



REPORT OF THE ADJUDICATOR

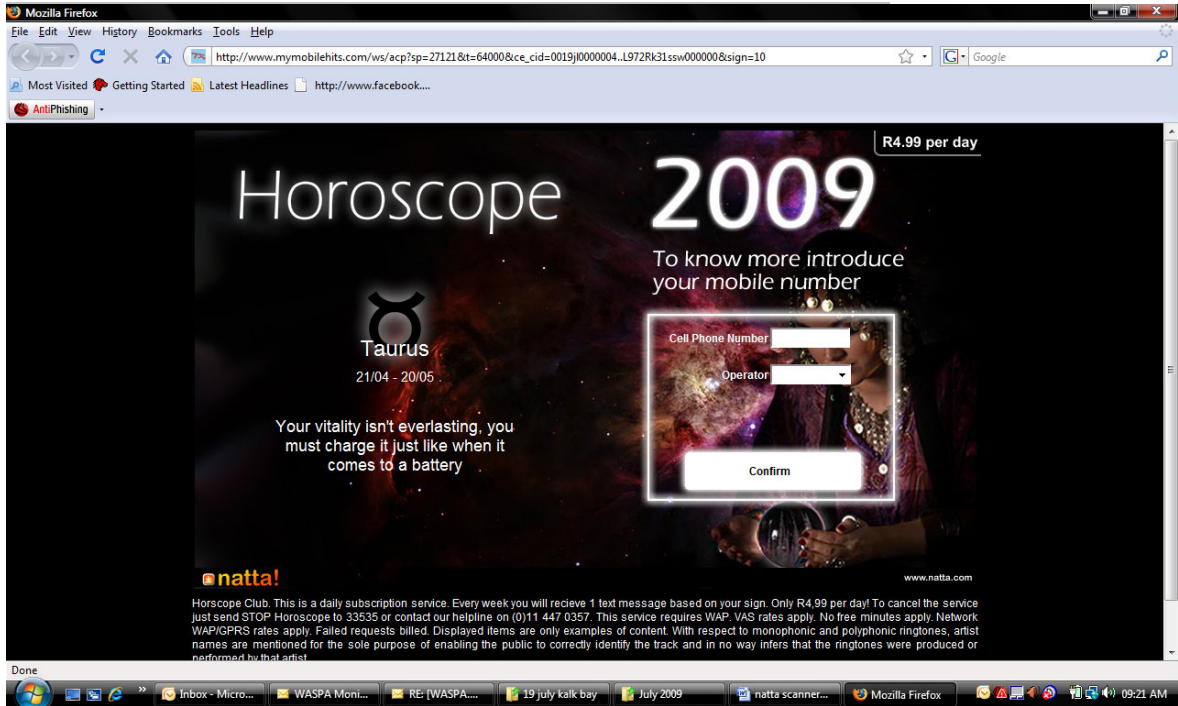
WASPA Member (SP)	TIM w.e
Information Provider (IP) (if any)	Natta
Service Type	Subscription service
Source of Complaints	WASPA Monitor
Complaint Number	7085
Date received	20 July 2009
Code of Conduct version	7.4

Complaint

The complainant accessed the following web link:

http://www.mymobilehits.com/ws/acp?sp=27121&t=64000&ce_cid=0019jl0000004..L972Rk31ssw000000&sign=10

and arrived at a landing page which displays an advertisement for the SP's "Horoscope Club" (see below).



This advertisement is not explicitly identify the service as a subscription service.

Also, when entering the cellphone number and operator information, the following screen is blank. This service is therefore not working.

The advertisement displays copy:

"Every week you will receive 1 text message based on your sign. Only R4,99 per day!"

The complainant asks that surely the SP is not sending a customer only one message per week at a cost of R35 per week. The complainant does not believe that this content is worth R35 per week.

The complainant alleges that the SP has breached the following sections of the code:

3.3.1; 11.1.1; 11.1.2 and 11.1.3

The complainant has indicated that this is a serious offence and

cannot be resolved informally.

