



REPORT OF THE ADJUDICATOR

WASPA Member (Member):	Buongiorno UK
Service Type:	Subscription
Source of Complaints:	Monitor
Complaint Number:	# 6756
Code of Conduct version:	7.0
Advertising Rules version:	2.3

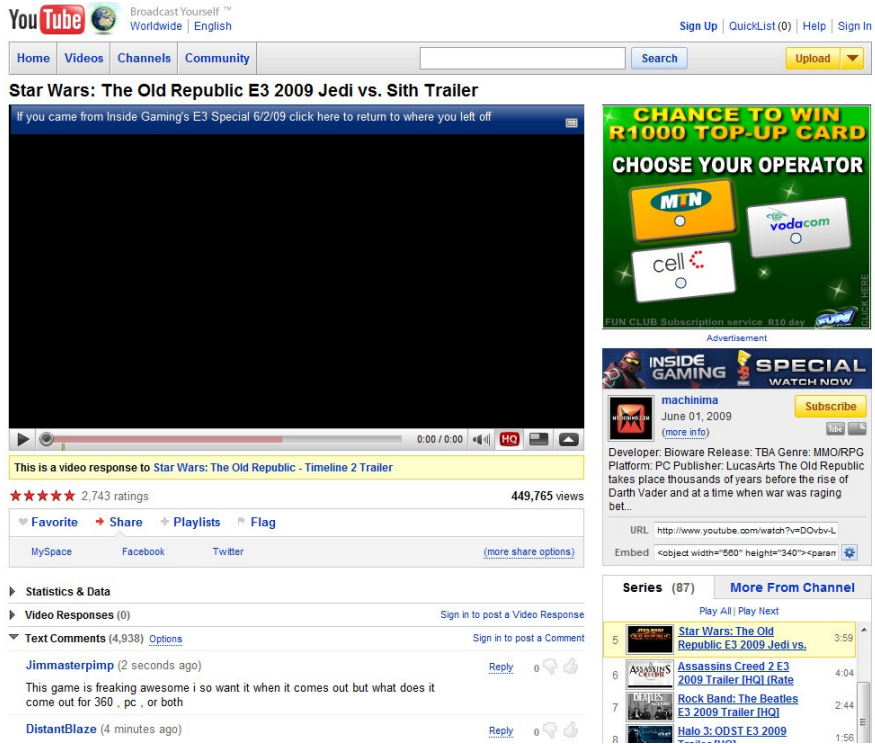
Complaint

Complaint #6756 was lodged by the Media Monitor relating to an advertising breach for a subscription service. A copy of the Monitor's report is set out in full below:

DATE: 8 JUNE 2009
PHONE NUMBER: 0769596058
SERVICE PROVIDER: iTouch
STARTING BALANCE: R61.35
SHORT CODE: 31194
WEBSITE: http://www.youmobile-za.com/adv-funclub-music-268_101.html?checkSplash=yes&operatore=vodacom

