



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	Breaches of the Code in advertisement
Complainant:	Anonymous
Complaint Number:	6180
Code Version:	6.2
Advertising Rules Version:	2.3

Complaint

The Complainant lodged the following complaint:

"Pricing display and Terms & Conditions are in breach of the code.
Specific item of content used to mislead customers into subscribing to a subscription service.
Confusing and contradicting unsubscribe instructions.

Clicking on a banner advert on <http://www.jpgwallpaper.com> an offer page opens from http://www.youmobile-za.com/adv-mobile-contents-169_101.html
Pricing at top of screen obstructed, not clear. Advertising FREE music but it seems to be R10 a day. Misleading use of word "free" in advert.

Specific item of content used to mislead customers into subscribing to a subscription service.

Link to terms & conditions indicated at bottom of page but not hyperlinked and it's a web access link. This product was obviously advertised on www internet, not web. When you access the T & C link wap.funfone.co.za indicated you get a "Sorry you cannot access Fun Club WAP please contact your network to get your WAP settings" message. At the bottom of this page there are two abbreviated links, T&C and FAQ. Clicking on the T&C link loads their terms page.

http://wap.funfone.co.za/za_funclub_wap/site/page/termsAndConditions.bsp?603558017:cpid=0&site=za_funclub_wap

The T&C text short code 36060 not the same as short code shown on offer page 31194 - confusing unsubscribe instructions.

T&C text seems to be incomplete because it refers to privacy policy, no link given to this and as quoted from their text. "Terms and Conditions contained

herein and agree to comply with them and the Privacy Policy in clause 20 below as amended from time to time."

No clause 20 found on page or any other clauses.

I will forward frame grabs."

After the SP's response the Complainant stated the following:

"The response from the service provider below is misleading with regards to when they stopped advertising the offer.

"The web advertised page mentioned in the complaint was withdrawn a few months back due to the company not marketing it any longer." Please refer to my original complaint submitted on the 7th April 2009 and I quote.

Clicking on a banner advert on <http://www.jpgwallpaper.com> an offer page opens from http://www.youmobile-za.com/adv-mobile-contents-169_101.html". The complaint was submitted on the same day that the offer was clicked on from a banner advertised on above mentioned website.

Please see original frame grabs submitted that's also date stamped.

It's clearly not months ago that the company stopped marketing the offer. In fact, their offer is still accessible via the url above."

6180.002.firefox.framegrab01.gif	4/7/09 11:11 AM Frame grab 01 taken from FireFox browser ref: Code of Conduct Complaint #6180
6180.003.firefox.framegrab02.gif	4/7/09 11:12 AM Frame grab 02 taken from FireFox browser ref: Code of Conduct Complaint #6180
6180.004.firefox.framegrab03.gif	4/7/09 11:13 AM Frame grab 03 taken from FireFox browser ref: Code of Conduct Complaint #6180
6180.005.firefox.framegrab04.gif	4/7/09 11:14 AM Frame grab 04 taken from FireFox browser ref: Code of Conduct Complaint #6180
6180.006.internet.explorer.framegrab05.gif	4/7/09 11:17 AM Frame grab 05 taken from MS Internet Explorer browser ref: Code of Conduct Complaint #6180

Service provider's response

The SP requested an extension twice and replied after a reminder notice was sent by WASPA.

In its response the SP stated the following:

“The web advertised page mentioned in the complaint was withdrawn a few months back due to the company not marketing it any longer. We do however thank you for making these website errors known to us and can assure you that the errors received when accessing the terms and conditions, as well as the incorrect short code within the T&C are being addressed as a matter of urgency. We are in the processes of re-evaluating our terms and conditions on the 1191 short code and have scheduled the changes accordingly.”

Sections of the Code considered

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

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

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.

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

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

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.

Although the Adjudicator has noted that the webpage has been withdrawn, the Adjudicator must take cognizance of the fact that the SP was in breach of

several sections. This has not been denied by the SP as can be seen from its subsequent actions.

It is however not possible for the Adjudicator to access the disputed page since it has since been withdrawn.

The Complainant alleged that the page was not withdrawn during the time period offered by the SP. This was indeed confirmed by the Adjudicator and amounts to a clear breach of section 3.1.1 which is not viewed lightly by the Adjudicator in this matter.

As to the other allegations, to which the SP has not responded and neither in fact denied, the Adjudicator has no alternative but to find the SP in breach of sections 11.1.2 and 6.5.1. These also suggest a breach of sections 4.1.1 and 4.1.2.

The Complaint is upheld.

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 withdrawing the site.

For its breach of sections 4.1.1, 4.1.2, 6.5.1 and 11.1.2 the SP is given a formal reprimand.

For its breach of section 3.1.1 the SP is fined the sum of R10 000, 00 payable to the WASPA Secretariat within five (5) days of notification hereof.