



REPORT OF THE ADJUDICATOR

WASPA Member	Mobile Toe
Service Provider (SP)	Integrat
Service Type	Subscription service
Source of Complaints	WASPA Media Monitor
Complaint Number	6986
Date lodged	7 July 2009
Code of Conduct version	7.4

Complaint

The complaint was lodged by the WASPA Media Monitor who identified a web IQ quiz provided by the IP which was selling a content subscription service. The Monitor raised breaches of sections 3.3.1, 11.1.1, 11.1.2 & 11.1.8 of the WASPA Code of Conduct.

The detailed complaint and testing methodology employed are set out in an Annexure to this Adjudication.

SP Response

Mobile Toe filed the following response:

“Thank you for bring this customer issue to my attention. We are very concerned with customer satisfaction and with compliance to the industry standards. We offer entertaining services for all to enjoy and investigate any problems or dissatisfaction immediately.

We understand from the investigation that the key issues to address are:

1. Confusing site design/ service description - alleged code breeches 11.1.1, 11.1.2
2. Service WAP link not working - alleged code breach 3.3.1
3. Abbreviation of the word ‘unsubscription’ to ‘unsub’ in welcome message - alleged code breach 11.1.8 and alleged advertising rules breach 5.3.1

We have immediately investigated this and would like to respond to each point.

1. Confusing site design/ service description - alleged code breaches 11.1.1, 11.1.2

We have designed the site carefully so that it explicitly states the nature of the service – an IQ online + mobile experience. We have also clearly promoted the IQ nature of the content that a customer is going to receive on their cell. This can be seen in the various elements on the page – the IQ rating curve graph, the optical brainteaser examples and the wording used. We have made it clear that a mobile subscription service is an inherent part of the service by placing a clear statement to this effect in the best possible location – the very top of the site. We feel that placement of this anywhere else would result in a breach of the code due to the information and price not being prominent. This is the most prominent position and we do not feel that the customer could be misled in any way by its wording as this is very clear.

Get IQ and IQ improvement tips subscription to your cell for only R50/week

The price point explicitly states that the service is subscription, clearly defines the price and clearly states the nature of the service.

We have taken great care to ensure that this price point is as clear as possible for all customers. We also believe that this clearly expresses to customers that this is not just an online quiz and that there is also a mobile subscription service involved: **Get IQ and IQ improvement tips subscription to your cell**. We cannot see how there could have been any confusion by the customer as to the nature of the service. As the customer also explains, we further explain the nature of the service to the customer after they enter their number: **Get your IQ and IQ improvement tips to your cell phone by taking the IQ quizzes below**

We have taken great care to make sure that this site is as clear for customer as possible and we believe that there is nothing on the site that could create any confusion. We definitely do not 'lure' customers and make it clear to customers that the service is an IQ online + mobile experience. We further confirm the service is fully compliant and does not fall into the category of a service where it is a request for a specific content item and is not in any way an entry into a competition or quiz. It is obvious what the service involves and the customer could not have been confused about the service nature. This clause of the code is intended to protect customers from 'hidden' subscription services. We plainly and clearly state the service involves a subscription component and there is no way that a customer could not be aware of this. We do not believe that we are in breach of any part of the code here.

2. Service WAP link not working - alleged code breach 3.3.1

We have reviewed the message provided and this actually has an incorrect WAP link. The message that was provided is:

If you divide 14 by $\frac{1}{2}$, what do you get? Answer:28 > Go to <http://www.mofow.net/zaig/> for members only optical brainteasers. User password: 3072

The correct WAP link is not <http://www.mofow.net/zaig/>; rather it is <http://www.mofow.net/zaig>

The correct WAP link is working fine. We have tested the link here and cannot see any problem. We believe that the customer made a mistake in the WAP address. There is no problem or breach here.