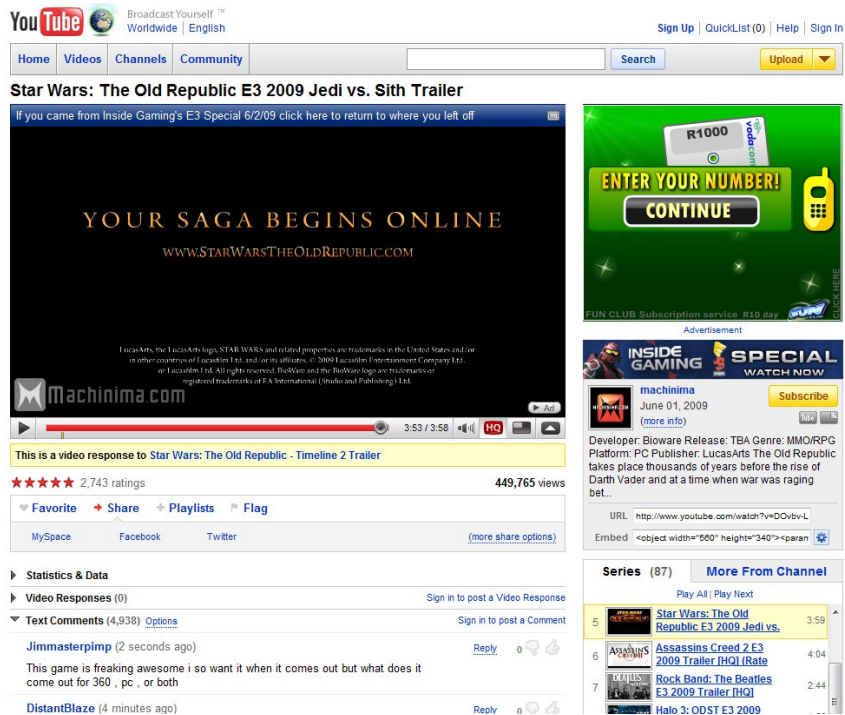
The green banner, on the right, is running on You Tube.

Banner 1:



Banner 2:

(Green banner on the right)



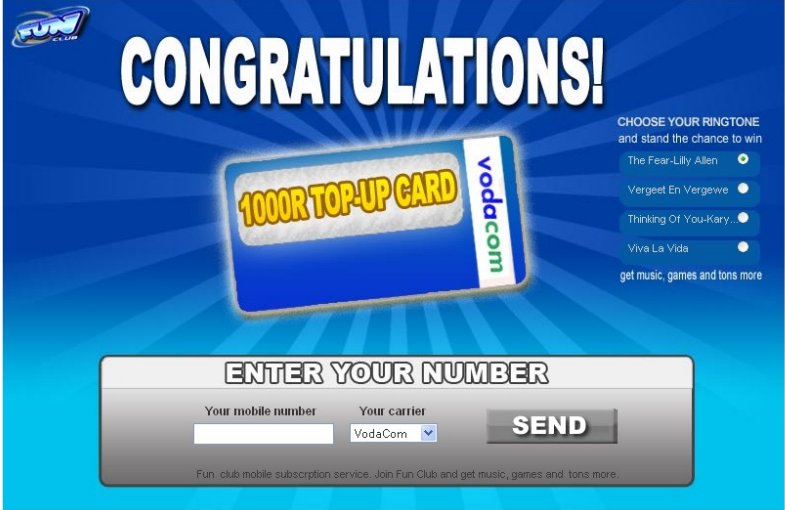
The banner that tells you that you have won airtime after you scratched a digital scratch card. Then they opt you into a subscription service when you try to claim the airtime you think you have won.

Funclub Music - Mozilla Firefox

http://www.youmobile-za.com/adv-funclub-music-268_101.html?checkSplash=yes&operator=vodacom

Facebook | Home

FUNCLUB IS A SUBSCRIPTION SERVICE R10/DAY - 1000R TOP-UP CARD TO BE WON EVERY MONTH - GET MUSIC, GAMES AND TONS MORE



CONGRATULATIONS!

CHOOSE YOUR RINGTONE and stand the chance to win

- The Fear-Lilly Allen
- Vergeet En Vergewe
- Thinking Of You-Kary...
- Viva La Vida

get music, games and tons more

ENTER YOUR NUMBER

Your mobile number Your carrier **SEND**

Fun club mobile subscription service. Join Fun Club and get music, games and tons more.

