



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Buongiorno UK
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainants:	Anonymous
Complaint Number:	7994
Code Version:	6.2
Advertising Rules Version:	2.3

Complaint

The Complainant wrote:

“This service is advertised by banners on Facebook and other sites. It is advertised as the Geo IQ Test.

http://www.youmobile-za.com/adv-geo-test--result-319_104.html?checkSplash=yes&operatore=mtn&bannerVar.

This service uses a Quiz to entice users into a subscription service for ring tone. The score of the test is used to bundle a subscription service. In a very sneaky manner the subscription offer is added below the bundled "Geo IQ Score" with a tick-box that has already been ticked to agree by default. The size of the text that is used to display the Geo IQ score twice on the page and the size of the subscription offer hidden below it becomes obvious that the Geo IQ score is used to initiate the subscription and not the actual subscription.

The site also does not display the pricing as it should at the top of the page. The banners used to advertise this service does not display that this is a subscription service.”

The Media Monitor provided an input:

“I am in complete support of the complaint lodged. It is furthermore alarming and completely unacceptable that iTouch are still running campaigns such as this, following the 11.1.2 clause change on 17 June 2009 already.

My breaches are:

11.1.1

11.1.2

11.1.5

In addition, Facebook is a networking platform that is accessed by many children. In my opinion, 11.7.1 also applies, but an Adjudicator can comment further on this. This adjudicator ruling will set a precedent going forward in terms of subscription advertising on Facebook as a media platform, and will result in further tight monitoring on the Facebook site: 11.7.1. Promotions for subscription services must not appear in publications or other media specifically targeted at children.
Yes, please proceed to an EMERGENCY PANEL.”

The Complainant was not satisfied with the SP's response and wrote:

“Absolutely not. This does not resolve the complaint. Facebook has nothing to do with the fact that the website offer is not compliant. The site still bundles a subscription service with a score for an IQ Geo test. The site still does not display the pricing as required by the WASPA code. This site is still in breach of the WASPA code.”

In his final response the Complainant wrote:

“The tick box is automatically ticked when the page opens. The user does NOT tick the box to join the subscription, the box is already ticked.

1. A user goes to the website from a banner that tells them they can get their Geo IQ Score and NO mention of content at all. Clearly the user did not click the banner because they wanted content, but because they wanted their Geo IQ score.

2. On the website the user is prompted to enter their number to get their Geo IQ Score and sent a PIN to their handset still under the premises that they are doing this to get their Geo IQ Score.

3. While the user follows the instructions to get their Geo IQ Score sent to their phone, they are automatically subscribed to a content subscription service. Automatically subscribed because the box is already ticked and the user does not first have to tick the box.

4. Even if the user ticked the box (which they don't, because it's already ticked by default) they only receive their score after they have subscribed. This means that the Geo IQ score is bundled with a subscription service. They can't get their score until they subscribe to a content offer i.e. the Geo IQ score is used to initiate the subscription for the content club. The code is clear about it in clause 11.1.2 that an entry into a competition or quiz may not be used to initiate a subscription service.

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.”

Service provider's response

The SP wrote:

"Below is the banner the user would see. By clicking on the banner he or she is taken to the second page following the banner.

The below page states that this is a Fun Club Subscription Service at R6/day. Once the user enters his or her mobile number and operator, as well as tick the Terms and Conditions box, then only is the user sent a pin number to his or her mobile cell phone. If the pin is entered incorrectly the page will not progress to the next one. The pin number needs to be entered correctly in order for the user to proceed with the fun Club Subscription.

If the user does not tick the T&C's box the popup seen below informs the user that he or she should select the Terms and Conditions before proceeding with the process.

On this page it informs the user in the T&C's that it is the Fun Club Service at R6/day, as well as below on all the pages following the 1st Banner.

As shown on the forth page the user enters his or her mobile number and ticks the T&C's box. Only then will the user be able to proceed to the next level.

The below page also states that this is in fact a subscription service at R6/day, as well as shown the Terms and conditions at the bottom of the page informing him or her of the Fun Club Subscription Service, as well as the stop command as seen on all the pages in the process.

Once the user has correctly filled in the above page then only is he or she taken to the page where the pin needs to be entered.

The pin is sent to the user mobile number initially entered in the above page. If the pin is not entered correctly an error is displayed in the block below.

One the user has entered the pin correctly sent to him or her then only is the user given his or her Brain Geo IQ.

At this stage the user is sent the Fun Club Welcome Messages, as well as content items for download.

