



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat (Pty) Limited
Information Provider (IP) (if any)	Mobile Messenger
Service Type	Content subscription service
Source of Complaints	WASPA Monitor
Complaint Number	7769
Date received	7 October 2009
Code of Conduct version	7.4

Complaint

The complainant clicked on an internet banner advertisement and was directed to the IP's website at: http://www.oozm.com/za/iquiz2/?p_id=840. The landing page for this website invites users to enter an iQuiz competition to stand a chance of winning an Apple iPhone.

The complainant entered the competition and correctly answered all 3 questions provided. They were then prompted to enter their name and cellphone number to receive their score for the quiz. After entering their details, the complainant was then prompted to "sms OK to 31167" to get the score.

However, before the complainant could sms the above information to 31167, they received the following sms:

*UR PIN is >>3854<< Enter on funbox.com/za/alerts/dumbtest 2 ger ur Funbox
Amazing Facts subscription & IQ score. 4HELP call 0822350496 R40/week*

The complainant then sms'd "OK" to 31167 as prompted. They then received the following two sms's:

Congratulations, IQ Quiz Amazing Facts will now be sent to your cell. 4HELP call 0822350496 R10.00x4sms p/week sms STOP to 31167 2end

and

Ur IQ is 121!Well don't Smarty! Ur IQ is higher than the ave IQ of an ave person. Stay tuned for more!

The complainant states that R10.00 was deducted from their account for joining the service. The complainant then received the following sms half an hour later:

3400,000 Americans are considered "Extreme Commuters". There people commute over 90 minutes round trip every day to work.4Help call 18002337105

A further amount of R10.00 was deducted from their account for this sms.

The complainant alleges that the banner advert they clicked through from does not advertise the IP's Funbox Amazing Facts service, nor does it refer to any subscription service. Instead users are encouraged to enter the iQuiz by standing a chance of winning an Apple iPhone. The advert also does not contain any pricing information for the service.

The web page which is linked to the banner advert does state at the top of the page in small font and in the terms and conditions at the bottom of the page that this is a subscription service. However, it does not explicitly state that users will automatically be subscribed to the subscription service by entering the iQuiz.

The banner advert also states that a user will be entered into the draw to win the iPhone if they score 100 or higher on the quiz. The complainant scored over 100 but received no further information regarding the competition. There is also no information regarding the competition in the terms and conditions on the web page.

The complainant also alleges that the welcome message is in the wrong format and is very confusing and that wrong abbreviations are used in the terms and conditions and in all the sms messages sent.

The complainant believes the IP is using the IQ Quiz and what appears to be a fake iPhone competition to lure customers into joining its subscription service.

The complainant alleges that the IP has breached the following sections of the WASPA Code of Conduct:

3.3.1; 4.1.2; 6.1.1;6.2.2; 6.2.3; 9.1.1; 9.1.2; 9.1.4; 9.3.1; 11.1.1;11.1.2; 11.1.5; 11.1.8; 11.1.10; 11.5.1; and section 9.3 of the Advertising Rules.

SP's response

The SP notified the IP immediately of the complaint and requested it to remove the link (http://www.oozm.com/za/iquiz2/?p_id=840) with immediate effect. The advert and webpage were deactivated immediately pending the outcome of this complaint.

The SP also put the IP to terms to make certain changes to the promotion and provide confirmation that it had done so within 24 hours, failing which the SP would suspend service to the IP.

The SP also provided the IP with examples of the correct formatting of the MT messages.

The SP also stated that it would identify any user adversely affected by the iQuiz service and offer a full refund.

IP's response

The IP provided its own response to the various allegations made by the complainant.

1. Re. alleged breach of section 3.3.1 of the code:

The IP states that it did not promise any service for which it is unable to offer and the service presented is also aligned with the user's request. The promised service, "Amazing Facts" and "IQ score" are provided to the subscriber.

2. Re. alleged breach of section 4.1.2 of the code

The IP states the required information is clearly displayed on all pages of the campaign and is not false or deceptive.

3. Re. alleged breach of section 6.2.2 of the code

The IP undertook to make the necessary changes in order to comply with this section before the service is promoted again.

4. Re. alleged breach of section 6.2.3 of the code

The IP states that all pricing information was clearly displayed on the campaign website in appropriate locations and in legible font size and color.

5. Re. alleged breach of section 9.1.1 of the code:

The IP undertook to make the necessary changes before the service is promoted again.

6. Re. alleged breach of section 9.1.2 of the code

The IP undertook to make the necessary changes before the service is promoted again.

7. Re. alleged breach of section 9.1.4 of the code

The IP undertook to make the necessary changes before the service is promoted again.

8. Re. alleged breach of section 9.3.1 of the code

The IP undertook to make the necessary changes before the service is promoted again.