Done

start Skype™ - claudia.cutno Lize Mari McDonald (N... Document2 - Microsof... Funclub Music - Mozill... Inbox - Microsoft Out... FW: This is so wrong ... EN 03:31 PM


Then I entered in my phone number

The Fear-Lilly Allen - Mozilla Firefox

http://www.youmobile-za.com/delivery-gadget-268_101-197621.html

Facebook | Home

FUNCLUB IS A SUBSCRIPTION SERVICE R10/DAY - 1000R TOP-UP CARD TO BE WON EVERY MONTH - GET MUSIC, GAMES AND TONS MORE



DON'T BE LEFT WITHOUT A 1000R TOP-UP CARD

Insert the code received by sms:

YOUR CODE **SEND**

SUBSCRIPTION SERVICE-R10 every day - networks charge extra- sms STOP FUN to 31194 to unsubscribe-Buongiorno- 0214178001(Std rates) T&C's at wap.funfone.co.za For the subscribers to the service we draw 1000r top-up card every month - Competition ends 30 June 2009

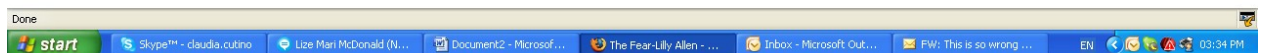
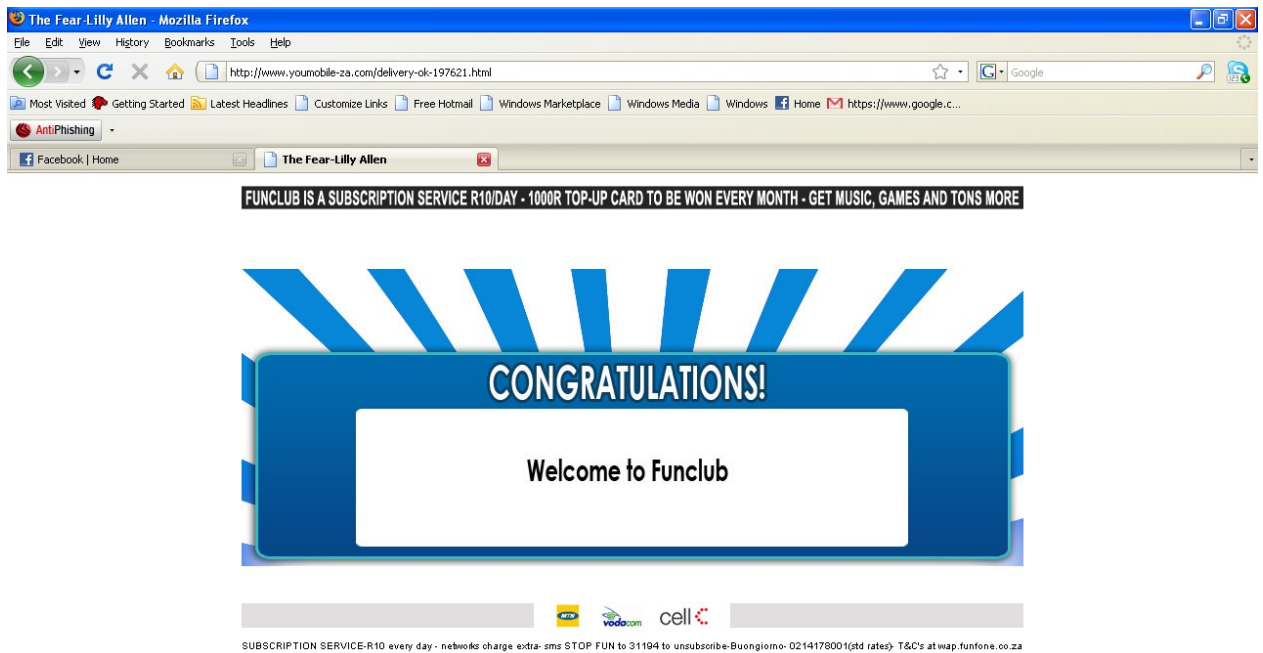
Done

start Skype™ - claudia.cutno Lize Mari McDonald (N... Document2 - Microsof... The Fear-Lilly Allen - ... Inbox - Microsoft Out... FW: This is so wrong ... EN 03:31 PM

I then received a sms with a pin number in it.

