



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	Subscription service initiated by single content item only.
Complainants:	Anonymous
Complaint Number:	6453
Code Version:	6.2
Advertising Rules Version:	2.3

Complaint

The Complainant lodged the following 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.

Loadin is advertising 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 MAN to 30123 they are promoting ONLY a single game PACKMAN in the visuals but also in the voice over.”

Service provider's response

The SP wrote:

“We have requested the Loadin Pacman Ad to be sent to us from the marketing team. Once reviewed, we will revert back to you on the matter at hand. Please accept our sincerest apologies for the late response in this regards.”

Later in its official reply the SP stated:

“After reviewing the Loadin pacman ad and voice over, we disagree with this complaint respectfully. The ad displays clearly in it's terms and conditions (T&C's) that it's a subscription service at R5 / pday. The voice over informs the user that the first week is free to download content as well as many more downloads, thus we are not just making the user aware of a single content item but, also inform the user of other content, which is displayed in the ad and mentioned in the voice over.”

Sections of the Code considered

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.

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.

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.

It is quite regrettable to note that the SP does not seem to be very concerned over timelines contained in terms of the Code. This case is one of many where the SP has either in its informal or formal reply failed to comply with the timeframes allotted to a reply.

Having reviewed the advertisement in dispute several times and by perusing the various terms and conditions, the Adjudicator is of the opinion that the SP in this matter did not breach section 11.1.2 of the Code directly.

Although the SP claimed that the voice over indicated additional content for download, the visual effect pertaining thereto as well as the use of the keyword “MAN”, do not conform to section 11.1.3's phrase: “must include at least two examples of that content **clearly displayed**.”

This would therefore imply that the SP is also indirectly in breach of section 11.1.2, as well as section 4.1.2, since the use of the keyword “MAN” might also prove to be deceptive, in misleading a user to believe that they will only get Pacman.

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;
- Continuous late replies; and
- The SP's subsequent conduct in eradicating any breaches.

The SP is fined the sum of R100 000, 00 payable to the WASPA Secretariat within five (5) days of notification hereof.

The SP is further ordered to:

- immediately suspend the service;
- suspend all billing for the service ;

The Adjudicator further orders that the service provider immediately suspend any similar advertising 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.