All pages clearly advisers the user that he or she is in fact interacting with a mobile subscription service and billing would occur at R6/day, as well the unsubscribe details and call centre contact number should he or she experience any problems with the subscription of any kind.

All pages show the user that he or she is interacting with a subscription based service and billing that would occur while subscribed to the Fun Club Service.

We do not feel that we are in breach of the code of conduct, as all pages informs the user of the Fun Club's intentions as well as messages sent to the user also makes the user aware of his or her website interaction with the advertised pages.

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.

11.1.3. 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.

11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription 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.

11.1.9. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.1.11. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.

6.2. Pricing of services

6.2.1. All advertised prices must include VAT.

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

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.”

The SP provided the following response to the Media Monitor's input:

“It is our understanding that Facebook is not specifically targeted at children nor are we in any way in breach section 11.7.1 of the code, as the Terms and Conditions are clearly stated in the advert, as well as the web site URL to the

full T&C's, which states that the bill payers permission needs to be obtained before proceeding with the subscription.

Nowhere in the WASPA Code of Conduct does it specify that Facebook is not a suitable advertising media, hence Facebook is not specifically targeted at Children as per Global Demographic Statistics.

Nevertheless, we have advised our third party advertiser to retract the advertisement. We will advise once this has been completed.”

In its final response the SP wrote:

“We have just received confirmation that the advertisement has been removed.”

Sections of the Code considered

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

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.

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.

11.1.7. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent response.

From its inception on Facebook all the way through to the website the SP's service is flawed with breaches.

It seems to the Adjudicator that the SP persists in utilizing quizzes to lure consumers into subscribing to its fun club albeit a different medium, which in this case is Facebook. This is a clear breach of section 11.1.2 and section 11.1.5.

After perusing the Facebook banner it is unambiguously clear to the Adjudicator that the SP is not making any attempt to indicate to the prospective user that such service is indeed a subscription service. The SP's allegation that the banner clearly displays that it is a subscription service is a farce, and in fact a mockery of what the WASPA Code of Conduct is aiming to achieve. Nowhere does it state "Subscription Service" on the banner and the "R6 day" is of such a nature, due to its size and colour, that it would take a finely trained eye to spot it. This is a direct breach of section 11.1.1.

The website page which is displayed after the banner is clicked also leaves much to be desired.

Once again the display of the subscription service at the top of the page is of such a nature that no justification to the words "prominent" and "explicit" is given as is required from the Code of Conduct and Advertising Rules. This is another breach of section 11.1.1.

It is also alarming that the website leaves the terms and conditions' box ticked, not providing a user that is lured into believing that he/she will only be receiving his/her brain geo IQ score, the opportunity to give his/her informed consent. This read together with the above breaches result in further breaches of sections 4.1.2 and 4.1.1. These dealings with customers are misleading and not honest and fair.

Although the Adjudicator is not convinced that Facebook is specifically targeted at children, the Adjudicator is albeit of the opinion that the ticked tickbox does allow a child to subscribe without the SP obtaining confirmation that the child does have permission to do so or is indeed informed of the fact that he / she needs permission. So although no breach of 11.7.1 could be found, the Adjudicator is of the opinion that there has been a breach of section 11.1.7.

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's subsequent response and withdrawal of the site.

1. The SP is required to uphold its suspension or withdrawal of the service and access to the site it is hosted on until such time as it complies with the orders set out below. The SP may not initiate any new or existing billing transactions for the service during such period of suspension; however it may process any unsubscription requests;

2. The SP shall send an sms notification, detailing such suspension, to all existing subscribers of the service in the format prescribed in 11.4 of the current Code (the SP shall furnish the WASPA Secretariat with confirmation that it has notified its subscribers);

3. The SP shall clearly indicate at the first point of contact with the service and all subsequent pages and sites (irrespective of medium) that the service is a subscription service and further precisely what the subscription entails. These indications must be clearly visible and unambiguous.

4. The SP shall ensure that any reference to or implication of the availability of single items or quizzes are removed from the service's site such that the site only makes reference to its subscription content in clear and unequivocal terms;

6. The SP shall ensure that its terms of use are amended in accordance with Rule 9.2 of the Advertising Rules;

7. The SP is fined:

7.1. R100 000 for its breach of sections 4.1.1 and 4.1.2 on the basis set out above; and

7.2. R150 000 for its non-compliance with sections 11.1.1, 11.1.2, 11.1.5 and section 11.1.7, of which R 70 000 is suspended for one year, payable to the WASPA Secretariat within 5 (five) working days of notice.

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the SP is indeed complying with this.