9. Re. alleged breach of section 11.1.1 of the code

The IP undertook to make the necessary changes before the service is promoted again.

10. Re. alleged breach of section 11.1.2 of the code

The IP acknowledged that it must provide the subscriber's IQ score result on the campaign website prior to subscription.

11. Re. alleged breach of section 11.1.5 of the code

The IP states that it is clearly stated that it is a subscription service on the campaign website and in the first message (PIN message).

12. Re. alleged breach of section 11.1.8 of the code

The IP states that the welcome message sent to users contains all of the necessary information clearly and concisely.

13. Re. alleged breach of section 11.1.10 of the code

The IP states that it had attempted to have a second opt-in mechanism which was to be mobile originating. However the PIN instructional message was sent rather than a message requesting to reply.

14. Re. alleged breach of section 11.5.1 of the code

The IP states that an instruction on how to terminate service is clearly stated in the welcome message and in the summary terms on the website.

Sections of the Code considered

Section 3.3.1:

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

Section 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.

Section 6.1.1:

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

Section 6.2.2:

All advertisements for services must include the full retail price of that service.

Section 6.2.3:

Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

Section 9.1.1:

Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

Section 9.1.2:

Any promotional material for a competition service must include details of how the competition operates.

Section 9.1.4:

Promotional material must clearly state any information which is likely to affect a decision to participate, including:

- (a) the closing date;
- (b) any significant terms and conditions, including any restriction on the number of entries or prizes which may be won;
- (c) an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes;
- (d) any significant age, geographic or other eligibility restrictions;
- (e) any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item;
- (f) the entry mechanism and workings of the competition.

Section 9.3.1:

Competition services must have a specific closing date, except where there are instant prizewinners.

An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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].

Section 11.5.1:

Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

Advertising Rules:

9.3 Abbreviations:

Decision

The IP has admitted that it has contravened sections 6.2.2; 9.1.1; 9.1.2; 9.1.4; 9.3.1; 11.1.1; 11.1.2 of the WASPA Code of Conduct in respect to its Funbox Amazing Facts subscription service, and also from the manner in which the service has been promoted.

The IP has denied that it has contravened section 3.3.1 of the Code. I do not understand this denial as the IP has admitted that it is offering a competition service without providing entrants with any further opportunity of winning the advertised prize. This is clearly a contravention of section 3.3.1.

I agree with the complainant that the entire promotion of this service, from the banner advertisement to the sending of the MIT messages after the user has subscribed, albeit inadvertently, is knowingly false and deceptive, and is likely to mislead users into subscribing to the service. The IP has therefore contravened section 4.1.2 of the Code.

I am satisfied that where the IP does publish the costs of subscription, it has done so in accordance with section 6.2.3. The IP has not contravened this section of the Code.

The complainant was subscribed to the service before they had sent the required opt-in sms. Furthermore users intending to enter the iQuiz, thinking that it is an individual competition, are automatically subscribed to the IP's service. I am not

satisfied with the IP's explanation in this regard and find that it has contravened section 11.1.5 of the Code.

The notification message sent by the IP after users are subscribed to the service is not clear and does not contain the correct information in the required format. The IP has contravened section 11.1.8 of the Code.

The message sent to users to enable them to initiate the service also does not contain the correct wording in the required format. The IP has contravened section 11.1.10.

I am satisfied that the IP has not contravened section 11.5.1.

The IP has used incorrect abbreviations when promoting the Amazing Facts service and has contravened section 9.3 of the Advertising Rules.

Sanction

Perhaps the most worrying aspect of this complaint is the manner in which the IP has used a bogus iPhone competition to lure subscribers to its Amazing Facts subscription service. This must be viewed in a very serious light.

It has been noted that there have been at least 3 other complaints made recently against the IP relating to its web-based subscription services, 2 of which were upheld.

These facts have been taken into account when choosing appropriate sanctions.

The SP should be commended for its prompt response to this complaint and for immediately deactivating the service pending the outcome of this adjudication.

The following sanctions are given:

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1. The SP is ordered to terminate all services offered by the IP using the relevant short code with immediate effect.
 2. The IP must refund all amounts charged to the complainant's account and to provide proof to the WASPA Secretariat that it has done so within 7 (seven) days of receiving notice of this report.
 3. The IP must offer a refund of all amounts charged to any persons who were subscribed to this service from its inception within 7 (seven) days of receiving notice of this report.
 4. The IP must, within 7 (seven) days of receiving notice of this report, provide the WASPA Secretariat with a list of all subscribers to this service from its inception, together with proof that they have been offered a refund and, where they have accepted such offer, that the refund has been duly paid.
 5. The IP is fined the amount of R150 000.00.