



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Zed Mobile
Information Provider (IP) (if any)	n/a
Service Type	Subscription service
Source of Complaints	Anonymous
Complaint Number	6364
Date received	5 May 2009
Code of Conduct version	7.0

Complaint

The complaint was lodged by the complainant in respect of a television advert flighted on Sunday, 19 April 2009 advertising the SP's content subscription service. The advert only advertises a single item, i.e. the Bubble Boom mobile game.

The complainant alleges that the use of a single item in the advert contravenes section 11.1.2 and 11.1.3 of the WASPA Code of Conduct.

SP's response

The SP replied to the complaint on 6 May 2009 by stating that it had removed the advert flighting the "Bubble Boom Game" immediately after receiving the complaint and confirmed that the advert was no longer being flighted by TV stations.

The SP went on to state that it was not fully clear of the interpretation of sections

11.1.2 and 11.1.3 of the WASPA Code of Conduct and was awaiting clarification from WASPA on these sections of the code to ensure its full compliance.

In the meantime, the SP stated that it was reviewing all its TV advertising material in order to prevent further contraventions.

Additional response from complainant

On 7 May 2009, the complainant advised the WASPA Secretariat that he or she was not satisfied with the SP's response. In particular, it was stated that while section 11.1.3 was a relatively new provision, section 11.1.2 has been part of the code for a long time.

The complainant went on to state that the intention of this section of the code has been, since the introduction of the code, to prevent "bundling", which was exactly the practice now being used by the SP to sign up users to its subscription service.

The complainant alleges further that the SP flighted the advert with full knowledge of the aforesaid provisions of the code and that doing so risked contravening the code.

The complainant states that WASPA introduced section 11.1.3 with a clear communication to its members and alleges that the SP was well aware of the meaning or intention of these provisions.

Sections of the Code considered

Section 11.1.2 reads as follows:

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.

Section 11.1.3 reads as follows:

An advert for a subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed.

Decision

Section 11.1.3 was introduced into the WASPA Code of Conduct on 25 March 2009 in version 7.0 of the code. This section was introduced into the code to compliment section 11.1.2, the intention being to prevent customers being misled into signing up for subscription services when they were only interested in the single content item advertised.

In my opinion, the wording of section 11.1.3 is clear and unambiguous. I cannot accept the SP's statement that it is not fully clear on the meaning and import of section 11.1.3.

I have considered the advert in question and find that it is a direct contravention of section 11.1.3 of the Code.

Sanction

The advert was a television advert which poses a greater risk to consumers than other forms of advertising. The SP's explanation for its contravention offers no basis for mitigating the harm that may have been caused by consumers such as the complainant.

However, I have taken note of the fact that the SP has already removed the advert from being aired any further.

Based on the foregoing, the following sanctions are made:

1. The SP is fined the sum of R75 000.00;

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2. The SP is formally warned to comply with section 11.1.3 in its future advertising practices.

The fine is payable immediately and may not be suspended pending an appeal.