



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Integrat
<b>Information Provider (IP)</b> (if any)	Mobile Toe
<b>Service Type</b>	Subscription service
<b>Source of Complaints</b>	WASPA Monitor
<b>Complaint Number</b>	7197
<b>Date received</b>	29 July 2009
<b>Code of Conduct version</b>	7.4

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### Complaint

The complainant accessed the following web link:

[http://www.ourlovecalculator.com/zabrain\\_50/](http://www.ourlovecalculator.com/zabrain_50/);

and landed at a web page advertising a brain quiz or brain teasers “*sent straight to your phone*”.

The following text appears at the top of the landing page:

*“Get your IQ and IQ improvement tips to your cell for only R50/week”*

The complainant then clicked on the hyperlink (“*Click Here*”) and was directed to a series of new web pages, each containing 10 separate trivia questions. The complainant answered all 10 questions correctly and was then directed to a new web page where they were prompted to select their age to enable the results of the quiz to be formulated.

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The complainant was then prompted to enter their cell number and carrier to access the results. The complainant noticed that a tick box with the prompt "I agree" had already been ticked thereby automatically signifying the complainant's agreement to the Terms and Conditions.

The complainant then received an SMS message with a PIN number which read as follows:

***Enter pin 4357! U'll be subscribed to mind50w from Mobile Toe @ R50.00/R/week. Help? Call 0822350400, VAS rates apply. To unsubscribe, sms STOP to 31990.***

The complainant entered the PIN number and clicked "continue" on the website to receive the results. The result was shown on another web page.

The complainant then received a further 2 SMS messages which read as follows:

***U've subscribed to IQ! Ull get ur link 4 unlimited access 2 Optical Brain Teasers weekly @ R50/SMS. Send STOP mind50w to 31990 2unsub.call 0822350488.***

and

***Heres ur members only wap link 4 unlimited access:  
<http://www.mofow.net/zaig/> User PIN: 3072. 2days teaser: If you divide 14 by 1/2  
what do you get? Answer:28***

When checking their account balance, the complainant noted that a sum of R50.00 had been deducted from their account.

The complainant believes that the SP has breached the provisions of the WASPA Code of Conduct in a number of material respects. In particular, the information at the top of the landing page does not explicitly state that the user is subscribing to a subscription service.

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The text colour is grey and the lettering is very thin so it is unclear for the customer to see in the first place. Only after you have answered all ten questions does the line at the top of the page change to: **“Get your IQ and IQ improvement tips to your cell for only R50/week”**. The complainant believes that the average customer would not realize this change, as they would think they are only taking part in an IQ test, and not joining a subscription service.

After the user’s cell number is entered, the screen shot changes to the initial line at the top of the page, with the *“I agree to the T&Cs”* box already automatically ticked. Although the pricing and subscription information is included on the PIN notification message, it is not repeated anywhere on the web page where the PIN is to be re-entered.

If the customer doesn’t scroll down at all there is no way of knowing that there is even terms and conditions at the bottom of the page. The terms are also in grey text which is unclear.

The PIN notification message is incorrect in that the pricing format is wrong. **“@ R50.00/R/week** should read **“at R50.00/week”**.

The unsubscribe instructions in the welcome message are also unclear. **“Send STOP mind50w to 31990 2unsub”** should read **“sms STOP mind50w to 31990 to unsubscribe”**. The SP also uses the word **TXT** as shown in the above screenshot instead of **SMS** which is the correct abbreviation.

The complainant believes that the following sections of the code have been breached:

3.1.1; 3.1.2; 4.1.2; 6.1.1; 6.2.4; 6.2.5; 11.1.1; 11.1.2; 11.1.5 and 11.1.8.

The complainant also believes that rule 9.2.11 of the Advertising Rules have been breached.

The complainant believes the SP is well aware that it is prohibited from using a quiz to promote a subscription service and regards the alleged contraventions of the Code to be of a serious nature.

**IP's response**

The IP initially responded by stating that it was very surprised by the nature of the complaint as they believe that the site offers great customer value, an enjoyable customer experience and is fully compliant. The IP did, however remove the URL, while the matter was being investigated further.

In its formal response to the complaint, the IP denied that the nature of the service was not clearly stated. It believes that the name of the site, being "**Brain Teasers sent straight to your cell**" clearly highlights that this is a cell-based service.

The IP does not believe a customer could be misled by the advertising on this site because by its very nature, it is promoting a cell-based service. The IP states that it has taken great care in the design of this site and its wording to ensure that customers are clearly informed about the nature of the service.

The IP disputes that it has contravened sections 3.1.1, 3.1.2 or 4.1.2 of the Code.

The IP states that it is not aware of any authorities that prohibit this form of marketing and again denies that it is attempting to mislead customers.

The IP denies that it has breached section 11.1.2 as the request from the customer is to join the advertised service.

The IP denies that it is in breach of section 11.1.5 as the customer is not automatically subscribed to any service. They are specifically requesting to join the advertised service.

The IP highlighted the wording at the top of the index page, i.e. "**Get your IQ and IQ improvement tips to your cell for only R50/week**", and "**Get your IQ and daily improvement tips on your cell phone by taking the IQ quizzes below**" on the other pages.

The IP also states that it made sure that the colour used for the pricing information did not clash with the name of the service and in doing so it believes that it complies with all the WASPA guidelines. The IP therefore denies that it is in breach of section 9.2.1.1.

