

WASPA Member (SP)	iTouch
Information Provider (IP)	None
Service Type	Customer Service
Source of Complaint	Leon Whittle
Complaint Number	#4610
Code of Conduct Version	6.1
Date of Adjudication	07/09/2008

Complaint

The Complainant in this matter lodged the following complaint:

“Club 36060’s current TV ad selling Bubble Bobble as the hook to a subscription service can only be described as bundling a product with a subscription service. In a thinly veiled attempt to sidestep this critical legislation, they add in the words “amongst others” whilst the entire ad is simply a bubble bobble add. To anyone who is not clear re the workings of the industry, this is VERY misleading and is a clear attempt to bundle a product with a subscription. Please don’t let the words “amongst others” fool you as they mean nothing to the uninformed and are simply a cheap trick to try sidestep this important piece of WASPA guidelines”

SP Response

The SP gave a detailed response which is reproduced here in full:

“We appreciate that the complaint has brought this to our attention. It was never intended by iTouch / Buongiorno SA to mislead the market in any way.

We were under the impression that we were covered by offering the item as a hook as we were using the words “Amongst many others” to show the market that they were getting not only the item on the advert but many different items.

We were under the impression that adhering to the following clauses in the WASPA guidelines we were not in breach:

4.1.1 – Members are committed to honest and fair dealings with the Customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

6.2.2 – all advertisements for services must include the full retail price of that service.

In the advertising rules the following clauses:

1.2.3 - Trigger: At any display of, or mention by a voice-over, of a unique access number| Display Length: Minimum 5 seconds, at each mention of a unique access number.| Display Text Font: 'Zurich' font | Display text Font Size: 15 points MINIMUM | Display Text Position: On bottom edge of title face of the screen”

The SP then produced a copy of the Advertising Rules’ ad layout picture and responded further:

“The above shows that the TV commercial must state that it is a subscription service and that the above must be adhered to.

All of the above are being adhered to in the current commercials for iTouch and Buongiorno.

We appreciate that the complainant has brought the knowledge of the clause 11.1.2 to our attention.

In light of this all our current TV commercials are being reworked to show a variety of content items available as well as say so in the voice over to ensure that the market is aware of offerings of the subscription.

Club Movilisto Bubble Bobble advert has been pulled from market and will not be aired again.”

Sections of the Code considered

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.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

11.1.2. 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.

11.1.3. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. It seems from the Complaint and the SP's response that this was possibly a case of bundling. The fact that a single product is offered but then combined with words such as "amongst others" might indeed create confusion and is in itself misleading. Without having the advantage of viewing the advertisement in question, it has to be re-emphasized that the Adjudicator can only rely on the information made available to him / her. It would therefore be presumptuous to make a finding purely based on what was assumed by the Complainant.

The fact that the SP has immediately withdrawn the said advertisement and assured the Secretariat that it would review all of its advertisements might indicate an indirect acknowledgement of bundling. However, such action might also indicate a willingness on behalf of the SP to eradicate any uncertainty that is created in the eyes of the public.

It would therefore be a mere assumption on behalf of the Adjudicator to rule that a breach of sections 4.1.2, 11.1.2 and 11.1.4 took place.

The fact that the SP has indicated that it has complied with the advertising rules does serve to confirm that no breaches of sections 11.1.1 and 11.1.3 took place.

Although the possibility of bundling does exist, the Adjudicator has to commend the SP on its immediate actions taken.

The SP is however reprimanded to ensure that all its current advertisements are compliant with section sections 4.1.2 and 11.1.

The Complaint is partially upheld.
