



REPORT OF THE ADJUDICATOR

Complaint reference number:	16543
WASPA member(s):	Buongiorno SA (SP)
Membership number(s):	0002
Complainant:	Public
Type of complaint:	Subscription Services
Date complaint was lodged:	2012-02-27
Date of the alleged offence:	N/A
Relevant version of the Code:	11
Clauses considered:	11.2.2, 11.2.3 & 14.3.14
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	N/A

Complaint

The Complainant in this matter alleged that the he accessed a banner ad which misled him into believing that he would win an IPAD. He never received his prize.

Service provider's response

The SP stated the following in its response:

“This complaint appears to be specifically aimed at the allegedly infringing banner. All we can state in this regard is that we did not create and/or approve such a banner. The complainant has not supplied any banner screenshot or made reference to the website where the alleged pop-up appeared. As we have not approved or created this banner, without the website and/or screenshot referred to we cannot investigate this manner and/or answer to any possible infringements. Whilst we are not in a position to answer any allegations regarding the banner, we do confirm that the user subscribed through a landing page that clearly indicates only the possibility of winning – and how to qualify – and also clearly shows the service as a subscription service with terms that need to be fulfilled in order to be eligible for the rewards/prize. The 4 sms' referred to would also show the service as a subscription service.

Should the Complainant provide the website containing the allegedly infringing banner and it proves to be linked to our service, we will address this immediately. Should it not refer to one of our campaigns we suggest that this manner be taken up with the relevant WASP.”

Sections of the Code considered

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 reasonably 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.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

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 subsequent reply.

The Complainant has failed to provide any sufficient content or any material for that matter to provide the Adjudicator with any sufficient information assisting him or her to make a decision in the Complainant's favour.

The Adjudicator therefore concurs with the SP's response in as far as it contended the absence of any viable information that could assist it in providing a detailed response and any attempt in trying to negate the allegations levelled against it by the Complainant.

The Adjudicator is therefore in no position to consider the allegations raised against the SP in this matter.

The Complaint is dismissed.