The IP stresses the following:

1. The name of the service is promoted in large bright green text on every page, i.e. "***Brainteasers sent straight to your phone***".
2. Above this bright green wording is further clarification on the nature of the service, explicitly stating that it is cellular content being promoted.
3. Before the customer incurs any charges, they are sent a text message fully explaining all aspects of the service and all costs. The IP believes that clients are made fully aware of all charges and the nature of the service. It believes that its website is very clear, and it underlines this in the clarity of the messages that it sends.
4. As the complainant has confirmed, the PIN message that is sent before a user joins the service reads:

**Enter pin 4357! U'll be subscribed to mind50w from Mobile Toe @ R50.00/R/week. Help? Call 0822350400, VAS rates apply. To unsubscribe, sms STOP to 31990.**

The IP believes this message is very clear and conforms to all WASPA guidelines.

5. The IP also refers to the following message:

**"U'll be subscribed to mind50w from Mobile Toe @ R50.00/R/week"**

and believes there can be no doubt as to the nature and charges for this service. The message clearly and plainly states the fact that the customer will be subscribed and the cost for that subscription. The IP denies that it is in breach of sections 11.1.1 or 11.1.8.

6. The service cannot start without the entry of the PIN contained in this message. The customer has to read the message sent to the phone and so

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has to be aware of all costs before they join. There is no way that a customer can join without knowing or understanding the nature and costs of the service.

7. Regarding the automatic ticking of the "I agree" box in relation to the terms and conditions, the IP states that nowhere in the code or advertising guidelines is this mentioned as an issue.

The IP takes offence to the allegation that it has breached sections 3.1.1 and 3.1.2 of the Code. It believes that it is a legitimate business conducting legitimate services in South Africa and that it has taken great care and attention to detail to make certain that customers are fully aware of the service.

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### **Sections of the Code considered**

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2. Members are committed to lawful conduct at all times.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

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.

11.1.5. 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

*Advertising Rules:*

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 nonserif 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.

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- 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.

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.

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## Decision

Before any conclusion is reached on whether the IP has breached sections 3.1.1; 3.1.2 and 4.1.2, I will first examine this web-based promotional campaign in the context of section 11 of the Code, which relates to subscription services of this nature.

Firstly, the landing page and various other web pages accessed as part of this promotion, do not comply with section 11.1.1 of the Code. Nowhere on these pages is it prominently and explicitly stated that the services are “subscription services”.

The IP has therefore contravened section 11.1.1.

Secondly, I must agree with the complainant that users accessing these web pages may be misled into believing that they are entering a quiz or IQ test rather than subscribing to a weekly subscription service. After answering the 10 questions, the user is constantly prompted to enter their personal information in order to access the results of the quiz.

Furthermore, the wording at the top of some of the web pages states “***Get your IQ and IQ improvement tips on your cell phone by taking the IQ quizzes below***”. This completely contradicts the SP’s denial that it has breached section 11.1.2 of the Code.

I am therefore of the view that by prompting the user to enter an online quiz, which may be seen as an independent transaction, in order to promote its subscription service, the IP has contravened section 11.1.2 and 11.1.5.



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I am also of the view that the IP has breached the Code and Advertising Rules in the following ways:

1. The notification message does not contain all the information required by section 11.1.8;
2. The pin number sms pricing format is wrong: **@ R50.00/R/week**. It should read: **at R50.00/week**.
3. The colour, size and placement of the pricing information on all of the web pages does not comply with section 6.2.5 read together with Rule 9.2.1.1 of the Advertising Rules.

The access cost text is not 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 cost text blends in with the background colour scheme and is obscured thus preventing easy reading of complete details of the price.

4. The unsubscribe instructions in the welcome message are also unclear: **Send STOP mind50w to 31990 2unsub** should read: **sms STOP mind50w to 31990 to unsubscribe**.
5. The Service Provider also uses the word **TXT** as shown in the above screenshot instead of **SMS** which is the correct abbreviation.

I am also concerned about the following issues:

1. the URL for the site refers to "*our love calculator*" instead of to the name of the service in question;
2. The pricing information in the notification message differs from the pricing information on the top of the landing web page. Instead of stating that the pricing is R50 per week as originally advertised on the landing page, the notification messages states that the price of the service is R50 per SMS with 2 messages being sent to them per week, i.e. the weekly cost is now R100.00.

I am therefore of the view that the IP has contravened sections 3.1.1; 3.1.2 and 4.1.2.

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### **Sanction**

The aforesaid contraventions of the Code and Advertising Rules are viewed in a serious light. I have taken into account that the IP is a new member of WASPA. However the provisions of the Code are explicit and all members must make themselves fully compliant before rolling out any services.

The SP in this matter is also fully conversant with the provisions of the Code and could have been consulted to ensure that the service complied with the Code.

I have also taken into account that the IP immediately removed the URL from the marketplace.

The following sanctions are given:

1. The IP must stop promoting its Brain Teaser subscription service in this manner, i.e. by offering consumers entry into an IQ test or quiz.
2. The IP must refund all subscribers to this service in full since its inception.
3. The IP must notify all subscribers that they are entitled to this refund.
4. The IP is fined the sum of R 75 000.00. This fine is suspended for 3 (three) months pending any further contraventions of this nature.