3. Abbreviation of the word 'unsubscription' to 'unsub' in welcome message - alleged code breach 11.1.8 and alleged advertising rules breach 5.3.1

As the investigation states, there is actually no requirement for the word 'unsubscription' to be used in full. We would also like to state that we are unfortunately bound by character restrictions in SMS messages and we have had to abbreviate this word in order to reach the correct amount of characters. 'Unsub' is a well known abbreviation of unsubscription and we do not believe that this should cause any problems for a customer – especially in the context of the message: **Send STOP mind50p to 31990 2 unsub**".

As noted the code is very clearly worded and focused and nowhere does it mention any derivation on the word UNSUBSCRIBE which is a distinctly different word to SUBSCRIPTION. The code would have dealt with the word 'unsubscribe' should there have been an issue around it. One can not make a decision that all abbreviations are a breach of the code (especially different words) by merely trying to tie them together. As an aside, it does say STOP which is very clearly understood as is the colloquial unsub.

To conclude, we do not believe that there has been any breach of any code or advertising guideline as we have described above. Additionally, the customer was fully aware this was a subscription service (even by their own admission) and as can be proven by the messages on the site and sent to their phone before and upon signing up. We are continuously working to improve our services and, as previously stated, we are very concerned with customer satisfaction and will take all of the comments into account with future service operation and site design. "

Sections of the Code considered

The following sections of version 7.4 of the WASPA Code of Conduct were considered:

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

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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.

11.1.8. 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

The following section of the WASPA Advertising Rules was raised by the Monitor.

9.2.1.1 Formatting Of Access Cost Text:

Access cost text must be of a size that is at least **80%** of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a non-serif font.

- The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.
- The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.
- All access cost information must be placed horizontally

9.2.1.2 Position of Access Cost Text

- For each unique access number, the full and final cost of the access must be displayed **immediately** below, or above, or adjacent to the unique access number or Content access code in a non-serif font.

- The consumer should thus not have to scroll down significantly on that same page or follow any links to other pages to be made aware of the full pricing and T&C associated with a unique access number.

9.3.1 ABBREVIATIONS

9.3.15 (i) **Must Use The Words “Subscription Service”**

If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words “Subscription Service” must be prominently displayed as per specification within the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed.

(ii) **Must Indicate Charge/s:**

The advertisement must indicate in the font size, position and type as indicated:

- (a) The TOTAL **potential** charge that the consumer may incur while part of the subscription service. See **Appendix 2** for illustrative examples..
- (b) The frequency (and the minimum frequency, if applicable) at which they will be charged for the subscription component of access to that subscription service.
- (c) Whether, in addition to the periodic subscription charges in (a) & (b) above, there are any additional charges applicable to obtaining any particular service, Content or class of Content on the advertisement. **[See (iii) below]**

This indication must include the potential and cost of any (additional) bearer charges.

Decision

1. The main thrust of this complaint is the allegation that the service –
 - 1.1. is not prominently and explicitly identified as a subscription service;
 - 1.2. involves a request by a customer for a subscription services is not an independent transaction and/or is both a request to join a subscription service and an entry into a quiz.
2. In determining the validity of these allegations the Adjudicator has also had reference to the further sections of the Code of Conduct and Advertising Rules as set out above, in addition to those raised by the Monitor. These sections largely provide content to the obligation to identify, prominently and explicitly, a service as a subscription service and are thus related to the allegations placed before the WASPA member.
3. The Adjudicator is cognisant of the fact that Mobile Toe has not had the opportunity to address any potential breach of these further sections of the Code and Advertising Rules, but does not believe that there is any prejudice accruing to Mobile Toe as a result. This

flows from the fact that determinations regarding these sections are based on the screenshots provided by the Monitor, which have not been placed in dispute by Mobile Toe. In the circumstances the Adjudicator is of the view that there is no argument which can be advanced by Mobile Toe which will counteract the evidence constituted by the screenshots.

