



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Mira Networks (Pty) Ltd
Information Provider (IP):	DoubleMT Interactive S.L.
Service Type:	Subscription
Complainant:	WASPA Monitor
Complaint Number:	19473
Code Version:	12.1
Advertising Rules Version:	Not applicable

Complaint

The WASPA Monitor submitted the following complaint (verbatim):

Attached correspondence between the complaints team and an unhappy customer who requested that they be unsubscribed and a refund given.

They were unsubscribed but no refund was given as the SP provided proof of subscription.

The WAP page in question (<http://kulaville.com/lps/whatsapp/wpsa1>) does not promote the subscription service explicitly.

The WEB page (<http://kulaville.com/lps/whatsapp/avsa1>) does not promote the subscription service explicitly.

The WAP page must be edited as follows:

Billing information must be moved to the area above the block in which you put your number.

The \"CONTINUE\" button must be changed to one that states \"SUBSCRIBE\".

The WEB page must be edited as follows:

The \"NEXT\" button must be changed to one that states \"SUBSCRIBE\".

Information provider's response

The IP submitted, in essence that:

It believes that the Media Monitor has gone beyond the scope of the requirements of the Code in the requests that it has made;

It submits that on both the WEB and WAP page, the service is clearly indicated as a subscription service;

The "NEXT" button, which the Monitor wants changed to a "SUBSCRIBE" button does not in fact take one to the subscription step. The relevant button is labelled "JOIN".

Sections of the Code considered

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

Decision

I will divide my decision into four aspects:

The question of whether the Media Monitor can demand specific changes

The communication of subscription services on the WAP page

The communication of subscription services on the WEB page

The "NEXT" button

The role of the Media Monitor

I agree with the IP that the Media Monitor cannot demand specific changes that are not dictated by the Code, and that there are no highly specific requirements in the Code regarding the "naming" of the button, although Clause 11.3.2 does refer to "join" or similar.

This having been said, the Monitor is familiar with the application of the Code and the pitfalls in relation to any particular clause, and may provide suggestions that address problems that are perceived.

My task, however, is to apply the requirements of the Code to the facts at hand. I note that just as the IP is not bound to accept the suggestions of the Media Monitor in the absence of an adjudication, I am not bound by any suggestions that the Media Monitor made or accepted in the previous matter referred to in the papers.

Content issues

As a broad comment, providing background to my thinking on the remaining issues, I note the nature of the service offered, which is a subscription that offers subscribers access to WhatsApp; or the ability to contact WhatsApp users. What is pivotal is that WhatsApp is an application that is usually available at no cost. This service is therefore different from, for example, a subscription to music content, which consumers reasonably expect to relate to some sort of subscription service. WhatsApp, in contrast, is an application that consumers are likely to expect to be freely available.

While I find the existence of a service that charges consumers for access to a freely available service somewhat confusing, I will presume for the purposes of this adjudication that it is legal and that relevant permissions have been obtained.

What is important for the application of the Code is that the perception that WhatsApp is free makes it all the more important that the “subscription” nature of this service is clearly communicated in terms of Clause 11.1.1.

The WEB page

I have carefully considered the image provided by the IP and I do not think that the IP has complied with Clause 11.1.1 sufficiently.

The disclaimer “Subscription Services R7/ day” appears in small print at the top right of the screen, separated from the rest of the content by a border, and in a dark font. The only other reference appears hidden in the small print at the bottom of the screen. I believe that it would be easily overlooked by a reasonable consumer; and

that given the nature of the service, the consumer would be unlikely to even consider that this might be a subscription service and look for the information actively.

The webpage is therefore in breach of Clause 11.1.1. of the Code.

The WAP page

The WAP page is somewhat better than the webpage, simply by virtue of the smaller area bringing the relevant disclaimer closer to the main communication of the screen. It is also in a white font and therefore more readable.

However, the font still remains too small in relation to the overall communication, and outside the border of the primary communication. It therefore may be overlooked. It is possible that if this were a more typical type of subscription service, I would be satisfied with this layout, in the circumstances I believe that the nature of this subscription places an increased duty on the IP in terms of Clause 11.1.1.

The WAP page is therefore in breach of Clause 11.1.1. of the Code.

The NEXT button

I accept, in the absence of evidence to the contrary, that the “NEXT” button does not lead to the confirmation page, and that it is therefore not in breach of the Code.

I note, however, that the IP would be well advised to consider my comments regarding the nature of this service in relation to the wording used on the button that *is* used to link to the final confirmation page. I am not convinced that in the context of WhatsApp – a service that one would usually “join” for free – the word “join” is sufficient. However, the page in question has not been put before me, and it may be that the subscription nature of this service is so well communicated on that page that the word “join” is sufficient.

Sanctions

Given the above, the WEB and WAP pages must be amended with immediate effect.

I believe that the nature of this service makes it self-evident that the communication that this is a subscription service and not the usual, free, WhatsApp should be particularly strong. I believe that the IP's advertising is somewhat predatory and *mala fides* in this regard, and fine them **R5000,00**.