



ADJUDICATOR'S REPORT

Complaint reference number: #20313

WASPA member(s): Buongiorno SA

Membership number(s): 0002

Complainant: Public

Type of complaint: Competition service / subscription service

Date complaint was lodged: 2012-06-05

Date of the alleged offence: Not specified

Relevant version of the Code: 11.6

Clauses considered: 6.2.6 and 9.1.7

Relevant version of the Ad. Rules: Not considered

Clauses considered: Not considered

Related cases considered: None

Complaint

The complainant, a member of the public, lodged the following complaint concerning the SP's 35050 Gold service ("the service"):

Code_Breached: 9.1.7. Competition services and promotional material must not:

a) use words such as '\win\' or '\prize\' to describe items intended to be offered to all or a substantial majority of the participants;

b) exaggerate the chance of winning a prize;

c) suggest that winning a prize is a certainty;

d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

6.2.6. 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.

Detailed_Description_Complaint: While browsing a website, I encountered an advert with moving balls, and a question that asked how many balls were bouncing. I can provide a screenshot of this advert if necessary. The advert gives no suggestion that it is advertising a subscription service, and the price of the service is not displayed anywhere in the advert.

Clicking on the advert took me to the following page:

<http://www.weekly-contest-winner.net/page?cam=4&country=za&pub=2&context=-BtSAFbWfQAShyIBAAAAO4mRAAAAAAAAgAEAAIAAAAAAP8AAAAECyjhWAAAAAAB2hZAAAAAAAOz4BAAA=,eJxzKkrMzDN1z P5824808>

I can provide a screenshot of this page if necessary.

The page produced a pop-up which announced: "Congratulations! You have just qualified to win an Apple iPhone 5".

If one closes the pop-up, it reveals a page which states, among other things: "You are today's lucky winner in Durban", and "You have (1) unclaimed prize".

I put it to the service provider that both of these statements are false, and designed to seduce clients to (perhaps unwittingly) subscribe for its services. These statements are also a breach of the Waspa Code of Conduct, which the service provider seems to have no regard for.

I have laid similar complaints in the past, and the service provider has been fined. However, these adverse adjudications appear to do nothing to improve the service provider's behaviour. I ask that the adjudicator and Waspa seriously consider banishing Buongiorno SA as a member.

Service provider's response

The SP responded to this complaint by insisting that the advertisement which the complainant based his complaint on was not the SP's and that the SP was not in control of it or its functionality. It has disclaimed responsibility for this banner advertisement throughout the lead up to this adjudication. In its initial submissions it included the following statements:

The allegation of the campaign being a by-product of Buongiorno is misplaced in that not a sufficient-enough nexus exists between the URL and the business of Buongiorno. While it may be conceded that the URL encapsulates a subscription service and Buongiorno itself carries on business of a similar nature; to conclusively state that the campaign in question is that of Buongiorno is unfounded and facetious.

The SP has also expressed its view that the complainant is vexatious and has lodged numerous (some similar) complaints against the SP in the past. When the SP responded to a further submission by the complainant including a further link to a website (I did not visit the website concerned as my browser warned me that doing so would expose me to malware on the site), it argued further as follows:

Thank you for the opportunity to provide additional information. We would like to submit the attached letter in further support of our defence in this instance, particularly given that it has arisen from yet another complaint made by someone intent on bringing the company into disrepute.

Sadly we are often faced with a series of attacks from the individual concerned which it is not yet certain if merely done to enhance their career/profile – as mentioned previously, it is clear that the pages complained about no longer link to any of our campaigns but clearly links to that of one of our competitors and where these competitors are also clearly not compliant with the WASPA COC, but yet appear to have avoided his attention.

We therefore wish to reiterate that the claim made is both frivolous and vexatious and should be dismissed in its entirety.

The letter the SP referred to was a letter from its attorneys, DLA Cliffe Dekker Hofmeyr, dated 18 July 2012 and concerning complaint 16479. The SP's attorney, Belinda Scriba, addressed a number of issues relating to that complaint in some detail which I don't intend traversing in this report. One paragraph of Ms Scriba's letter which stood out is the following reiteration of the SP's denial of responsibility for the banner advertisement which seems to form the basis of a number of complaints:

These accusations were wholly unfounded as the allegedly infringing banner, as will be seen below, was not a banner a) approved by our client; or b) used to link to one of our client's campaigns. Our client had absolutely no involvement whatsoever in the creation or presentation of this banner. Our client therefore cannot be held responsible for the contents of the banner which the complainant finds offensive. The complainant has been advised of this - as has WASPA - and yet our client was still called upon to address the complaint.

Sections of the Code considered

In the circumstances it was not necessary to consider the sections of the Code which the complainant highlighted in his complaint.

Sections of the Advertising Rules considered

Not applicable.

Decision

The complainant has argued that the offending banner advertisement is the SP's. The SP has argued repeatedly that it is not responsible for this offending banner. It has even gone so far as to agree that it is not compliant with the Code. The complainant has not introduced any evidence that the banner advertisement is, indeed, attributable to the SP beyond his allegations. I therefore see no link between these banners and the SP and this complaint must fail.

Sanctions

I dismiss this complaint as the complainant has not established that the SP is sufficiently linked to the offending banner advertisement to sustain the complaint.