4. The Adjudicator finds that the service offered is not prominently and explicitly identified as a subscription service. In making this finding the Adjudicator had regard to the following considerations:
 - 4.1. The term "Subscription service" is not utilised at all, in direct contravention of section 9.3.15 of the Advertising Rules.
 - 4.2. The phrase "Get IQ and IQ improvement tips subscription to your cell for only R50/week" appears only on the first two web pages of the sign-up process as provided by the Monitor. Thereafter the phrase "Get your IQ and IQ improvement tips to your cell phone by taking the IQ quizzes below" is used. As noted by the monitor there is no reference to a subscription service in this phrase.
 - 4.3. Mobile Toe argues that it has carefully designed the site so that it "explicitly" states the nature of the service – "an IQ online + mobile experience". This may be so but, from WASPA's perspective, it is the subscription nature of the service which must be identified. The Adjudicator is not sure what is being referred to by "an IQ online + mobile experience" but is clear that it involves a subscription service and that this needs to be prominently and explicitly stated.
 - 4.4. Mobile Toe argues further that they have made it clear that a mobile subscription service is an inherent part of the service by "placing a clear statement to this effect in the best possible location – the very top of the site". It is their contention that to place this statement anywhere else on the site would result in a breach of the Code and the potential misleading of consumers.
 - 4.5. It is evident, however, notwithstanding the assertions by Mobile Toe that its advertising for the service is compliant with the Code, that there is a breach of section 9.2.12 of the Advertising Rules in that the full and final access cost is not set out in the manner required. Indeed the cost of the service is not to be found at all on the page on which the sign-up for the service is completed (the third screenshot provided by the Monitor) – this states only that the PIN must be entered in order to allow the consumer to receive the results of the test.
 - 4.6. In the circumstances the Adjudicator rejects the contention advanced by Mobile Toe that it has taken all steps to ensure compliance and that there is no potential for confusion on the part of consumers as to the nature of the service provided.

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5. The Adjudicator is further of the view that signing up to the service does not constitute an independent transaction as this sign-up procedure is intrinsically linked to completing the IQ Test and receiving the results therefrom.
- 5.1. Mobile Toe argues that the “service is fully compliant and does not fall into the category of a service where it is a request for a specific content item and is not in any way an entry into a competition or quiz”. The Adjudicator cannot accept this – the first page of the sign-up procedure explicitly states “Take the Quiz now and compare your score” and there are other references to taking a quiz. The marketing mechanism driving sign-ups is centred on answering questions and then obtaining results and comparing these with others. The Adjudicator is of the view that the subscription mechanism is an entry into a quiz and therefore in breach of section 11.1.2.
- 5.2. It is not, however, necessary in assessing compliance with section 11.1.2 to consider the question of whether there has been an entry into a quiz or not. The second sentence of section 11.1.2 provides only examples of sign-up procedures which do not constitute an independent sign-up procedure and cannot be interpreted as limiting the first sentence. In this regard the Adjudicator agrees with the view expressed by the adjudicator on page 4 of the adjudication in respect of complaint 6858. See <http://www.waspa.org.za/code/download/6858.pdf>.
- 5.3. As noted above, when entering the PIN sent to their mobile phone onto the relevant webpage, there is insufficient indication that this is the act which will result in the subscription and the debiting of R50 from the consumer’s account. Rather the consumer is encouraged to enter the PIN in order to obtain the results of the test or quiz which they have just completed.
- 5.4. In the circumstances the Adjudicator does not believe that it would necessarily be the specific intention of a consumer to subscribe to the service and it follows that signing-up to the process is not an independent transaction as required by section 11.1.2.
6. The Adjudicator also wishes to raise a discrepancy between the pricing as advertised on the website (“R50/week”) and the SMS containing the PIN sent to the Monitor (“R50.00/week) as against the SMS confirming the subscription (“U’ll get ur link 4 unlimited access 2 Optical Brain Teasers weekly @ R50/SMS”). The testing undertaken by the Monitor indicates that R50 was deducted on receipt of the SMS with the link to members’ only content.
- 6.1. This is self-evidently contradictory and confusing or inaccurate and the Adjudicator finds that there is a breach of section 4.1.1 of the Code.
7. The argument advanced by Mobile Toe in respect of the allegedly defective WAP link is accepted and the alleged breach of section 3.3.1 is accordingly dismissed.

