



ADJUDICATOR'S REPORT

Complaint reference number: #20401

WASPA member(s): Buongiorno SA

Membership number(s): 0002

Complainant: Media Monitor

Type of complaint: Pricing – subscription service

Date complaint was lodged: 2013-05-02

Date of the alleged offence: 2013-05-02

Relevant version of the Code: 12.1

Clauses considered: 6.2.4

Relevant version of the Ad. Rules: Not considered

Clauses considered: Not considered

Related cases considered: No other complaints considered

Complaint

Essentially what the Media Monitor noticed is that a banner advertisement indicated a subscription fee of R5/day whereas the landing page it directed consumers to when they clicked on it reflected a subscription fee of R6/day. The Media Monitor lodged the attached complaint which identified the pricing information inconsistency and indicated that the matter could be resolved if the SP remedied the discrepancy.

Service provider's response

The SP initially responded on 30 May 2013 as follows:

After conclusive deliberation with our Marketing and Acquisitions Team regarding the campaign in question, Buongiorno South Africa Pty (Ltd) ("Buongiorno") can wholly state that the incorrect pricing which forms the basis of this complaint, was a mere oversight by the Affiliate when having updated the campaign-template.

We are cognisant that as a registered WASP that pricing in any advertisement should not be misleading. Our advertisement does not seek to mislead the general public or propagate false information regarding our services. It is thus our defence that human error on the part of an Affiliate is the reason for the confusion.

We have unfortunately not been provided with the URL of this campaign and kindly request the Media Monitor to forward the requisite link so as to effect the necessary changes.

As such, we undertake to remedy the error without delay.

The Media Monitor responded on 6 June 2013 as follows:

I'm afraid we do not have the link, apologies.

*I'm sure BSA can identify who designed these banners and request the revisions accordingly.
(test result attached)*

We look forward to hearing.

The matter proceeded to formal adjudication on 5 July 2013 when the Secretariat did not receive timeous confirmation that the pricing discrepancy had been remedied. The SP responded subsequently with the following:

We refer to the above-mentioned complaint and our prior response sent on 30 May 2013.

As was inferred from our previous response, Buongiorno South Africa (Pty) Ltd (herein referred to as "Buongiorno") had undertaken to remedy the error on the Banner advertisement. This correction was effected without the requisite assistance of the Media Monitor, as had been duly requested by Buongiorno.

It is our submission that from the time of providing the Secretariat with a response and the subsequent receipt of the Media Monitor's answer thereon, on 6 June 2013, that the campaign was indeed changed.

As a point of law, we would like to submit that human error and/or mistake is a valid defence in terms of civil litigation on which WASPA basis its mandate on. As such, we implore the

Adjudicator to look on the discrepancy of prices, in the campaign, as a mere oversight and that no ill-intent or malice was attached thereto.

It is our final submission is that we have complied with the recommendations set out by the Media Monitor. We concede that this may however not have been illustrated well-enough in our preceding response; as no attachments were submitted; still we would like to reiterate that all requisitioned changes – namely change in price- was properly effected.

We trust that we have shown an aptitude to upholding the Code and adhering to the recommendations of the Media Monitor. We therefore ask that the matter be closed.

Sections of the Code considered

The Media Monitor cited section 6.2.4 which states the following:

6.2.4. *Pricing contained in an advertisement must not be misleading.*

Sections of the Advertising Rules considered

Not considered

Decision

The pricing discrepancy is plain and the SP did not dispute it. On the contrary, the SP conceded the discrepancy, undertook to remedy and, according to its subsequent submissions, rectified the discrepancy on or about 6 June 2013. The Media Monitor presumably could not monitor the update as she lacked the links to the banner's location and wasn't in a position to report this to the Secretariat.

Section 6.2.4 prohibits "misleading" pricing information. The word "mislead" means to "cause (someone) to have a wrong idea or impression". It implies intent and for the SP to have mislead consumers using the pricing discrepancy, the Media Monitor would be required to satisfy me that the SP intentionally made use of the pricing discrepancy to, paraphrasing the definition, cause consumers to have the wrong idea about or impression of the subscription cost for the SP's service. I see no evidence of this and the only reason this matter has progressed to a formal adjudication is that the Media Monitor was not made aware that the pricing discrepancy had been rectified so she could alert the Secretariat.

The SP could have been more proactive in bringing this correction to the Media Monitor's or the Secretariat's attention, especially considering the possibility that consumers could have

acted on the lower pricing information. That said, there is no evidence before me regarding pricing information which would have been communicated to consumers through further Web pages and messages to their mobile phones had they proceeded with the subscription process. I am therefore unable to, and don't, make any determination as to potential prejudice flowing from this pricing discrepancy.

The pricing discrepancy appears to have been the result of an error, nothing more. The SP remedied it. I don't see any indication of intent on the SP's part which would lead me to conclude that the SP breached section 6.2.4. That said, the SP ought to have responded to the complaint with greater urgency to prevent possible prejudice to consumers acting on the basis of the lower pricing information.

Sanctions

Given that the pricing discrepancy appears to be the result of an error and not intentionally caused, I dismiss this complaint.

I do, however, urge the SP to take greater care to publish accurate pricing information and to respond to concerns raised about seemingly misleading pricing information with a greater sense of urgency.