Ur pin is 0754. Come join in the TONS of fun.Ur games & tones r waiting. By entering the pin number, u'll be subscribed to Fun Club (R10/day subscription)

I then entered the pin number.



I then received a welcome message in my inbox as well as two service messages with links to start downloading.

Welcome 2 FUN CLUB! U have UNLIMITED access 2 downloads & the chance 2 win a Nintendo wii! Help: 0214178001. (Sms stop fun to 31194 to end. Subscription R10/day)

I checked my balance and R10 had been deducted for the joining of the service. I also decided to download two content items to check if it is free, which it was.

Conclusion:

The banner tells you that you have won airtime after you scratched a digital scratch card. When attempting to retrieve the airtime you have just won, with a hug banner saying **CONGRATULATIONS!** You are prompted to enter your mobile number. Any person who thinks they have just won a R1000 airtime voucher would enter their number for this. The customers sole purpose for entering their number is to receive the voucher they have won and has no intention whatsoever for joining a service.

This advert clearly misleads the public into thinking they have won a prize, even though it may say it's a subscription service in the top left, the T&C's text is not big enough as stated in the code. It then prompts you to finally enter in the pin code you received, although this message does say you will be subscribed the information is still confusing as the screen says: ***DON'T BE LEFT WITHOUT YOUR 1000R TOP-UP CARD*** misleading you once again to think that if you don't enter in the pin number you will not receive your top-up card.

The format of "1000R" is also completely incorrect on some of the banners.

When receiving the welcome message to the service, it says 'Welcome 2 FUN CLUB! U have UNLIMITED access 2 downloads & the chance 2 win a Nintendo wii!' So basically the advertisement went from standing a chance of winning R1000 airtime voucher, to leading you to think you have won and prompting

you to to enter your information. And once doing so, it tells you joining you to a service with unlimited ringtone/wallpaper/video etc downloads and a chance of winning a Nintendo Wii...

Also the stop or opt out instructions are not clear on the welcome message: (Sms stop fun to 31194 to end. Subscription R10/day) It should say something along the lines of *"to unsubscribe, sms Stop Fun to 31194"*

Even though they join you to this service, the service in question has nothing whatsoever to do with receiving or even the chance of winning any airtime, which was basically the point of the advert in the first place.

I also decided to click on the link on the wapsite that said Prizes and Winners which took me to the page where I could Win a Nintendo Wii (As advertised in the welcome message) It told me everytime you download a content you get an entry. I noticed that the closing date of the competition was on the 31st May 2009 and that the winner would be announced on 3rd June 2009.

So basically you are drawn to another competition with the chance of winning prizes in your welcome message, only to find out that the competition is already finished! Also there is no links or any information anywhere on the wapsite to tell you about how you can win the airtime listed in the above advertisement.

The Monitor cited sections 3.3.1, 4.1.2, 6.1.1, 6.2.8 (plus section 9.2.2.1 of the Advertising Rules), 9.1.6, 11.1.1, 11.1.2, 11.1.5, 11.1.8 and 11.1.10 as sections of the WASPA Code of Conduct ("the Code") that had potentially been breached by the Member.

The complaint was sent to the WASP on 9 June 2009.

SP Response

On 11 June 2009 the Member responded to the complaint and conceded that the advert was misleading to the public and assured WASPA that the advert was being withdrawn.

Decision

The specific sections of the WASPA Code cited by the Monitor have been set out in full below:

Section 3.3.1 provides as follows:

3.3.1. Members will not offer or promise services that they are unable to provide.

Section 4.1.2 provides as follows:

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.

Section 6.1.1 provides as follows:

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document. In turn, Section 9.2.2.1. of the Advertising Rules provides that T&C text must be in 12 point font size, or 50% of the largest access number on a Web page, whichever is the greater.