8. The aspect of the complaint dealing with the abbreviation of “Unsubscribe” to “Unsub.” is not upheld for the following reasons:
- 8.1. It is clear from the context in which the abbreviation occurs and the nature of the abbreviation itself what it is referring to. The adjudicator is not of the view that a reasonable person viewing the instructions as a whole would be confused as to how to unsubscribe from the service.
- 8.2. The Monitor argues that “the fact that SUBSCRIPTION may not be abbreviated, would only mean that the same would apply for UNSUBSCRIBE”. This cannot be sustained. An Adjudicator cannot create new rules based on variations of the Code or Advertising Rules: rather the assumption must be made that, if the drafters of the Code and Advertising Rules had intended to circumscribe the abbreviation of unsubscribe, they would have explicitly done so. There is obvious intent behind forcing providers to use the word “subscription” in full. Given the STOP requirements specified in the Code it is not clear that the same intent can be said to apply to the term “unsubscribe”.
9. The alleged breaches of section 11.1.8 of the Code read with section 9.1.3 (incorrectly cited as section 5.1.3 by the Media Monitor) of the Advertising Rules are dismissed.
10. In summary the WASPA member is found to have breached sections 4.1.1, 11.1.1 and 11.1.2 of the WASPA Code of Conduct as well as sections 9.2.16 and 9.3.15 of the WASPA Advertising Rules.

Sanction

11. In determining an appropriate sanction the Adjudicator has had regard to the record of the member as well as sanctions imposed in respect of breaches of the same clauses by other WASPA members.
12. In the Adjudication in respect of Complaint 4868¹ – lodged on 18 September 2008 and the only other matter explicitly involving this member – the member was fined the sum of R10 000 in respect of very similar breaches. In this matter the following finding was made:

“The Adjudicator is of the view, however, that, notwithstanding the assertions of the WASPA member to the contrary, the advertising of the service is not compliant with the Advertising Rules. It is the further view of the Adjudicator that the advert does not

¹ <http://www.waspa.org.za/code/download/4868.pdf>. “The Complainant visited a website and did an IQ test which requested a cell number for completion and alleges that as a result of entering her number she was unknowingly subscribed to a subscription service run by the IP with the SP as an Aggregator.”

go far enough in bringing to the attention of consumers the fact that it is for a subscription service.

In reaching this conclusion the Adjudicator has noted that:

- the words "Subscription Service" are not "prominently displayed at the top section of the advertisement" as required by section 9.2.16 of the Advertising Rules;
- the manner in which doing the IQ Test and the subscription sign-up are combined is, in isolation, potentially confusing to consumers;"

12.1. It was found that the member had breached section 9.2.16 of the Advertising Rules.

13. In the Adjudication in respect of complaint 3106² a different IP was fined R25 000, with payment of R20 000 suspended for 12 months, for a breach of clause 11.1.1 of the WASPA Code and clause 9.2.16(i) of the Advertising Rules.

14. The Adjudicator also had regard to the Adjudications in respect of complaints 4413³ and 4580⁴.

15. The Adjudicator considered the following as mitigating factors:

- 15.1. the remedial action taken by the WASPA member including the payment of a refund;
- 15.2. the fact that there were, albeit non-compliant, indicators that the service was a subscription service.

16. The fact that the impact on consumers who subscribed to the service would have been aware of such subscription almost immediately through the observance of the requirements of section 11.1.8 of the Code (and therefore had the opportunity to opt out) is regarded as neither mitigating nor aggravating. Such consumer would still have been out of pocket the initial R50 – a considerable sum - as well as the cost of unsubscribing and the member should not benefit in the assessment of sanctions merely through compliance with the Code.

