



## ADJUDICATOR'S REPORT

<b>WASPA Member (SP):</b>	Integrat
<b>Information Provider (IP):</b>	Mozzi
<b>Service Type:</b>	Subscription
<b>Source of Complaints:</b>	WASPA Monitor
<b>Complaint Number:</b>	6918
<b>Code of Conduct version:</b>	7.4

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### Complaint

A complaint was lodged by the WASPA Media Monitor regarding an Radar subscription service ("the Service") offered by the IP and utilising the wireless application services of the SP.

The Monitor alleged that the advertising for the service that a specific content item was being bundled with a request to be subscribed to the service. The Monitor provided a screenshot of the advertisement being used to attract members to the service.

The Monitor also alleged that the content being offered was deceptive and misleading as what was actually offered was a wallpaper application and not actually a radar application.

A copy of the advertisement in question is set out below:

Subscription service - R30 / Week



**1. Select operator**  
Vodacom

**2. Enter your number**  
[ To receive your pincode ]  
0 [ Get It ]

**3. Enter your pincode**  
[ To start downloading ]  
[ Download ]

SONAR  
GET THIS AND  
MANY OTHERS!

This subscription service is available for all networks. You will receive 3 items per week which will be charged at R 10 per item. Download charges may apply. The shown item(s) form(s) part of the subscription service and is(/are) indicative of the content items that will be received. To cancel the service, send STOP to 31603. By entering your phone number you allow us to remind you with a maximum of 3 times to join this or any other of our service. Bill payer's permission required. Min. age 18+ or with permission of parent or guardian. Mozzi operates according to the South African Wireless Application Service Providers' Association Code of Conduct. Mozzi offers innovative information and entertainment for your mobile, such as ringtones, Javagames and wallpapers. Mozzi offers original, unique services with the highest standards. IP: Sam. Helpdesk: 082 235 0400.

[Mozzi](#) | [Compatibles handsets](#) | [General terms and conditions](#) | [Contact Us](#) |

## SP's Response

*The SP's response is set out in full below:*

### **Response to complaint #6918**

*Integrat is a full WASPA member and as such committed to all WASPA rules and guidelines. We advise clients of WASPA when they sign up with us and we try to keep them updated on changes to the code and guidelines. Integrat does not offer or advertise any content services.*

*A description follows of the complaint for reference as well as Integrat's and our client's response.*

### **Description of complaint:**

*[http://www.mozzi.com/online\\_ads/index.php?data=ZA\\_AM\\_radar\\_760x510.swf&ce\\_cid=0002C10mWTHT3AHjg47oPQGFZd000000](http://www.mozzi.com/online_ads/index.php?data=ZA_AM_radar_760x510.swf&ce_cid=0002C10mWTHT3AHjg47oPQGFZd000000)*

*The above url takes a web user to a site promoting a Radar on a cellphone.*

*There are two problems with this advertising:*

*Problem 1: No actual radar exists - it's a wallpaper and misleads consumers into thinking they'll receive an application where they will be able to track something.*

*Problem 2: The SP is making use of one content item in order to sell an entire subscription service. This is a clear violation of the Code.*

*A complaint has previously been lodged against this provider for both these offenses on their X-Ray Scanner. (Complaint 6802)*

*The WASPA Monitor has indicated that this is a repeat offence and cannot be resolved informally. The service provider is requested to provide a formal response to the alleged breaches so that this matter can be reviewed by an independent adjudicator.*

**Response from Integrat (SP):**

Response to Problem 1:

*We were surprised at the content of this complaint - specifically the reference to a repeat offence, since the adjudicator has not given his/her adjudication on complaint #6804 yet. We have requested that this complaint be placed on hold until the adjudicator has provided us with clear instructions on how to proceed. The mentioned request was ignored – we have not received any response whatsoever.*

*We are not convinced that our client's advertising is misleading or that they are in breach of the code. We would be more than willing to immediately attend to any sanctions or actions requested by the adjudicator.*

Response to Problem 2:

*The client has amended the advert - they now use two examples to make the subscription format clearer to subscribers.*

**Response from SamMedia (IP):**

Response to Problem 1:

*Our client does not believe they are in breach of the code since the T&Cs make it clear that the service is indeed a subscription service and that wallpapers will be delivered.*

Response to Problem 2:

*Our client has amended the advert to include more than one content item.*

[http://www.mozzi.com/online\\_ads/index.php?data=ZA\\_ZA\\_Xray\\_760x510.swf](http://www.mozzi.com/online_ads/index.php?data=ZA_ZA_Xray_760x510.swf)

## Decision

### **Bundling of content item with request to join a subscription service**

Section 11.1.2 of version 7 of the Code reads 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 11.1.2 of the Code is similarly worded as reads 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 and may not be an entry into a competition or quiz.

The web page used to advertise the services advertised only the “Radar” content item in the main section of the advert. It appears to be common cause between the Monitor and the SP that the particular method for accessing this content is the same as the method described in complaint no 6802 and is summarised again below for ease of reference.

