



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Sybase 365
Information Provider (IP) (if any)	mBill
Service Type	Competition / Subscription service
Source of Complaints	Anonymous
Complaint Number	5509
Date received	9 January 2008
Code of Conduct version	6.2

Complaint

The complainant lodged this complaint via the WASPA website. The complaint refers to an mBill campaign for its Simpsons Xbox Subscription service on the website: <http://simpsonsxbox.mobefun.com/ZA/>. Visitors to the site can sign-up for the subscription service and then stand a chance of winning a Simpsons Xbox.

The subscription service advertised has a R20 sign-up fee and then the subscriber receives 2 content menus per week @ R10 each. The terms and conditions at the bottom of the site state that the competition will be drawn on the 1st day of each month. A message will be sent to each opted-in user and in 160 characters or less, the most entertaining and amusing response sent back to 31633 via reply SMS judged by the panel of judges will win the prize.

The complainant alleges that this campaign breaches section 11.1.2 in that it is a request to join a subscription service bundled with a request for a specific content

item.

The complainant also alleges that the access cost information is not placed horizontally and the design is such to obscure the easy reading and complete details of the price in contravention of the WASPA Advertising Rules.

Finally, the complainant alleges that there is no closing date advertised for the competition.

Emergency Panel Notice

On 20 January 2009, an emergency panel notice was issued in respect of this complaint, together with complaints 5395 and 5396. After reviewing the available information, the emergency panel concluded that the service provider had continued to bill customers in clear contravention of the emergency panel ruling for complaint 5081.

Consequently:

1. The panel ordered mBill to immediately suspend all competition and other services offered in South Africa.
2. The panel ordered Sybase 365 to immediately suspend all services to mBill.
3. The panel ordered that no WASPA member may provide any services to mBill.
4. The above orders apply until the conclusion of the formal review of the applicable complaints.

Given the above ruling, the emergency panel found no need to review the substance of complaint 5509, and agreed that this complaint should be handled using the formal process.

SP's response

mBill initially responded by stating:

"Can you provide me with URL's of other advertisers that actually pass the WASPA guidelines? I don't think I've ever seen a website that meets all your criteria".

mBill then advised the Secretariat that it had temporarily removed the Simpsons Xbox website.

In response to the emergency panel notice, mBill firstly confirmed that it was aware that its suspension was due to the continued billing of subscribers to the original iPhone campaign which formed the subject matter of the emergency panel ruling for an earlier complaint (5081).

mBill stated that although the original iPhone campaign and all billing of opted-in subscribers was stopped, the campaign was amended to include all changes required to comply with the WASPA Code) and the original subscribers that were still opted-in to the service had their billing re-enabled.

mBill stated that this was due to an error by a junior programmer who was in charge of the campaign at the time. The employee is no longer working for mBill as a result, and the writer of the response, who is a senior programmer at mBill, has been appointed to take charge of mBill's South African campaigns in the future to ensure that everything runs smoothly.

Sections of the Code considered**9. Competitions****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

The IP has once again bundled a subscription service with a competition service in this promotion. This complaint, although dealing with a different webpage and promotion, displays the same or similar characteristics to the IP's iPhone promotion. Based on the rulings made in the complaints relating to the latter promotion, I am also of the view that this promotion also contravenes section 11.1.2 of the Code.

It would also appear that there is no closing date for the competition and the terms and conditions for winning the xBox are not clear from the wording of the promotion. I am therefore of the view that the IP has contravened section 9.1.1, 9.1.2, 9.1.4 and 9.3.1 of the Code.

Sanction

The SP is ordered to refund the complainant for all charges incurred in joining this service within 7 (seven) days of receiving notice of this adjudication report. Such refund must be paid in South African rand only.