



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	SMSNET SA
Information Provider (IP):	Not applicable
Service Type:	Automatic Subscription
Complainant:	WASPA Monitor
Complaint Number:	5558
Code Version:	6.2
Advertising Rules Version:	Not applicable

Complaint

The Complainant lodged the following complaint:

Hugemob automatically subscribes users when clicking on their advertising banner on the Waptrick.com site.

Service provider's response

In its final response the SP stated the following:

I would like to indicate that Hugemob.com is our weekly subscription model service site with very clear terms and conditions; fully in compliance with WASPA codes of conduct and all the pricing being clearly communicated. We assume that members who click to join on the site have read and understood the terms and conditions. The page can be viewed at: <http://hugemob.com/agreement=.jsp>

In regard to the Hugemob subscription service we stand in a view that we did not breach the WASPA code of conduct as we highlight our views in respectively. We do not however claim to be perfect and we will therefore appreciate any corrective measures to improve our services further.

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

We have always strived for decent conducts in our business and misleading customers was never our aim.

3.1.2. Members are committed to lawful conduct at all times

Indeed we are committed and still do commit our self to a lawful conducts and we do regret for any short-comings in our conducts. As in the case of Hugemob layouts; we had put everything together as required and yet again after this complaint we have revamped it to an outstanding standard and we have received a nod from WASPA monitor on the page.

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.

The Hugemob page in question here complied with the above and nevertheless we have amended it into a more clearer version.

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

Have the full retail price at the agreement page.

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

All the information required above is clearly stated on the agreement page; we have double checked for any misleading and un-clearly communicated information and found all to be in order as required above. We follow the standard advertisement procedures implemented by all other wasps.

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

There is no such possibility to automatically subscribe any customers. All the terms and conditions are stated at the agreement page. We have made it even more convenient and terms and conditions are clearly communicated.

Sections of the Code considered

3.1.2. Members are committed to lawful conduct at all times.

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.

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

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

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. The Adjudicator has taken note of the SP's response and has reviewed the terms and conditions available on its hugemob site. By reviewing the specific site the Adjudicator is of the opinion that the terms and conditions as well as the pricing and reference to the service as being a subscription service has been complied with.

Taking cognizance of the specific site, the Adjudicator is satisfied that none of the sections of the code has been breached.

However, in its response the SP has failed to address the issue surrounding its banner display on waptrick.com. The Complainant stated that when he/she accessed a banner on the waptrick site it immediately subscribed him/her to hugemob.com. Whether the site hugemob therefore complies with the Code of Conduct is not of any relevance here and it is regrettable that the SP has not provided the Adjudicator with better clarity on its advertising practices on other or affiliated sites, such as waptrick. When taking these advertising practices into consideration with the information and subsequent SP response made available to him/her, the Adjudicator is of the opinion that the SP failed in satisfying the Adjudicator with a sufficient response. Going from the understanding that the Complainant was automatically subscribed to hugemob from waptrick, the Adjudicator is of the opinion that there was indeed a breach of the relevant sections of the Code of Conduct.

The banner ad did not specify that it was a subscription site, no price was indicated and the Complainant was automatically subscribed, without being adequately made aware thereof.

Whether the SP was or is indeed aware that this practice is being followed by waptrick is irrelevant. Before advertising on another site, the SP must ensure that the site advertising the SP's services or linking to the SP's website, must comply with the Code of Conduct. In this particular case the Adjudicator is of the opinion that the SP failed in addressing these concerns. In previous adjudications and more specifically adjudications 2430 and 3548 it was clearly brought under the attention of the SP.

The Adjudicator therefore finds the SP in breach of all the sections made mention of, apart from section 3.1.2. The Adjudicator does not have sufficient evidence to rule on this section.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;
- The SP's subsequent conduct in eradicating any breaches; and
- The SP's failure to take remediation actions with reference to waptrick.

The SP is fined the sum of R20 000, 00 payable to the WASPA Secretariat within five (5) days of notification hereof.

The SP is further ordered to amend its advertising in order to comply with the WASPA Advertising rules before further placement and subsequently instructed to withdraw any current advertisements which are not complying with the said rules (including the disputed advertisement in this matter).

The Adjudicator further orders that the service provider immediately suspend any advertising of the mentioned service on Waptrick.com or on any other forum or media until such time as it complies fully with the WASPA Code of Conduct and WASPA Advertising Rules.

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the SP is indeed complying with this.