



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Mobile Messenger
Information Provider (IP) (if any)	
Service Type	Subscription service
Source of Complaints	WASPA Monitor
Complaint Number	6984
Date received	8 July 2009
Code of Conduct version	7.4

Complaint

The complainant alleges that the SP is making use of its “Crushometer” web quiz in order to sell a content subscription service in breach of section 11.1.2 of the Code.

The complainant accessed the following link:

http://www.crushometer.net/za/?p_id=122&aff_id

and entered their phone number and other requested details on the landing page.

They then received the following SMS message:

**Enter PIN 1250 on funbox.com/za/alerts/crushometer to receive Flirting Tips
4help 0822350496 R10.00per SMS.4 SMS/week**

The complainant then re-entered the pin and clicked on agree to terms and conditions so they could get their crush’s name.

They then received a further 2 SMS messages:

**Thanx 4 joining Crushometer. Flirting Tips sent 2 ur cell. 0822350496
R10.00/SMS, 4 SMS/week SMS STOP to 31167 to end.**

**Hey Girl!When U go out this week,keep ur eye peeled 4 a gorgeous guy with a
Red Car named Bill! He'll b the one uv been looking 4!**

The complainant believes that a customer, who is interested in finding out the name of his/her crush, is inadvertently hooked into subscribing to a content subscription service offering Flirting Tips.

The complainant also alleges that the PIN number SMS message sent is misleading and should read something along the lines of "once you enter the pin code you will be subscribed etc..."

The complainant believes that the SP has breached section 11.1.2, 11.1.5 and 11.1.10 of the Code of Conduct, which it believes to be a serious offence which cannot be resolved informally.

SP's response

The SP refutes all allegations that its campaign breaches any section of the WASPA code in any way. In its review of the breach notice received, the SP identified 2 key components:

- a) the content of the PIN message; and
- b) the nature of the subscription service.

Through its own analysis, and through the implementation of recent recommendations from WASPA, the SP believes that the promotion is compliant and does not breach any section of the code.

The suggested PIN notification message conflicts with the WASPA template as per section 11.1.10 of the Code. The PIN message taken from version 7.4 of the Code further confuses the issue.

The SP refutes that the current PIN message is misleading or confusing in any way. The PIN specifically references the actual service and instructions. The user is notified that the PIN must be entered in order to receive the flirting tip content. This is further confirmed by the complainant following explicit instructions to enter the activation code thereby receiving content immediately.

The SP also states that the PIN guideline in no way references “once you enter the pin code you will be subscribed etc...” Therefore as a compliant WASP, the SP does not believe that it has breached section 11.1.10 of the code as the wording suggested is not required.

With respect to section 11.1.2, this is a flirting tips subscription and not a quiz or competition. The service provides love advice. Users are notified throughout the flow that they are joining a subscription service to receive flirting tips as an independent transaction. There are no other content offers, accordingly, this is not a breach of section 11.1.2.

In response to the alleged breach of section 11.1.5, the SP states that its clients explicitly provides notice of the ‘subscription service for R30 per week’ on each page of the program above the creative. The user is being informed repeatedly that they are joining a subscription as well as given the cost of subscription. This is not a breach of section 11.1.5 as users are not automatically subscribed. The user provides their consent as they progress to the next page. Furthermore, the Crushometer is not a transaction or non-subscription service and there is no indication as such.

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.

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.

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].

Decision

I have reviewed the SP's promotion as tested by the complainant. I disagree with the complainant that the SP's "Crushometer" is a competition or quiz. However, it does appear as a stand-alone content item or service which is unrelated to the actual offering of the subscription service.

I agree with the complainant that a user who follows the link and enters their details on the "Crushometer" does so with the intention of receiving a single content item, i.e. the name of their crush. They do not expect to be subscribing for weekly flirting tips to be sent to them.

The "Crushometer" service is not an example of the content that a subscriber could expect from the service.

After entering their phone number and other requested details on the landing page from the link provided by the SP, the user receives the following SMS message:

**Enter PIN 1250 on funbox.com/za/alerts/crushometer to receive Flirting Tips
4help 0822350496 R10.00per SMS.4 SMS/week**

This message does not follow the compulsory wording of section 11.1.10 of the code and is therefore in breach of this section of the code.

Once the PIN is re-entered, and the service is activated, the following message is sent:

**Thanx 4 joining Crushometer. Flirting Tips sent 2 ur cell. 0822350496
R10.00/SMS, 4 SMS/week SMS STOP to 31167 to end.**

This is the first time that it is confirmed that "Crushometer" is actually the name of the subscription service rather than it being a standalone service on its own.

I am therefore of the view that the SP has contravened section 11.1.2 and 11.1.10 of the Code.

Sanction

A breach of section 11.1.2 is regarded as a serious offence. This is aggravated by the fact that the manner in which the SP's service has been promoted has been intentionally designed to mislead consumers.

The following sanctions are given:

1. The SP must pay a fine in the amount of R150 000.00;
2. The SP must refund all subscribers to its "Crushometer" service;
3. The SP must notify all such subscribers that they are entitled to such refund and provide the WASPA Secretariat with written confirmation that it has done so within 10 (ten) days of receipt of notice of this adjudication;
4. The SP must immediately stop promoting its Flirting Tips subscription service in this manner by deactivating the link and taking down the relevant web pages.

These sanctions will not be suspended pending any appeal.