The specific button a consumer was required to click on to start the request process was labelled “GET IT”. “IT” is ambiguous in this context and could refer to either the required pin code or the specific content item being advertised. The “DOWNLOAD” button, when clicked, would result in a consumer receiving a link to download the specific “Radar” content item, i.e. when the pin number is entered onto the web page and the “DOWNLOAD” button is clicked, the consumer is simultaneously subscribed to a subscription service at a cost of R30 per week. This method of subscribing the consumer to the subscription service falls foul of section 11.1.2 of the Code as it bundles subscription to the service with the process of requesting and downloading a specific content item, i.e. it is not an independent subscription transaction but involves the simultaneously provision of access to an advertised content item too.

**Deceptive advertising**

Having studied the advertisement in question, I am of the opinion that not all consumers would appreciate that what was being advertised was essentially a content item (i.e. a video or “wallpaper”) and not an actual radar. Section 4.1.2 of the Code requires that members must not knowingly disseminate information that is deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission. I find that the advertisement for the content item and service would have been likely to mislead some consumers and do not think it possible that this would not have been known by the IP. It would not have been difficult to mark these kinds of advertisements as joke offerings but this was not done.

In this particular complaint, no allegation has been made against the SP that its advertising did not display access costs and terms and conditions in the required minimum font sizes.

**SP’s failure to suspend services**

A member is required to be familiar with the provisions of the Code of Conduct. Even after this particular service and its advertisements were brought to the attention of the member on 29 June 2009 (the date on which the member confirmed receipt of the complaint), no decisive action was taken by the member at that time. Instead the member responded initially on 29 June 2009 as follows:

*To Whom It May Concern:*

*We are surprised at the content of this complaint - specifically the reference to a repeat offence, since the adjudicator has not given his/her adjudication on complaint 6802 yet. We would like to request that this complaint be placed on hold until the adjudicator has provided us with clear instructions on how to proceed. We are not convinced that our client’s advertising is misleading or that they are in breach of the code. We would be more than willing to immediately attend to any sanctions or actions requested by the adjudicator, but we don’t see the point of continuously responding to the same complaints until such a time.*

The SP requested WASPA to place the complaint on hold rather than take steps to place the service on hold pending the outcome of complaint 6802. In such circumstances, the SP assumes the full risk of the service being found to be in breach of the Code. I find the SP to have breached section 4.1.1 (outlined above) and 4.1.2 of the Code in that the member did not demonstrate fairness towards consumers and knowingly distributed information that was likely to mislead.

Section 3.9 of the Code not only requires members to bind information providers to comply with the provisions of the Code but also permits a member to suspend the services of any information provider that provides a service in contravention of the Code. In the present matter, the advertisement was misleading and the service being offered clearly breached section 11.1.2 of the Code, yet even after this ought to have been clear to the SP, it did not suspend new subscriptions to the service until the Emergency Panel directed it to do so almost a month later on 13 July 2007.

**Summary**

In summary, I find that sections 4.1.1; 4.1.2 and 11.1.2 of the Code have been breached.

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**Sanction**

In light of the severity of the breaches the following sanctions are imposed:

1. The suspension of all advertising for the service ordered by the Emergency Panel on 13 July 2009 date is confirmed and any further advertising of this service in contravention of the Code is prohibited.
2. The SP is directed to pay R50 000 ("the 1<sup>st</sup> Fine") to WASPA within 5 working days of delivery of this report for breach of sections 4.1.1 and 4.1.2 of the Code failing which the SP's membership shall be suspended until such time as the 1<sup>st</sup> Fine has been paid in full.
3. In respect of the breach of section 11.1.2 of the Code, the SP is directed to pay over to WASPA an amount of R80 000 ("the 2nd Fine") drawn from all revenue received by the SP from the date of delivery of this report from all cellular network operators (including both the SP and IP shares thereof or their respective commissions therein) in respect of any of the IP's subscription services irrespective of the date on which such services were actually rendered or the date on which the right to payment of such revenue actually accrued.
4. The SP or any other person may also settle the 2nd Fine or any portion thereof in cash by such other means as they deem fit.
5. The SP is directed to deliver to WASPA, within 7 days of delivery of this report, a list of all short codes, long codes and alphanumeric identifiers assigned to the SP and being used by the IP as contemplated by the provisions of section 3.11.1 of the Code.
6. Until WASPA provides written notification of receipt of payment of the 2nd Fine in full:
  - 6.1 the SP is directed to withhold payment of all amounts due by it to the IP as contemplated by the provisions of section 13.4.1(i) of the Code;
  - 6.2 the SP is directed to provide WASPA with monthly statements of account ("the Statements") detailing all revenue either paid over or due to be paid over to the SP by any cellular network operator in respect of any and all services provided by the SP to the IP from 1 May 2009;
  - 6.3 the SP is directed to deliver a written consent to WASPA within 7 days of the delivery of this report irrevocably authorizing WASPA to verify and audit the accuracy of the Statements with the relevant network operators concerned;
  - 6.4 all members, including the SP, are directed to suspend the provision of all subscription services to the IP from 23h00 of the first Sunday following delivery of this report; and

- 6.5 all members are directed to send a SMS message to any affected subscribers advising that the relevant services have been terminated due to a breach by Mozzi of the WASPA Code of Conduct.

The fact that sanctions have been imposed in respect of complaint 6802 for a substantially similar service has been taken into account in mitigation of the sanctions imposed in this adjudication as well as the fact that the breaches of the Advertising Rules present in complaint 6802 were not alleged to have been present in this matter.