



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Buongiorno SA
Information Provider (IP) (if any)	s/a
Service Type	Subscription services
Source of Complaints	WASPA Monitor
Complaint Number	4677
Date received	13 August 2008
Code of Conduct version	6.1

Complaint

The WASPA Monitor logged a complaint against the SP's TV commercial which advertised a subscription service for mobile games, including the 80's arcade game "Double Dragon" (Loadin – Double Dragon advert). The complaint alleges that the commercial contravenes the WASPA advertising rules in the following respect:

"The right hand top corner of all television commercials is allocated to display the access cost of that service. This space is not allocated for promotional messages i.e. "1 week free"."

The complainant alleges that the SP should only display the access cost in the top right hand corner space and that the promotional message regarding one free week's subscription can be accommodated in the main body of the advert.

The SP was requested to revise the advert with immediate effect.

SP Response

The SP has responded by arguing that, in the current advert, its promotional message to grant the 1st week free is advertised alongside the price in the right hand corner because this information relates to the price of the service, i.e. it reduces the price of the service to the customer. The SP states that *"it is not used as a hook or marketing message but is part of the pricing structure of the service"*.

The SP also argues that according to section 6.2.2 of the Code: *"All advertisements for services must include the full retail price of that service"*. The SP states that it is clarifying that the total retail price to the customer is R30/month but that they are being offered 1 week free before they will be billed. At any stage in the 7 days (free week) the customer can unsubscribe without being billed. This free week gives that full access to the services including content downloads.

The SP goes even further and argues that it would not be giving full and complete disclosure of the price of the service if it removed the reference to the free week.

Sections of the Code considered

Section 6 of the Code read together with section 2 of the Advertising Rules, particularly the following provisions:

6. Advertising and pricing

6.1. WASPA advertising rules

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

6.2. Pricing of services

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

6.2.4. *Pricing contained in an advertisement must not be misleading.* If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.2.8. Pricing on any promotional material must use one of the following generally accepted formats for prices in Rands: “Rx” or “Rx.xx”.

6.5. Use of the word “free”

6.5.1. The keyword “free” or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

Advertising Rules

COST OF ACCESS TEXT DISPLAY RULES

Trigger:

At any display of, or mention by a voice-over, of a unique access number

Display Length:

100% of the length of the advertisement

Display Text Font:

‘Zurich’ font

Display Text Font Size:

18 points MINIMUM

Display Text Font Position:

In a visible block or triangle in a top corner of the screen in the Title Safe Area (see diagrams)

Display Text Font Colour:

Contrasted colour superimposed on the block/triangle

Block/Triangle Colour

Contrasted colour, behind the display text

Display Text Type:

- Text must be static
- No Caps (except for the first letter of the first word) or italics may be used as the display font for the word subscription.
- No italics may be used as the display font for the price text.
- *No text must be placed around the access cost text that may obscure clear reading*
- The access cost text must not be positioned or formatted in a manner where it may be obscured by other text or visual information that may be displayed as part of the ad
- The access cost must not be part of a colour scheme that may obscure easy reading of complete details of the access cost
- The access cost text must not be obscured by any background flashing or other visual animations that practically and objectively obscures easy reading of complete details of the cost

Example:

R10/SMS or

R10/week

Subscription

Decision

The advert in question does not comply with section 6 of the WASPA Code, read together with section 2 of the Advertising Rules for the following reasons:

1. The word “free” is used in relation to a subscription service which has associated charges; and
2. Text has been placed around the total access cost text which may obscure clear reading.

In relation to point 1, the SP has indicated in its response that a prospective subscriber can use the service for the first week without incurring any charge. While this may be a legitimate offer, the benefit needs to be clearly explained in the body of the advert. Displaying the word “free” in relation to the service is misleading as the service itself is charged at R30/month after the first week.

Even if the use of the word “free” in relation to the service in question was permitted, the SP’s argument in relation to point 2 must fail. The Advertising Rules clearly state that the top corner of a television advert must only be used to display the total access cost for the service. The Rules also provide clear examples of how and what text should be displayed.

Prominently highlighting the total charges involved when subscribing for the service advertised, as well as the frequency of those charges, ensures that a prospective subscriber is not misled or confused regarding the pricing of the service. In the present matter, the pertinent information that the subscriber needs to know is that he or she will be billed R30 per month for use of the service. This is the information that must be highlighted in the top corner of the advert. The additional text may contribute to prospective subscribers being misled or confused, which is contrary to the objectives of the Code.

The complaint is accordingly upheld.

Sanction

The SP was given an opportunity to resolve this complaint informally by revising its advert. Instead, it chose to dispute the merits of the complaint. The SP is now ordered to:

1. Provide written confirmation to the WASPA Secretariat within 5 (five) days of being notified of this decision that the advert in question has either been revised or has been withdrawn.

2. If the advert is to be revised, a clear copy of the advert, as revised, must be furnished together with the written confirmation as above.
3. Any revised advert must be cleared by WASPA before re-fighting.
4. All subscribers who have been billed from the time the contravening advert was first flighted must be refunded and written confirmation that such refunds have been paid must be furnished to the WASPA Secretariat within 10 (ten) days of the SP being notified of this decision.
5. The SP is fined R10 000.00.