17. The Adjudicator also noted the seriousness with which offences relating to subscription services are regarded and the damage to the industry which flows from conduct such as that undertaken by the member in this matter. The Adjudicator is of the view that it is not

² <http://www.waspa.org.za/code/download/3106.pdf>

³ <http://www.waspa.org.za/code/download/4413.pdf>

⁴ <http://www.waspa.org.za/code/download/4580.pdf>

acceptable that blatantly non-compliant services such as that offered by the member continue to be offered to South African consumers notwithstanding the length of time with which the basic compliance obligations have been in place. The member has been previously found guilty of breaches of the same sections of the Code and Advertising Rules with which it has been found to be non-compliant in this matter and it appears that sanctions previously imposed have not proved to be a sufficient incentive to compliance.

18. The following sanction is imposed:

- 18.1. The member is fined the sum of R150 000, payable in full to the WASPA Secretariat within five working days of receipt of invoice therefore from the WASPA Secretariat.
- 18.2. The member is required to terminate the subscription of and refund in full all consumers who subscribed to the service.
 - 18.2.1. Such refund is to be affected within ten (10) days of receipt of notification of this Adjudication and proof of the refunds is to be provided to the WASPA Secretariat.
 - 18.2.2. The member is further ordered to send an SMS to all such subscribers explaining that the termination and refund has been ordered by WASPA. Such SMS should not contain any marketing material and must, at a minimum state the words "refund ordered by WASPA www.waspa.org.za" as well as setting out the name and contact number of the member.
- 18.3. Although it appears that the promotion for the service no longer exists in the form complained about, in the event that it remains current the member is ordered to terminate it immediately.
- 18.4. These sanctions are imposed in respect of the cumulative effect of all breaches.

19. The sanctions set out in paragraph 18.2 above shall not be suspended by the operation of section 13.3.15 of the Code in the event that this Adjudication is appealed.

ANNEXURE – WASPA MEDIA MONITOR TESTING METHODOLOGY

DATE:

7 July 2009

PHONE NUMBER:

0793430739

SERVICE PROVIDER:

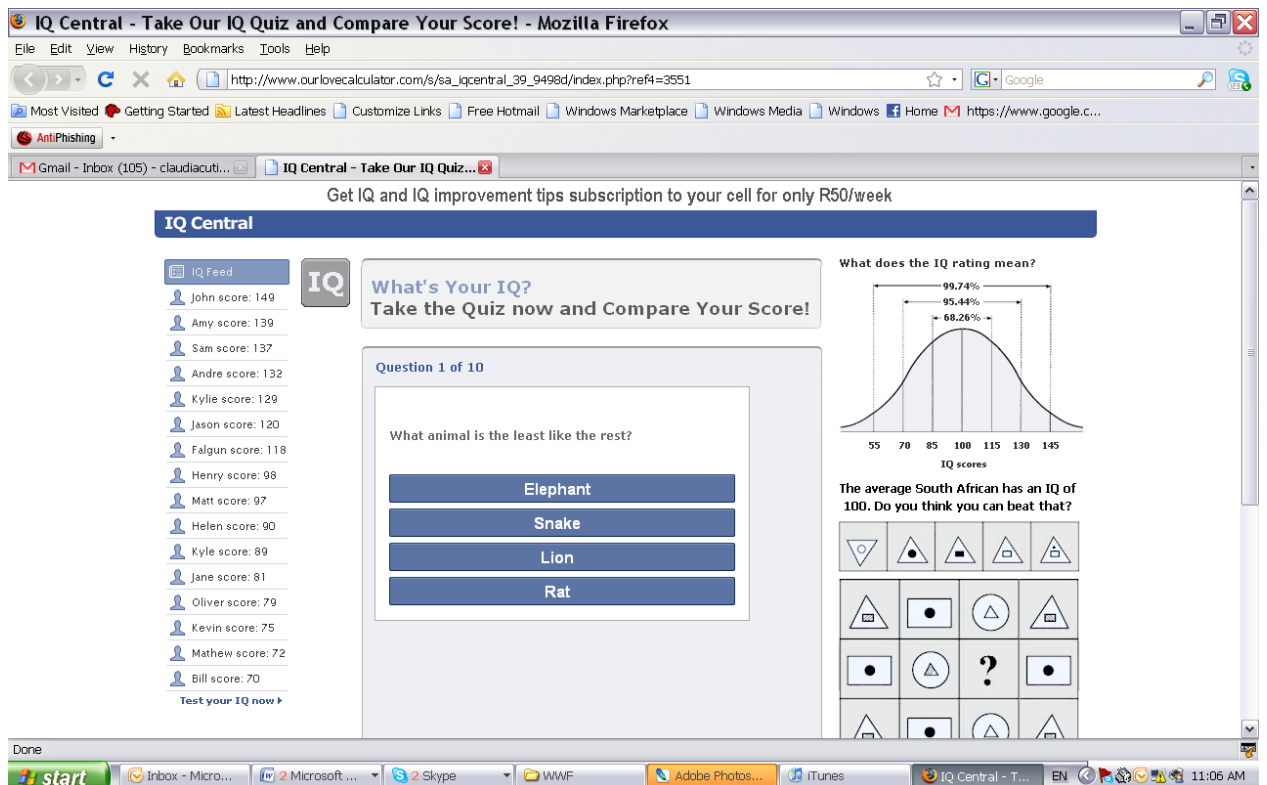
Integrat

STARTING BALANCE:

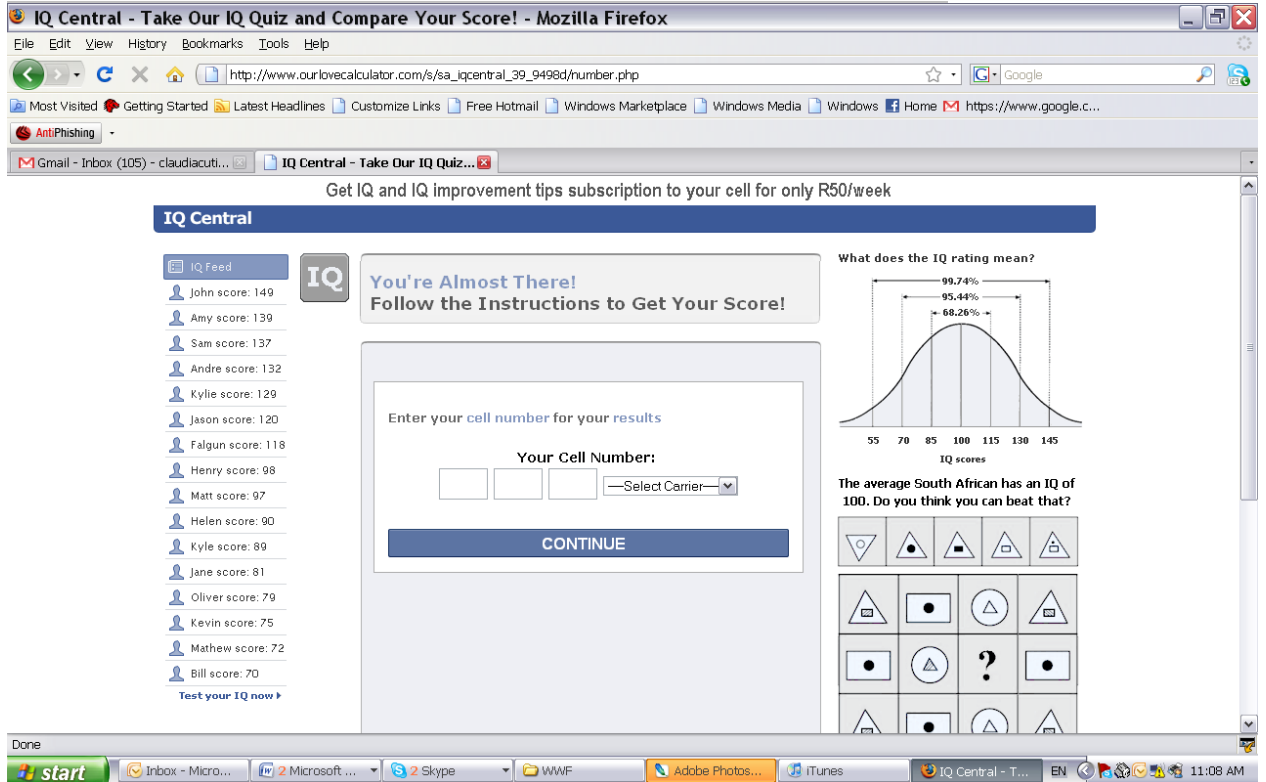
R159.50

WEB LINK:http://www.ourlovecalculator.com/s/sa_iqcentral_39_9498d/index.php?ref4=3551

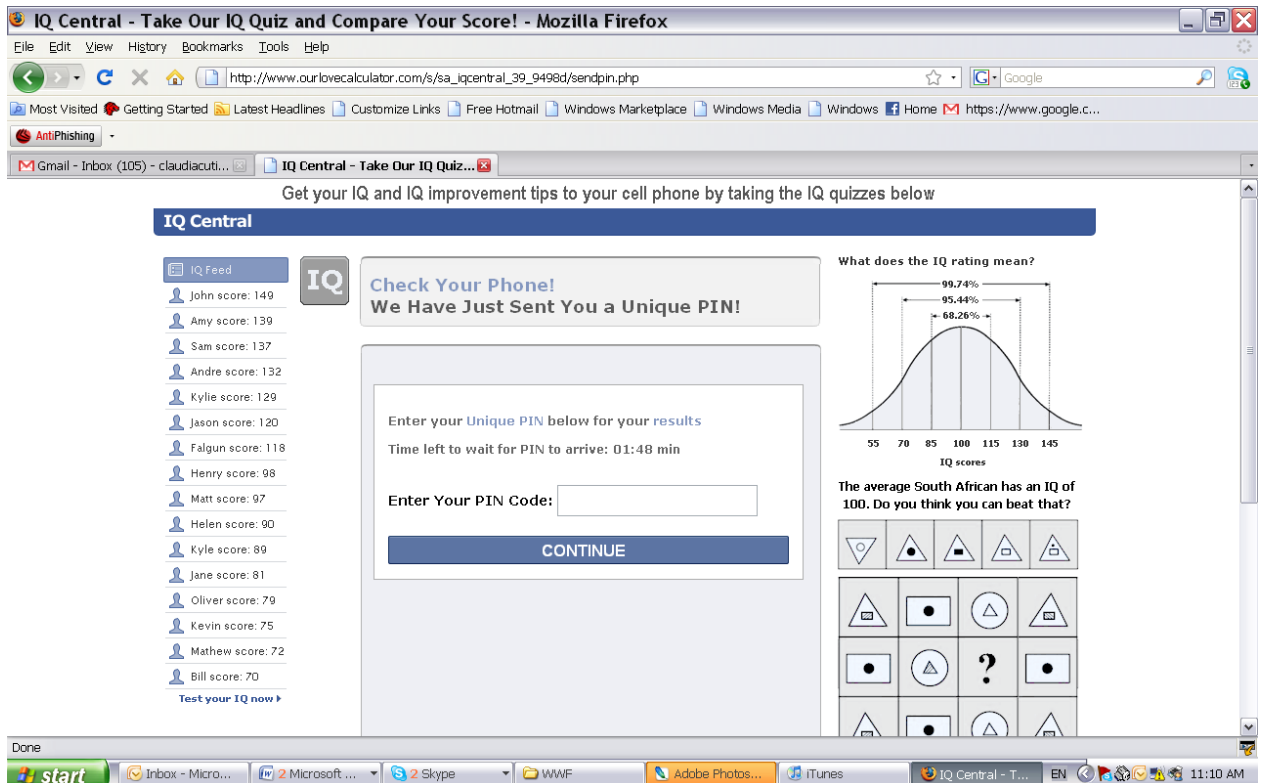
I went to the above web link:



I answered all ten questions and then was prompted to enter my cell number and carrier so I could receive my results:



And then clicked on continue.



Then I received a sms with a pin code in it:

Enter pin 4449! U'll b subscribed to mind50p from Mobile Toe @ R50.00/week. Help?

Call 0822350400, VAS rates apply. To unsubscribe sms STOP to 31990.

I then entered the pin as prompted so I could receive my results.

The screenshot shows a Mozilla Firefox browser window displaying the 'IQ Central' website. The page title is 'IQ Central - Take Our IQ Quiz and Compare Your Score!'. The URL is 'http://www.ourlovecalculator.com/sa_iqcentral_39_9498d/thanks_redirect.php?from_page=pin'. The page content includes an 'IQ Feed' with a list of names and scores, a 'Check Your Cell for Your Score!' section with a 'CONTINUE' button, and a 'What does the IQ rating mean?' section with a normal distribution graph and a 3x3 grid of icons.

Then I received a two sms:

1. **Uve subscribed to IQ!U'll get ur link 4 unlimited access 2 Optical Brain Teasers weekly @ R50/SMS. Send STOP mind50p to 31990 2 unsub.call 0822350488 4help**
2. **If you divide 14 by ½, what do you get? Answer:28 > Go to <http://www.mofow.net/zaig/> for members only optical brainteasers. User password: 3072**

I then checked my phone balance and it was R10.50 which means R50 had been deducted! I then tried to go to the webpage in question twice on my phone and it said both times that the web page cannot be found.

Conclusion:

The customer is drawn to the advertised IQ test in order to do the test and receive their IQ score. The way it is shown as a subscription service at the top of the page saying: **“Get IQ and IQ improvement tips subscription to your cell for only R50/week.”** This can easily mislead the customer into thinking it is just an advertisement for an improvement tips subscription and has nothing at all to do with taking the IQ test at all. (Perhaps making the headline part of the block may have been better). Also one needs to scroll down significantly to see that there are even any terms and conditions. Only once you enter your cell phone number does the top sentence change to: **“Get your IQ and IQ improvement tips to your**

cell phone by taking the IQ quizzes below” This time the word subscription is nowhere in the information. The customer is prompted to enter their cell number in order to receive their results, and the only way to do so is by subscribing to a service which the customer has no intent in doing at all. Also once the customer is subscribed, the link given in order to do the members only optical brain teasers weekly does not work. In the welcome message the unsubscribe details are not very clear, it reads: **Send STOP mind50p to 31990 2 unsub”** It should say something along the lines of:” to unsubscribe sms STOP mind50p to 31900”. The revised Code of Conduct of 17 June 2009 prohibits all SP’s from using Quizzes to lure customers into Subscription Services.

Breaches of the code:

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

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.

11.1.8. 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

BREACHES OF THE ADVERTISING RULES:

5.3.1 ABBREVIATIONS

One is not allowed to abbreviate the word **subscription** in any way e.g.: **Subs**, or **Sub** or **Subscr**. In the welcome message the Service provider uses the word **unsub**. Whilst it is not

featured in the abbreviations block in the Ad Rules, the fact that SUBSCRIPTION may not be abbreviated, would only mean that the same would apply for UNSUBSCRIBE.