Subject: [WASPA.complaints] WASPA Monitor Logged complaint #20401

From: WASPA Monitor <monitor@waspa.org.za>

Date: 2013/05/02 01:41 PM

To: complaints@waspa.org.za

CC: WASPA Monitor <monitor@waspa.org.za>

Date of breach: 2 may 2013

WASP or service: BSA

Clauses breached: 6.2.4. Pricing contained in an advertisement must not be misleading.

Description of complaint:

Test result attached:

The billing information in the banner adverts (R5/day) do not concur with the billing information in the landing pages (R6/day).

In order to avoid adjudication, please can these pages be revised asap.

We look forward to hearing how quickly this can be remedied please.

Remedial options:

If this advert or marketing message is altered immediately and a copy of the amended advert provided to the WASPA Secretariat, it is likely that this complaint can be resolved informally. this remedy might prevent fines from being imposed for breaches of the WASPA Code.

The WASPA Monitor requests that the service provider provide a clear plan of action for dealing with this advert, for example:

- This advert has been withdrawn and will not be flighted from [date].
- The following changes have been made to the advert: ...
- The revised advert is scheduled to appear again on [date].

Attached file : Buongiorno SA Test 24 April 2013.docx

— Attachments: —

Buongiorno SA Test 24 April 2013.docx

558 kB

Buongiorno Subscription Service Banner Test

24 April 2013

Cellphone Number: NA

Airtime balance: NA

SMS Code: NA

Name: Buongiorno SA

Banner Advertising:

*T&CS APPLY. R5/DAY SUBSCRIPTION SERVICE.



Landing Page:

The landing page has a dark purple background. At the top left, it says "SUBSCRIPTION SERVICE R6/day" and "Compatible Handsets only". On the left side, there's a vertical sidebar with the text "GET UNLIMITED DOWNLOADS!" and "Top MP3s, Android Apps, Games + more!". Below this, it says "Selected Just 4 You" and shows four small album covers. In the center, a woman with blonde hair, wearing a light blue shirt and a colorful necklace, is holding a fan of South African R100 banknotes. A large yellow arrow points from her towards the right. To the right of the woman, the text "get ur share of more than" is above a large yellow "R1,500,000" with "daily*!" next to it. Below this is a white box with the text "Enter your cell phone number" and a text input field. A yellow "Continue" button is below the input field. At the bottom of the white box, there's a small checkbox and the text "I accept T&Cs. DON'T MISS UR CHANCE. R6/day Genio subscription service." Below the woman and the white box, there's a yellow bar with a digital timer showing "10 59 56" and the text "PLUS EVERY DAY YOU CAN GET REWARDED*!". To the right of the timer, there's a small text block: "100% Gauranteed if you participate! So join now, as a paying Member, Play 2 Win* - be Rewarded even if you are not the Quiz Master of the Day. Don't Miss Out - Start now www.clubgenio.co.za being rewarded has never been this easy. See T&Cs for further details." At the bottom of the page, there's a "Genio" logo and a "MTN CELL" logo. The bottom of the image shows a Windows taskbar with various icons and a system clock showing "1:00 PM 24-Apr-13".

Banner Advertising:

*T&CS APPLY. R5/DAY SUBSCRIPTION SERVICE.



Landing Page:

SUBSCRIPTION SERVICE R6/day Compatible Handsets only

GET UNLIMITED DOWNLOADS!
LATEST APPS, HOT HITS, WALLPAPERS & MORE!

Get cool content and stand a chance to
Win the new iPhone*

Enter your cell phone number
Unlimited downloads + grab your chance right now!

Selected Just 4 You

10 58 06 PLUS EVERY DAY YOU CAN GET **REWARDED*!**

100% Gauranteed if you participate! So join now, as a paying Member, Play 2 Win* - be Rewarded even if you are not the Quiz Master of the Day. Dont Miss Out - Start now www.clubgenio.co.za being rewarded has never been this easy. See T&Cs for further details.

1:01 PM 24-Apr-13

As can be seen in the above examples, the banner adverts are non-compliant. The billing information in the banner adverts (R5/day) do not concur with the billing information in the landing pages (R6/day).

6.2.4. Pricing contained in an advertisement must not be misleading.



30 May 2013

Dear WASPA

Re: [formal] Escalation of complaint Ref:# 20401

We refer to the above complaint.

After conclusive deliberation with our Marketing and Acquisitions Team regarding the campaign in question, Buongiorno South Africa Pty (Ltd) ("Buongiorno") can wholly state that the incorrect pricing which forms the basis of this complaint, was a mere oversight by the Affiliate when having updated the campaign-template.

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We have unfortunately not been provided with the URL of this campaign and kindly request the Media Monitor to forward the requisite link so as to effect the necessary changes.

As such, we undertake to remedy the error without delay.

Yours faithfully

Buongiorno SA Pty (Ltd)



Dear WASPA Secretariat

Re: WASPA Code of Conduct complaint Ref:#20401

We refer to the above-mentioned complaint and our prior response sent on 30 May 2013.

As was inferred from our previous response, Buongiorno South Africa (Pty) Ltd (herein referred to as “Buongiorno”) had undertaken to remedy the error on the Banner advertisement. This correction was effected without the requisite assistance of the Media Monitor, as had been duly requested by Buongiorno.

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Yours faithfully
Buongiorno South Africa (Pty) Ltd