



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Sybase 365

Information Provider (IP)
(if any) mBill

Service Type Competition / Subscription service

Source of Complaints WASPA Monitor

Complaint Number 5165

Date received 11 November 2008

Code of Conduct version 6.2

Complaint

This complaint was lodged by the WASPA Media Monitor on 11 November 2008 and relates to complaint # 5081, which dealt with the IP's mTrivia subscription service which was bundled and promoted with the Apple 3G iPhone on the webpage: <http://3giphone.mobefun.com>.

Complaint # 5081 was regarded to be of a serious nature and was referred to an emergency panel hearing. After reviewing the available information, the emergency panel concluded that there were definite breaches of clause 9.3.1 of the WASPA Code of Conduct and *prima facie* evidence of breaches of clauses 9.1.1, 11.1.1, 11.1.2 of the Code.

The emergency panel consequently made a number of orders which included:

1. The IP was ordered to immediately suspend the competition service pending the outcome of the formal complaints procedure; and
2. The IP was ordered to immediately deactivate the entry mechanism for the competition.

The orders handed down by the emergency panel were effective as of 31 October 2008.

On 11 November 2008, the WASPA monitor discovered that a modified version of the IP's subscription service was being promoted in a similar way on a different web page: <http://iphone.mobefun.com/ZA/>, in contravention of the emergency panel ruling.

The page header for this new webpage is **"Win a Gold iPhone"**. The page goes on to state:

"Just a couple steps

And you are in the running to win the 24 carat iPhone

Answer this question

Who makes the iPhone?

Subscription required.

Fun Message of the Day

Apple / Microsoft

Join R20 + R10/day"

The rules and guidelines appearing at the bottom of the page read as follows:

"Gold iPhone Trivia Fun service has a signup fee of R20, billed by premium SMS to your mobile phone number. Subscription. Daily Trivia Fun message charged @ R10. Participants subscribed to this service will be sent an SMS upon closing of this campaign and in 160 characters or less, the most entertaining and amusing response judged by our panel of judges will win the prize. The prize is dependent on a maximum of 500 subscribers, identified as unique mobile numbers. Prize will be awarded if this participation level is met. Prize winner will be notified by SMS and provided with a verification code and

instructions on how to claim the prize. This prize must be claimed within 28 days of the SMS notification message, or it is forfeited. If more than one person claims the prize, claimants will be required to prove ownership of the mobile number that won before the prize is awarded. Trivia Fun service run by mBill. Subscribers and players consent to receive occasional promotional messages. To cancel the Trivia Fun service, send the keyword "STOP" to 31633. For help or further information, call XXXXXX or visit mBill.net."

The complainant ran a test on the service on 11 November 2008 by entering the competition. After following the instructions given on the site, the complainant received 3 SMS messages confirming their subscription and providing a fun message of the day. The final message confirmed that the complainant had been entered in the draw.

The following revision have been made to the promotion which was the subject matter of complaint # 5081:

1. The entrant to the competition is alerted in the main body of the promotional wording that "Subscription is required".
2. The rules of the competition have been clarified and 10 trivia questions are no longer posed to entrants. Instead, they are sent an SMS to which they must provide an entertaining and/or amusing response.

The complainant alleges that the IP/SP continues or has repeated its breaches of sections 3.3.1 and 3.3.2 and 9.3.1 of the Code.

SP's response

The SP has not responded to the complaint.

The IP responded to the complaint by stating that ***"the 3G and Gold iPhone ZA sites have been taken down. This was done about 2 or 3 weeks ago after instruction from yourselves"***.

Sections of the Code considered**3.3. Service levels**

3.3.1. Members will not offer or promise services that they are unable to provide.

3.3.2. Services must not be unreasonably prolonged or delayed.

9. Competitions**9.1. Provision of information**

9.1.1. Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

9.3. General provisions

9.3.1. Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.

11. Subscription services**11.1. Manner of subscription**

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.

Decision

This complaint is related to the previous complaint # 5081. In my adjudication report for that complaint, I found that the IP had contravened numerous sections of the Code by confusing its mTrivia content subscription service with the Apple iPhone competition.

The IP has subsequently changed the nature and content of the subscription service being promoted. Subscribers no longer receive trivia questions and instead receive a fun message of the day.

The IP has also clarified further that only subscribers to the service can be entered into the competition/draw to win the iPhone.

Unfortunately, notwithstanding the IP's attempts to clean up its act, I am still of the view that the promotion does not adequately alert consumers to the distinction between entering the competition and signing up for the IP's content subscription service. A request to join the service in response to this promotion cannot be viewed as an independent transaction.

It also remains unclear how the iPhone can actually be won by an entrant to the competition. The webpage states that answering 1 simple question will ensure entrance to the draw. However in the terms contained at the foot of the page, it is stated that the user will receive an SMS and must give a 160-word or less response which is judged on its entertainment value. It is not stated anywhere what the user is responding to?

Once again, there is no closing date and 500 unique subscribers must be entered before the prize is awarded.

I remain of the view that the promotion in its amended form, and the related subscription service and competition fall foul of sections 9.1.1, 9.1.2, 9.1.4 and 11.1.2 of the Code.

Sanction

1. mBill is suspended from offering any competition or subscription services in South Africa for a period of 6 (six) months from the date of this report.
2. The SP is ordered to suspend the provision of any competition and subscription services to the IP for a period of 6 (six) months from the date of this report.
3. The WASPA Secretariat is requested to issue a notice to all WASPA members in terms of section 13.5 of the Code confirming that no services may be provided to the IP for a period of 6 (six) months from the date of the issue of such notice.
4. The SP is ordered to refund all entrants and/or subscribers for any amounts that have been billed to them since the inception of the promotion on this website. Such refunds must be paid in South African rands only.

These sanctions will not be capable of being suspended pending an appeal.