



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Mobile Finger / Mobile Toe
Service Type	Subscription
Source of Complaints	Public
Complaint Number	4868
Date lodged	18 September 2008
Code of Conduct version	6.2
Advertising Rules version	1.6

Complaint

The Complainant visited a website and did an IQ test which requested a cell number for completion and alleges that as a result of entering her number she was unknowingly subscribed to a subscription service run by the IP with the SP as an Aggregator.

"I visited a site called the International Forecaster and an advertisement invited me to do an IQ test. This I did and my cell number was requested. Since then I have been debited with untold charges to my mortification. I revisited the site and discovered that various terms and conditions were imposed. This was only by scrolling down, in other words it was a deliberate concealment of the charges that would be imposed. The cell number from which chargeable items were sent was 082 007030030020 and the number given on the advertisement was 082 235 0499. I believe that I have been conned and that your advertisement is fraudulent. Kindly refund the charges or I will take further action."

Under the WASPA informal resolution procedure the SP unsubscribed the Complainant but refused a refund on the basis that it believed the service to be compliant. It later amended this position and provided proof of the refund paid. The Complainant remained aggrieved and the matter proceeded to the formal procedure and now falls for adjudication.

SP Response

The SP filed the following response.

1. We have been communicating with this client, but the client desires resolutions that we cannot offer.
2. The service that the consumer complained about is a service offered by Mobile Finger and Integrat is only an aggregator and as such a conduit for the services that the IP Mobile Finger provides.
3. We have refunded the client per Postal order and attached the proof of refund hereto for your ease of reference.
4. The complainant has complained that the Nelson Mandela name is used in advertising of the service.
5. We have been in contact with the Nelson Mandela Foundation regarding this service and have forwarded all discussions regarding the service to Mobile Finger as they are the IP and Integrat as the SP has no involvement with the advertising and/or creation, design and making of their services offered.
6. This was explained to the complainant.
7. If the complainant wishes to take the matter further with the IP he can contact Mobile Finger directly at [.....] on 61433332765 or email jessupport@gmail.com.

Integrat as a service provider has done everything within our power to resolve this matter and view the matter as closed.”

The IP is not a member of WASPA.

Further investigation

The Adjudicator requested further information from both the complainant and the WASPA member prior to adjudicating the matter. The requests and replies thereto are set out below.

Adjudicator:

It is extremely difficult to find that there has been a breach of the WASPA Code through the use of deception (such as the hiding away of terms and conditions) without having an opportunity to review the site itself. While this information has been requested from the WASPA Member it would be very helpful if you are able to recall more detail about the site which caused the problem.

Complainant:

You are all a bunch of shysters. All you organization does is deflect complaints. I have learnt my lesson and will never ever take up an offer again.

Adjudicator:

1. It is well-established in a long line of WASPA Adjudications that an aggregator who is a WASPA member can and will be held responsible for breaches of the Code perpetrated by information providers using their services. It is certainly not acceptable to point a consumer to an overseas number and a gmail address for the IP. It was not possible to find any reference to an IP by this name using Google.
2. While the SP states unequivocally that the service is "compliant" there is no basis laid for this statement and no supporting material. Given that the SP believes the service to be compliant it is required to provide screenshots and other material as may be relevant in support of this contention.
3. Accordingly the SP is leaving itself open to an adverse judgement because it has not properly responded to the central complaint and has made no attempt to obtain any information regarding the matter from the IP.

WASPA Member:

We performed all actions including unsubscribing client, sending a sms confirmation, explaining subscription even going to the extent of issuing a refund to the client and while we accept we are responsible for any action do not believe that there were any breaches to the code perpetrated by information provider or ourselves. There are unfortunately going to be unhappy clients with any service provided due to one reason or another but we have gone to great lengths to attempt to satisfy this client.

