



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	TIM w.e.
Information Provider (IP) (if any)	Natta
Service Type	Subscription service
Source of Complaints	WASPA Monitor
Complaint Number	6818
Date received	18 June 2009
Code of Conduct version	7.4

Complaint

The complaint refers to two commercials which are flighted back-to-back and which advertise single content items in order to sell a subscription service.

The IP has previously been asked to pull commercials off air because of the same offence.

The WASPA Monitor believes this to be a serious offence which cannot be resolved informally.

SP's response

The SP does not believe there are any problems with both commercials and have asked for clarity on why they are alleged to be in contravention of the code. The SP states that in terms of the "RAW" TV Spot, it is offering a variety of ringtones and not a single content item.

The SP states further that the "Thermometer" TV spot is a subscription service for measuring relationships "hotness". Every week the subscriber receives a message with the information of how hot the relationship is. This is not a single content offer but instead is a service that informs the way the relationship is going and advises users.

Complainant's reply

The complainant replied that, with respect to the "RAW" commercial, they don't believe that the word "themes or entry themes" adequately describes a subscription service or implies that continuous content should be expected. The reference to a number of ringtones is displayed in the Terms & Conditions in, what the complainant believes to be, a very busy and only 15 second commercial. They believe that it is unreasonable to expect a viewer to read this copy. It is suggested that the voice-over should refer to all the content that can be obtained by subscribing to the service.

With regard to the "Thermometer" commercial, the complainant argues that the voice-over refers to "testing if you're with the right person". This copy does not imply that continuous content should be expected. A copy line is displayed: "Get outcome and tips", but this is displayed in the Terms & Conditions which may not be viewed in such a short commercial. The suggestion is made that the voice-over should refer to the outcomes and daily tips on relationships offered to subscribers to the service.

Sections of the Code considered

11. Subscription services

11.1. Manner of subscription

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.

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.

11.1.3. An advert for a content 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.

Decision

The IP has argued that both commercials are not offering single content items but rather a number of content items as part of the relevant subscription service being advertised.

I am satisfied that the “RAW” TV commercial makes it clear that a number of content items can be obtained by subscribing to the service. The voice-over refers specifically to examples of the various ringtones on offer and the backing track also provides more than one example. I don’t believe this advert contravenes the code.

The “Thermometer” TV commercial is different. The service in question appears to be a single or once-off content item. It is unlikely that a user would test the “hotness” of their relationship on a weekly basis and more likely that this service would be used once by entering the name of the person they are currently in a relationship with.

I agree with the complainant that the SP could have easily altered the voice-over of the commercial to clearly refer to the other content items available to subscribers. I am therefore of the view that the SP has contravened section 11.1.2 of the code in flighting the “Thermometer” TV commercial.

Sanction

A contravention of section 11.1.2 of the code is viewed in a serious light. This is aggravated by the fact that this is a television advertisement which will potentially be viewed by a large number of consumers.

It has been noted that the advertisement in question has been suspended by the SP.

The following sanction is given:

1. The SP is fined an amount of R150 000.00.
2. The SP must stop flighting the “Thermometer” TV commercial.
3. The SP must refund all subscribers to the “Thermometer” subscription service in full.
4. The SP must notify all subscribers that they are entitled to claim a full refund.

These sanctions will not be suspended pending an appeal.