



REPORT OF THE ADJUDICATOR

Complaint reference number:	23725
WASPA member(s):	Why Play Interactiva SL (IP)
Membership number(s):	1387
Complainant:	Public
Type of complaint:	Display & other
Date complaint was lodged:	2014-03-27
Date of the alleged offence:	2014-03-12
Relevant version of the Code:	12.4
Clauses considered:	4.1.1, 4.2.2, 11.2.2 & 11.2.5
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 he was not happy with the way in which the provider displayed its terms and conditions and alleged that the display thereof was hardly visible, rendering it impossible to read and of the belief that the SP is utilising this poor display to trick users into utilising the service.

He subsequently refused a refund and resolution.

Information provider's responses

The IP initially offered the Complainant a refund but later responded by indicating that the alleged complaint was a frivolous attempt by a competitor and also indicated proof that similar complaints were lodged against other SPs.

The IP further alleged that the claim was based on version 13.1 of the Code, which at the date of the alleged offence, was still in draft format.

The IP then provided a detailed point for point response highlighting the fact, or alleging same, that its terms and conditions and relevant subscription information were clearly visible and therefore conforming to all the relevant sections of the Code.

Sections of the Code considered

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

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.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

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 IP's subsequent reply.

From the outset it could be said that the same font and size used for "enter your cell for setup" kick-starting the process, are used for the terms and conditions.

This would then preclude a user from entering his or her number in the first instance should they claim that the text are unreadable or not clearly visible.

After having reviewed the various images offered as evidence, the Adjudicator is of the opinion that the terms and conditions as well as the subscription display are in conformance to sections 4.1.1 and 4.1.2.

The Complainant also alleged a 5 week response time from the IP which was proved to be incorrect.

The Adjudicator is therefore of the opinion that this complaint in itself seems frivolous and not a genuine attempt by a consumer alleging irregularities. This opinion is based on the fact that the Complainant utilised the same service on three occasions, subscribing and unsubscribing. It is also largely based on the fact that the Complainant lodged similar other complaints against members.

No evidence was forthcoming from the Complainant in determining any breaches of sections 11.2.2 and 11.2.5.

The complaint is therefore dismissed.