To clarify the situation some, we only passed on the IP's details to the client so they could converse with them if they had any further issues they wished to take offline with the IP directly. This was an aside. We did in the meanwhile perform all the required actions to unsubscribe the client and went to the full extent of attempting to satisfy customer (even issuing a full refund as a gesture of good faith – proof of the refund is as attached). In reference to their point over the use of the Nelson Mandela name, the Nelson Mandela foundation was already aware of the advertisement and liaising with the IP directly. We explained things and felt it more appropriate to put the client in contact with the IP to satisfy himself regarding this point as all things were in order and should not have affected the client at all. We believe too that the IP took proactive measures in halting the adverts so as not to cause further concern even though they may not have been necessarily obliged to. This was not downplayed in any way.

With regards to compliance -

Integrat made the statement that the service is compliant for the following reasons and confirm that we are of the confident opinion that the complainant was legitimately subscribed to the service – we have extracted the following from the then prevalent advertising rules for Internet Websites - Advertising Rules v 1.6 (2006-01-01 - 2008-11-01).

Any advertisement that has a subscription service component must include:

- (a) the periodic subscription charge, AND
- (b) the charging frequency, AND
- (c) Any additional premium-rated or other additional charges that might be applicable to access particular content or services.

While cost information associated with an access number may be displayed elsewhere on a web site (for example cost information also placed in the T&C page of a web site), this must be done as part of a duplication of the pricing. Hence, cost information cannot solely be placed on, for example only the T&C page where accessing the T&C page requires that the user click away from the initial page that displayed the access number.

These requirements have been met by Mobile Toe as is more clearly shown beneath. Screenshots of the website has also been attached as "brain landing and brain number" for your ease of reference although the wording is much smaller on the screenshots, then that it actually appears on the website, it can clearly be seen that it is a subscription service, as well as that the cost is displayed at the top of the screen as well as in the Terms and conditions at the bottom of the screen (duplication of cost). The periodic subscription charge and charging frequency is also displayed and shown in duplicate. The instructions on how to unsubscribe from the service is also clearly displayed along with the helpline number. We have blocked in red the relevant places where it is displayed that you are subscribing to a service, that there is cost involved for receiving the service, and the instructions how to unsubscribe, and what the helpline number is. All of this is displayed throughout the completion of the IQ test from the landing page until the page where the user is prompted to provide their cell phone number and then beyond to the thank you page.

The white letters on a black background also provides for good contrast and easy reading of the access cost and terms and conditions.

We have attached hereto the "Web registration and Pin verifying process" to show the exact process that follows when a consumer does the IQ test and is subsequently subscribed to the service to show that only the person in possession of the cell phone will be the person being subscribed to the service to eliminate the possibility of third parties entering known cell phone numbers on the websites and by so doing subscribing unsuspecting third parties - which is now impossible with the PIN process.

Our logs has also shown that the following PIN message informing the complainant of the cost involved before they are subscribed to the service, was sent to the complainant with the date and time is displayed next to the messages:

27822922715

<http://accounts.integrat.co.za/celltracker.php?account=0&tracktype=1_TX##>

27820070303020

Your Pin is 3876, enter it on the site now! You will receive: cmindtriks every day(s) at a cost of R4.99 per delivery.

2008-08-27 16:20:36

Receipted

The following welcome message was also sent to the complainant phone informing her of the subscription service, the cost and frequency and how to unsubscribe from the service together with the helpline number – which is only sent after the PIN, was entered on the website:

27822922715

<http://accounts.integrat.co.za/celltracker.php?account=0&tracktype=1_TX##>

27820070303020

U've subscribed 2get the latest Mind Tricks on ur cell! Send STOP cmindtriks to 31990 to unsubscribe. ull get content daily @ 4.99. 82 235 0488 for help

2008-08-27 16:21:21\

Receipted

From the above it is clear that the complainant was informed on the website that it is a subscription service and the cost involved. This also shows that the complainant entered his cell phone number on the website and that a pin was sent to his phone informing him of the cost of the subscription. We are therefore of the confident opinion that the user was legitimately subscribed to the service after he entered the PIN on the website and after he was informed by the website and the Pin message of the cost involved in subscribing to the service. We are furthermore of the opinion that the Content Provider Mobile Finger / Mobile Toe has adhered to the regulatory bodies rules and requirements and that this was a legitimate subscription started by the complainant out of his own free will.

We trust you find the abovementioned in order and await your adjudication in due course.