Section 6.2.8 provides as follows:

6.2.8. Pricing on any promotional material must use one of the following generally accepted formats for prices in Rands: "Rx" or "Rx.xx".

Section 9.1.6 provides as follows:

9.1.6. Competition services and promotional material must not:
(a) use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants;
(b) exaggerate the chance of winning a prize;
(c) suggest that winning a prize is a certainty;
(d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

Section 11.1.1 provides as follows:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

Section 11.1.2 provides as follows:

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.

Section 11.1.5 provides as follows:

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.

Section 11.1.8 provides as follows:

11.1.8. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:
(a) The name of the subscription service;
(b) The cost of the subscription service and the frequency of the charges;
(c) Clear and concise instructions for unsubscribing from the service;
(d) The service provider's telephone number.

Section 11.1.10 provides as follows:

11.1.10. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. U'll b subscribed to [XYZ service] from [name of service provider] @ [cost of service and frequency of billing]. Help? Call [call centre number + "(VAS)" if applicable]. To unsubscribe, [unsubscribe instructions].

Having closely reviewed the advertisement, subscription mechanism and confirmation messages reported on by the Monitor, as well as the response of the Member to the complaint which contained no refutation of the Monitor's averments, the complaints of breach of sections 3.3.1, 4.1.2, 6.1.1, 6.2.8 (plus section 9.2.2.1 of the Advertising Rules), 9.1.6, 11.1.1, 11.1.2, 11.1.5, 11.1.8 and 11.1.10 of the Code is upheld.

The advertisement that forms the subject matter of this complaint is grossly misleading. This cannot have escaped the attention of the creators thereof. It is abhorrent that the Member would stand to benefit financially from such a grossly misleading advertisement and at the expense of members of the public.

The subscription mechanism is also not an independent transaction in that it is wholly dependent on a consumer trying to redeem a free airtime voucher and there can be little doubt that the offer would be likely to mislead ordinary consumers into inadvertently subscribing to an ongoing subscription service.

Sanctions

The advertisement and subscription mechanism that form the subject matter of this complaint are of a nature that is damaging to the Wireless Application Services industry as a whole.

Section 1.2 of Code records that the primary object of the Code is "**to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services**". The advertisement and subscription mechanism that form the subject matter of this complaint strike at the very heart of the purpose of the Code.

Complaints of inadvertent subscription to a subscription service are frequent and pose a significant threat to the industry's ability to provide for any measure of self-regulation in future. If individual members do not adhere strictly to the provisions of the Code relating to advertising and transparent subscription mechanisms, then not only consumers, but the entire membership body of WASPA will be substantially prejudiced.

In considering the sanction to be imposed I have not only had regard for the severity of the breaches, but also the frequency and extent to which member has breached the Code in past. Breaches committed after the date of the offence in this matter have not been taken into account in the imposition of any sanction, however the full

lity of the Member's breaches of the Code within the past 5 years is summarised below.

