advertising Rules.