Copies of the web pages and subscription procedure as provided by the WASPA member are annexed to this Adjudication.

Sections of the Code considered

The following sections of version 6.2 of the WASPA Code of Conduct were considered:

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

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

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

9.2.2 COST OF ACCESS DISPLAY

9.2.2.1 Formatting Of Access Cost Text:

- The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.

9.2.16 SUBSCRIPTION SERVICES: Show Total Subscription Charge, Frequency of Charge, any bearer charges and any additional charge/s

(i) Must Use The Words “Subscription Service”

If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words “Subscription Service” must be prominently displayed at the top section of the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed.

Decision

The version advanced by the WASPA member in response to the Adjudicator’s request for further information is accepted. Insofar as it appears from the evidence before the Adjudicator that

- the complainant must have entered the PIN sent to his mobile phone onto the website prior to being subscribed to the service,
- the second text message received by the complainant would have unequivocally indicated that the service was a subscription service and would have put the complainant into a position to unsubscribe immediately,

it can only be found that the complainant should, after receipt of this second message, reasonably have been aware that he had agreed to a subscription service.

The complainant states that it was only upon revisiting the site that he discovered that various terms and conditions were imposed, and that these were only available after scrolling down, in other words it was a deliberate concealment of the charges that would be imposed. On the screenshot evidence provided by the WASPA member and the lack of any further information from the complainant the Adjudicator is unable to make a finding of deliberate concealment or conduct that would constitute a breach of sections 3.1.1 or 4.1.1 of the Code.

The Adjudicator is of the view, however, that, notwithstanding the assertions of the WASPA member to the contrary, the advertising of the service is not compliant with the Advertising Rules. It is the further view of the Adjudicator that the advert does not go far enough in bringing to the attention of consumers the fact that it is for a subscription service.

In reaching this conclusion the Adjudicator has noted that:

- the words “Subscription Service” are not “prominently displayed at the top section of the advertisement” as required by section 9.2.16 of the Advertising Rules;
- the manner in which doing the IQ Test and the subscription sign-up are combined is, in isolation, potentially confusing to consumers; and
- the first SMS sent to potential subscribers which contains the PIN states “[Y]ou will receive:cmindtriaks every day(s) at a cost of R4.99 per delivery” – while it is appreciated that this kind of message has a particular function it is noteworthy that this is a curious and vague formulation which makes no explicit mention of subscription services.

Accordingly it is found that the IP, through the WASPA Member, has breached section 9.2.16 of the Advertising Rules.

In assessing the imposition of a sanction in respect of the breaches noted above, the Adjudicator has taken note of

- the remedial action taken by the WASPA member including the payment of a refund;
- the apparent difficulty inherent in dealing with the complainant;
- the mitigating effect of the confirmatory email and the Adjudicator’s assessment that there are numerous other indicators (pricing, terms and conditions) that the service is a subscription service;
- the fact that it is clear that substantial effort has gone into making the advertisement and the service compliant;
- the potential for abuse of subscription services which requires that any infringement of the Code of Conduct relating to subscription services be viewed in a serious light;
- precedent in the form of the adjudications, in particular, of complaints 3106¹, 4413² and 4580³; and
- the prior record of the WASPA member.

¹ <http://www.waspa.org.za/code/download/3106.pdf>

² <http://www.waspa.org.za/code/download/4413.pdf>

³ <http://www.waspa.org.za/code/download/4580.pdf>

In the circumstances a fine of R10 000 is imposed, which amount is payable within five days of date of notification of the member of this Adjudication.



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Annexure: WASPA Member's Web registration and PIN verification process

Consumer Accesses Website (Mobile Toe – IQ service)



Participates in Quiz service



User requested to enter MSISDN to receive score & initiate subscription



User enters Cell Number on website



Mobile Toe requests Integrat Content Manager to send PIN to MSISDN



Integrat Content Manager issues PIN to MSISDN



User receives PIN on SMS



User enters PIN on Mobile Toe website



Mobile Toe submits PIN confirmation to Content manager



Integrat Content manager verifies and authenticates
(PIN issued vs PIN entered vs MSISDN)



User is subscribed



User receives IQ score on WEB page



User receives subscription confirmation