SP's response

The SP responded to the complaint by stating that it had stopped the campaign. However it disputes certain of the allegations made by the complainant.

Regarding section 3.3.1:

The SP states that the blank screen was caused by technical problems experienced by it at that time. It states that the web spots weren't working correctly. This made it impossible for anyone to subscribe to the services.

Regarding section 11.1.1:

The SP states that the required information is now on all of its campaigns. It states further that it was advised to increase the font size for all its campaigns.

Regarding section 11.1.2:

The SP doesn't agree with this point. The campaign is not associated with any quiz or competition. It is advertising a horoscope and informing the subscriber that they will receive their weekly horoscope based on their star sign.

The SP states further that it has operated in South Africa for some years, during which time it has conducted a fair business and always wants to be compliant with every rule and offer good value to its customers.

So that there is no misunderstanding, it will be more explicit and introduce the words "weekly horoscope" on the advert. It states further that it wants its clients to fully understand what they are subscribing to and to recognize the value of the services provided.

Regarding section 11.1.3:

The SP disputes that it has breached this section. There is an example of the content for each sign in the advertisement.

Complainant's reply

The complainant replied that the campaign has not been stopped and after checking, the complainant confirmed that the site has not been taken down.

The complainant once again entered their details and encountered a blank screen, thereby confirming that the site is still not functional.

The words "subscription service" are still in a font that is too small (smaller than the T&C's).

The complainant clarified that they were not suggesting that the Horoscope service is a competition or quiz. However, any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. Hence, the consumer must know they will be receiving ongoing content for the ongoing payments.

The changes suggested by the SP have not been actioned on the website.

The complainant states that the horoscope advertisement does not tell a consumer what they will be getting for R4.99 per day (unless they read the fine print). The complainant believes that the inclusion of the suggested wording "weekly horoscope" on the site will create better clarity for consumers.

The complainant maintains that receiving one horoscope SMS per week at R4.99 per day does not offer good value to the customer as suggested by the SP. The complainant does however suggest that this is a decision that the consumer must ultimately make when interacting with this service.

SP's further response

The SP states that it stopped all advertising and that the campaign is not live. The SP states that a consumer can't access the site any longer.

The SP then provided a new "horoscope" campaign which was sent to the media monitor to check.

The media monitor checked the new campaign and confirmed that it was not in line with the Code and specifically pointed out where it contravened the Code and Advertising Rules.

The SP then undertook to make certain changes to the campaign content again.

The monitor again found the following problems with the advert:

1. Sometimes when the page loads, the words "mobile subscription service R4-99/day" disappears off the page.
2. Other times when the page loads, the words "Mobile subscription service R4,99/day" is there for a few seconds and then the web-user is distracted by the words "ONLINE TARROT READING" immediately.
3. The advert still doesn't explicitly identify this as a subscription service. The words "Online Tarrot Reading" implies a once-off service.
4. When the web-user interacts with this service, it increases the sense that it is a internet service.
5. Also when testing, the result of this Tarrot reading will be sent to the users phone. Again luring customers into a subscription service. This would still be a clear breach of 11.1.2.

And lastly, I really do not think that it is a market related service charging customers R4-99 every day i.e. R35/week... to receive ONE SMS.

Sections of the Code considered

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.

11.1.3. 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.

Decision

The SP’s Horoscope advertisement contravenes sections 3.3.1, 11.1.1; 11.1.2 and 11.1.3 of the WASPA Code of Conduct for the reasons stated by the complainant.

I am not satisfied with the SP’s response and the attempts at amending the campaign have not taken the matter any further.

The complaint is accordingly upheld.

Sanction

The breaches of the code are regarded in a serious light. The SP does not appear to fully comprehend the import of a number of sections of the Code and it is strongly suggested that it comes up to speed very quickly if it intends continuing to offer services to the SA market.

The following sanctions are given:

1. The SP must immediately stop the “Horoscope” service and take down the web based advertisement.
2. The SP must refund all subscribers to the service in full.
3. The SP must notify all subscribers that they are entitled to the aforesaid refund.
4. The SP is fined R 125 000.00.