Number	WASPA Member	Result	Report Date	Code Clauses	Appeal	Fines Status	Report
0003	Buongiorno UK!	Complaint partially upheld	2005-10-11	6.2.2, 6.2.3, 6.2.4, 6.2.5, 4.1.1, 4.1.2, 9.1, 10.1			download
0010	Buongiorno UK!	Complaint upheld	2005-10-31				download
0080	Buongiorno UK!	Complaint partially upheld	2006-08-08	6.2.5, 11.1.2, 11.2		Paid	download
0192	Buongiorno UK!	Complaints upheld	2006-04-19	2.20, 4.1.1, 4.1.3, 4.1.5, 5.2.1, 5.3.1, 11, 13.3.7, 13.3.8, 13.3.9, 13.3.10	Appeal rejected	Paid	download
0284	Buongiorno UK!	Complaint upheld	2006-08-16	5.1.1, 5.1.5, 5.2.1, 5.3.1, 5.3.2, 11.1.12, 11.1.7			download
0610	Buongiorno UK!	Complaint upheld	2007-02-13	11.3.1, 11.1.7, 4.1.1, 6.2, 11.1.1, 11.1.2, 11.1.4, 11.3.1	Appeal mostly upheld		download
2398	Buongiorno UK!	Complaint partially upheld	2007-12-05	4.1.1, 6.2.4, 11.1.7, 11.1.8, 11.1.9, 11.1.10		Paid	download
3630	Buongiorno UK!	Complaint upheld	2008-08-22				download
4488	AMV/Buongiorno UK!	Complaint partially upheld	2008-09-16	4.1.2, 5.1.6, 11.1.4		Paid	download
4463	Buongiorno UK!/Blink Mobile	Complaint upheld	2009-03-10	2.8, 4.1.2, 7.2.1, 11.1.4, 11.1.6	Appeal dismissed	Unpaid	download
4614	Buongiorno UK!	Complaint upheld	2008-09-30	11.2		Paid	download
4677	Buongiorno UK!	Complaint upheld	2008-09-30	6.1.1, 6.2.2, 6.2.4, 6.2.8, 6.5.1		Paid	download
4649	Buongiorno UK!	Complaint upheld	2009-03-26	3.3.3, 3.3.1, 6.3.1, 3.1.1		Paid	download
4867	Buongiorno UK!	Complaint partially upheld	2009-03-10	4.1.1, 4.1.2, 11.1.1, 11.1.7, 11.1.8, 11.1.9		Paid	download
5014	Buongiorno UK!	Complaint upheld	2009-02-17	6.5.1, 11.2.1, 11.2.2, 11.2.3, 11.2.4		Paid	download
4967	Buongiorno UK!	Complaint upheld	2009-03-10	4.1.1, 4.1.4, 6.2.5, 6.2.6, 6.2.11, 11.1.2		Paid	download
5457	Buongiorno UK!	Complaint upheld	2009-06-02	2.14, 6.5.1, 11.1.2			download
5564	Buongiorno UK!	Complaint upheld	2009-07-17	3.1.2, 11.1.4, 8.1.3, 11.2.2, 2.13, 3.1.1, 3.7.1, 4.1.1, 5.1.6, 6.2.2	Appeal pending	Appeal pending	download
4929	Buongiorno UK!	Complaint partially upheld	2009-03-10	3.1.1, 13.3.16		Paid	download
5096	Buongiorno UK!	Complaint upheld	2009-03-10	2.14, 6.5.1			download
5300	Buongiorno UK!	Complaint upheld	2009-06-02	9.1.1, 9.1.4		Paid	download
5921	Buongiorno UK!	Complaint upheld	2009-06-02	4.1.2, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.10		Unpaid	download

Wireless Application Service Provider Association

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5641	Buongiorno UK!	Complaint upheld	2009-06-02	11.1.8, 11.1.9, 11.1.11	Unpaid	download
5568	Buongiorno UK!	Complaint upheld	2009-06-04	11.1.7, 11.2.1, 11.2.2, 11.2.3, 11.2.4	Unpaid	download
5704	Buongiorno UK!	Complaint upheld	2009-07-17	8.1.3, 11.1.6, 11.2.1, 11.2.2, 11.2.3, 11.2.4, 11.4.1	Unpaid	download
5980	Buongiorno UK!	Complaint upheld	2009-08-31	4.1.1, 4.1.2, 11.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.3, 11.2.4		download
5985	Buongiorno UK!	Complaint upheld	2009-08-31	4.1.1, 4.1.2, 11.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.3, 11.2.4		download
6030	Buongiorno UK!	Complaint partially upheld	2009-08-31	4.1.7, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.1.6, 11.1.7, 11.2.2		download
6039	Buongiorno UK!	Complaint upheld	2009-08-31	4.1.1, 4.1.2, 11.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.4, 11.2.4	Unpaid	download
6057	Buongiorno UK!	Complaint upheld	2009-08-31	4.1.1, 4.1.5, 5.2.1, 5.2.2, 5.3.1, 5.3.2, 8.1.3, 13.3.5	Unpaid	download
6105	Buongiorno UK!	Complaint upheld	2009-08-31	4.1.1, 4.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.3, 11.2.4		download
6112	Buongiorno UK!	Complaint upheld	2009-08-31	4.1.1, 4.1.2, 11.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.3, 11.2.4		download
6392	Buongiorno UK!	Complaint upheld	2009-09-30	13.3.4, 13.3.5, 2.11, 11.1.2, 4.1.1, 4.1.2	Paid	download
5682	Buongiorno UK!	Complaint upheld	2009-09-30	4.1.1, 11.1.1		download
6156	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11		download
6177	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.1, 4.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.3, 11.2.4		download
6232	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11		download
6263	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11		download
6274	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.1, 4.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.3, 11.2.4		download
6304	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 6.5.1, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8,	Unpaid	download

