



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Glomobi
Service Type	Subscription
Source of Complaints	Mr J Cobbett
Complaint Number	6842
Date received	19 June 2009
Code of Conduct version	7.4

Complaint

The complainant states that while browsing the website www.facebook.com he noticed an advertisement which read as follows:

*"You've just won a brand new iPhone." "We know you want a brand new iPhone for free. Well, click here now because we're giving away a brand new iPhone.
http://lp.zemgo.com/LandingZemgo.aspx?LpID=10977&PartnerID=adsmrkt&sourceid=001nnl0000003Bty1Y5pB2fmSh000000&sid=&ce_cid=001nnl0000003Bty1Y5pB2fmSh000000"*

The complainant alleges that the promotion of the IP's subscription service contravenes section 11.1.2 in that it prompts a request from a subscriber to join the subscription service in question through an entry into a competition or quiz.

IP's response

The IP stated in its response that the advertisement seen on the Facebook website was published by one of its clients without authority. However the IP acknowledged that it was ultimately responsible for the advert.

The IP also stated that it had requested clarification on the interpretation to be given to clause 11.1.2 of the code and only received same on 23 June 2009. According to its own interpretation of this clause, a single content item may not be advertised if a request for such content would subscribe a user. However if they or their clients were being transparent in their offering, then they were compliant.

The IP acknowledged that they and their clients were not compliant with the code and had instructed all their clients to stop running campaigns for now until they have adjusted their advertisements to be compliant with the code.

The IP also tendered a full refund to consumers.

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.

Decision

The IP has acknowledged that the iPhone promotion which the complainant accessed on the Facebook is in contravention of the code, specifically clause 11.1.2. The practice of advising customers that they have won a prize when they have not, or where the customer is required to fulfill certain further conditions before the prize is one is false and misleading.

Such practices are also contraventions of clauses 3.1 and 4.1 and subvert the spirit of the code in general.

Sanction

Contraventions of this nature are viewed in a serious light.

The IP has indicated that it is new in the SA market and that it had requested clarification on the interpretation to be given to clause 11.1.2, which it only received on 23 June 2009. Unfortunately, this does not assist the IP. I am of the view that the wording of clause 11.1.2 is unambiguous and not open to interpretation.

In its response, the IP offers the interpretation it had of the clause prior to receiving clarification from WASPA. However, I do not believe that the IP honestly believed that such an interpretation would result in any meaningful application of the code. In any event, the IP goes on to acknowledge where and why the advert in question failed to provide the necessary level of transparency and, by its own admission, it has fallen far short of the requirements of the code.

I have taken into account that the IP has undertaken to revise all of its advertising and that it has tendered a full refund to consumers. However, and notwithstanding the factors offered by the IP in mitigation, I remain of the view that the contravention is of a serious nature.

The following sanctions are given:

1. The IP is fined an amount of R 150 000.00;
2. The IP is ordered to refund all subscribers to the service in full;
3. The IP must notify all subscribers within 7 (seven) days of it receiving notice of this adjudication report that they are entitled to a full refund;
4. The IP must immediately cease any further advertising of its services which do not comply with clause 11.1.2 of the code.