



REPORT OF THE ADJUDICATOR

WASPA Member (SP): World Base Limited trading as FunMobile
Information Provider (IP): Not applicable
Service Type: Content subscription service
Complainant: Anonymous competitor
Complaint Number: #8080
Code Version: 8.0
Advertising Rules Version: 2.3

Complaint

The complainant, one of the SP's competitors which wishes to remain anonymous, lodged the following complaint with WASPA on 16 November 2009:

Complaint #8080 (lodged via the WASPA website):

Affiliations: Complainant wish to remain anonymous

WASPName: FUNMOBILE

OtherID: <http://za.funmobile-ringtones.com/index.php?a=730&z=b3ee5ee5ac8f44d6aaac243348869ae9>

Code_Breached: 11.1.1 No idea what they are selling

*11.1.3 No examples of the contents provided breaches of pricing format.
Would like to have adjudicator review.*

Detailed_Description_Complaint: <http://za.funmobile-ringtones.com/index.php?a=730&z=b3ee5ee5ac8f44d6aaac243348869ae9>

Tick_as_appropriate: I have not contacted the service provider and believe this matter requires WASPA's attention

Declaration_Good_Faith: Information provided is true and correct and provided in good faith

The complainant did not supply WASPA with screenshots of the areas of concern on the SP's website as part of its complaint. It did not supplement its complaint with this further detail either and the links provided do not resolve to a current website.

Service provider's response

The SP responded to the complaint as follows:

Dear WASPA,

Funmobile received complaint #8080 on 17th November 2009 and below is our response to the investigation on clause 11.1.1 and 11.1.3 of Code of Conduct (Ver. 8.0).

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.

Funmobile's Response:

On the right hand side of the webpage, not only have we clearly shown the words "subscription service" but we have also shown the subscription price and interval "R7.50 / 2 days". Also, the sentence "you acknowledge that you are subscribing to..." is stated in the Terms of Service and that is to remind user he/she is subscribing to a subscription service. Hence Funmobile's services are in compliance with clause 11.1.1.

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.

Funmobile's Response:

Since two or more examples must be displayed only if the advert is showing examples of the content that is available to the subscription service,

Funmobile has not breached clause 11.1.3 as there is no example of content in the advert. We have chosen not to include examples of the content because we do not want to give the wrong impression that the samples displayed in the advert are the only contents available to users.

I hope this clarifies the uncertainties. Should there be any questions, please feel free to contact me at gigilau@funmobile.com.

Thank you.

Best Regards,

Funmobile

Gigi Lau

The complainant was afforded an opportunity to respond to the SP's reply and did so as follows:

Below is my input which I have emailed you last week on funmobile.

11.1.1 the word subscription service is not only small and was not bold to make subscribers to identify the service was subscription.

The price point R7.50/2 days could be mistakenly for R7.50 for 2 days subscription... the advertise could indeed have R15/week 2SMS/RECEIVED.

11.1.3 The advertisers could have 2 samples on the website and also could indicate to the subscribers they will receive more products by stating "and many others". Having to say not to include samples of products is already consider bundling service and subscribers would not be clear what they are subscribing to...

Thank you

Sections of the Code considered

I have reviewed this complaint in the context of version 8.0 in order to determine compliance with the Code as this was the prevailing version of the Code at the time the complaint arose. Having regard to the issues raised in this complaint, I have also considered other sections of the Code, which are pertinent.

I have therefore considered the following sections of the Code which appear to be pertinent to this matter:

Code version 8.0
<p>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.</p>
<p>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.</p>

Sections of the Advertising Rules considered [if applicable]

Section 9 of the Advertising Rules sets out requirements for advertising on Internet Web Sites. The provisions go into a fair amount of detail regarding specific formats and positioning and apply to “all advertising placed on internet-based web sites visible to the general public where Access Channels are displayed. This also includes advertisements placed on third-party web sites.”

Given that there is no reproduction of the subject matter of the complaint before me, I am unable to comment on specific provisions of the Advertising Rules which may be relevant.

Decision

While the complaint may have merit, the complainant has not included evidence of the allegedly infringing behaviour.

There are no screenshots that reveal how the relevant pages look at the time the alleged infringement took place.

I am therefore unable to make a finding on the SP's alleged breach of the Code's provisions, either as alleged or at all.

Accordingly, I dismiss this complaint for lack of sufficient evidence.

Note: I have requested further evidence from the complainant, in which case this decision may be revisited.

Sanctions

Complaint provisionally dismissed. This order shall become final should the complainant not furnish WASPA with sufficient evidence to merit revisiting this order within two weeks of receiving WASPA's request for such further submissions.