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				11.1.9, 11.1.10, 11.1.	
6307	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11	download
6329	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 6.5.1, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.	download
6334	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.1, 4.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.3, 11.2.4	download
6453	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.2, 11.1.3	Unpaid download
6575	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.1, 4.1.2, 11.1.2, 11.1.4, 11.2.1, 11.2.2, 11.2.3, 11.2.4	download
6605	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11	download
6609	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11	download
6700	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11	download
6781	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11	download
6640	Buongiorno UK!	Complaint upheld	2009-12-03	4.1.2, 11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.9, 11.1.10, 11.1.11	download
7688	Buongiorno UK!	Complaint upheld	2010-01-31	4.1.2, 11.1	download
6803	Buongiorno UK!	Complaint partially upheld	2010-03-11	3.1.1	Unpaid download
6820	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1	download
6822	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1	download
6865	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1	download
6920	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1	download
6971	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1	download
7001	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1	download
7004	Buongiorno UK!	Complaint	2010-	4.1.2, 11.1	download

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		upheld	03-11			
7008	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1		download
7087	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1		download
7129	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1		download
7134	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1		download
7175	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 4.1.7, 11.1	Unpaid	download
7185	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1		download
7240	Buongiorno UK!	Complaint upheld	2010-03-11	3.1.1, 3.1.2	Unpaid	download
7250	Buongiorno UK!	Complaint upheld	2010-03-11	6.2.9	Unpaid	download
7260	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1		download
7283	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1		download
7622	Buongiorno UK!	Complaint upheld	2010-03-11	4.1.2, 11.1		download
7314	Buongiorno UK!/Mobimex	Complaint upheld	2010-03-12	11.1, 11.2, 11.6.2		download
7452	Buongiorno UK!	Complaint upheld	2010-03-12	13.3.16		download
7631	Buongiorno UK!	Complaint upheld	2010-03-12	3.3.1, 4.1.1, 4.1.2, 6.1.1, 6.2.4, 6.2.8, 6.2.9, 11.1.8, 11.1.10, 11.2.2, 11.5.6	Unpaid	download
7709	Buongiorno UK!	Complaint partially upheld	2010-03-12	11.1.3, 11.1.10, 11.2.2		download

The following sanctions are imposed:

1. The Member's membership of WASPA shall be suspended for two months with immediate effect. The expiry of this period shall not affect any other concurrent suspension that may have been imposed or may be imposed against the Member as a result of any other complaint and the expiry of the aforementioned period shall not have the effect of lifting any other concurrent suspension still in force at the expiry of the suspension period imposed in respect of this complaint.
2. The Member is fined an amount of R300 000 to be paid within 7 days of receipt of this report failing which the Member shall be expelled from WASPA and the WASPA Secretariat shall notify all network operators of the termination of the Member's membership of WASPA.

The sanctions imposed above shall not be suspended pending the institution of any appeal by the Member.