



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	TIMw.e. New Media Entertainment South Africa
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainant:	Anonymous complainant
Complaint Number:	6365
Code Version:	7.0 (consideration also given to version 7.4)
Advertising Rules Version:	2.3

Complaint

The complainant is an anonymous competitor of the SP's. The complainant referred a 16 second TV advertisement to WASPA for review, together with the following complaint:

Complaint #6365 (lodged via the WASPA website):

Affiliation_Information: Complainant wish to remain anonymous

Name_WASP: TIMw.e. New Media Entertainment South Africa

OtherID: This is the information provider Natta.com on short code 33535

Code_Breached: 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.

11.1.3. 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.

Detailed_Description_Complaint: WASPA has recognised the risk of misleading users by using a single item to advertise a subscription service. This gives many users the impression that they are requesting a once off item rather than a recurring subscription. To avoid this practice clauses 11.1.2 and now 11.1.3 we introduced into the code. Natta.com is adverting a subscription using a single item as the hook. This is in contravention to both the principle of 11.1.2 and the letter of the word of 11.1.3.

In their advert sms Boy to 33535 ã± they are promoting ONLY a single Beyonce song called ã-If I were a boyã® in both the visuals and the voice over and even the keyword (ã-BOYã®) ONLY identifies that single song. This is exactly what those two clauses are trying to prevent.

Tick_as_appropriate: I have not contacted the service provider and believe this matter requires WASPA's attention

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

This complaint concerns a form of marketing that has proved problematic in the past. The advertisement features a Beyonce song in order to market a subscription service. I was not furnished with a high resolution video and annex a fairly low resolution screenshot of the video as Annexure “A”. The phrase “R4.99/day” appears in the top right of the advertisement and the text on the bottom of the screen appears to read as follows:

SUBSCRIPTION SERVICE

POP Club. Every week you can download 4 Real Tones, 1 Video and 1 Wallpaper. Max 1 sms/day. Displayed items are only examples of content. Java/Wap/GPRS required. Network rates apply. Customer Care: (011) 447 0357. T&C at za.natta.com/web/za/tac¹. Errors billed. To cancel sms STOP to 33535. Total Tim.

The voice-over on the video says the following:

Do you want the sensual Beyonce on your mobile? What are you waiting for? Just send “Boy” to 33535 and get her latest hit now. Its “Boy” to 33535.

¹ This web address is indistinct on the screenshot.

Service provider's response

The SP responded with the following:

Dear Lorraine,

Concerning the email received regarding the claim that our campaign was not compliant with WASPA CODE OF CONDUCT, we are answering the following.

The campaign advertises Beyonce's contents, on the TV spot it's visible that we are also advertise Wallpapers and Videos. The voice over mentions "Do you want the sensual Beyonce on your mobile?" we use the video to promote Beyonce's contents and her latest songs. From our understanding we are using a "sexy" video to promote Beyonce's contents and not only one content.

Pls let us know if we must change the TV spot and future TV spots.

We will start to take this spot off the air but would like to have your feedback and advice for future TV campaigns.

Thank you.

Best regards,

Nuno Machado

Channel Manager

TIM w.e.

The SP's response indicates that the advertisement promotes "*Beyonce's contents and her latest songs*", in other words, more than a single item of content. In reply to the SP's response, the complainant wrote the following:

Thanks very much.

No I'm not satisfied.

Since the first release of the WASPA Code, the concept of bundling (attracting users with an individual item so that they think this is a once off purchase but

selling a subscription service instead) has been recognised as misleading and the clause 11.1.2 and now 11.1.3. have attempted to prevent this practice. Frequent communications and discussions about the intention of these clauses have occurred. It is highly unlikely that a company like Tim w.e, that's been around for a long time, made an innocent mistake in this case. My opinion is, that they knew what they were risking and took the chance for commercial benefit, as is becoming common practice in the industry.

They are in clear violation of 11.1.3 however they try to explain their intention. The hypothetical user is left with ONLY one impression - that they will get the song "BOY". "Get her latest hit now!", not the video or wallpapers of Beyonce. Their inclusion in dim grey text of "+ wallpapers and videos" give the viewer little in the way of explaining that the offer is not only for the hit, "If I were a boy".

Warm thanks,

Anonymous Complainant

Sections of the Code considered

This complaint was filed prior to the most recent update to the Code to version 7.4. I have accordingly considered versions 7.0 and 7.4 for the purposes of this report in order to determine compliance with the Code (referencing version 7.0) and the remedy for non-compliance (referencing version 7.4). Having regard to the issues raised in this complaint, I have also considered other sections of the Code which are pertinent.

I have therefore considered the following sections of the Code:

Version 7.0	Version 7.4
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.	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 and may not be an entry into a competition or quiz.

Version 7.0	Version 7.4
11.1.3: 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.	11.1.3: 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.
11.1.5: Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.	11.1.5: Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

Sections of the Advertising Rules considered

Rule 2 generally.

Decision

The SP is not new to complaints about its advertisements being instances of bundling. I located an adjudicator's decision from May 2007² in which the adjudicator appears to have found the SP guilty of a similar series of contraventions to those it has been accused of by the complainant, the primary complaint being bundling. In the report in question, the adjudicator comments as follows:

Bundling is regarded in a serious light by WASPA. It is very clear from the provisions of the Code and the Advertising Rules what is required of promotional SMS's used for offering subscription services to the public.

Bundling remains a serious concern for WASPA today and this can be seen in recent versions of the Code which have specifically forbidden the practice of bundling. Despite the fact that the advertisement contains text indicating the service is a subscription service (I also have a concern about the colour of the text boxes which are not the prominent white background or an indication of "*FULL, potential and upfront pricing*" which the advertising rules require), the voice-over clearly promotes a single item available through a premium number. It is also important to note that the advertisement is 16 seconds long and a viewer would be excused for focussing on the visuals and audio track of the advertisement and not the printed terms on the bottom of the screen. A reasonable viewer may well expect that the printed terms

² Complaint 1316 received on 8 May 2007 in which the SP in this matter was cited as an information provider.

accord with the offer expressed through the accompanying visuals and audio track and not realise that the service is a subscription service.

A viewer would almost certainly respond to the advertisement expecting a single item, especially considering that there is only one content item demonstrated in the advertisement.

I agree with the complainant's reply to the SP's response to the initial complaint which I am similarly not satisfied with. The SP's response is disingenuous and its offer to "start to take this spot off the air" is indicative of its failure to appreciate how problematic its advertisement is.

Sanctions

1. To the extent the service remains active, the SP is required to withdraw the advertisement until such time as it complies fully with the Code. The SP may not initiate any new or existing billing transactions arising out of the advertisement for any of the SP's subscription services during such period of suspension, however it may process any unsubscription requests;
2. The SP shall send an sms notification to all existing subscribers of the service in the format prescribed in 11.4 of the current Code;
3. The SP is fined -
 - 3.1. R150 000 for its violation of section 11.1.2 as read with 11.1.3 and 11.1.5 of the Code; and
 - 3.2. R20 000 for its failure to comply strictly with Rule 2 of the advertising rules.

The fines must be paid to the WASPA Secretariat within five (5) days of notification of this report's findings.

Annexure "A"

