



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	Buongiorno UK
<b>Information Provider (IP):</b>	Not applicable
<b>Service Type:</b>	Mobile Spy website in breach of the COC
<b>Complainants:</b>	Monitor
<b>Complaint Number:</b>	8085
<b>Code Version:</b>	7.4
<b>Advertising Rules Version:</b>	2.3

### Complaint

The Media Monitor wrote:

“On 15 September a complaint was lodged against iTouch Buongiorno for a Mobile Spy website which was in breach of the COC.

The customer is drawn to the advertised “**Mobile Spy**” “**Find their location**” which shows you by entering a person’s number you will be able to find their location. The customer then proceeds to join the service to be able to get this amazing download that will let you be able to find anyone you’re looking for. It is still evident that both the advertised contents are nowhere to be found on the web site at all. Therefore the Service Provider is still advertising content which is not available to customers.

We were advised by Buongiorno that a change request was submitted to take care of this issue.

Received an email on 18 September 2009 from Buongiorno:

“With regards to the content not available for this category, this is due to handset compatibility problems. We have logged a change request to try and rectify the matter with urgency.”

It is very clear that Funclub has not changed all the requirements, as stated in the first test. Furthermore, putting the site back up shows blatant disregard and dishonesty.

The pin code SMS and welcome SMSes have not been changed as told to do so. Although they have now corrected the cost of pricing, it is clear that the information on the top of the page which identifies this as a subscription service and gives costing etc, is now written in a grey colour which makes it much harder to read. In the previous test this information was clear in white lettering. See screen shots below.

The website was de-activated, but has since appeared again, with requested changes not made. Please proceed to EMERGENCY PANEL.”

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

“No, the link is exactly the same in both complaints. Original complaint 7631 attached again, proving it's the same link as the current complaint. I don't know where Buongiorno is getting this link from: [http://www.youmobile-za.com/adv-geo-test--result-319\\_104.html?checkSplash=ye](http://www.youmobile-za.com/adv-geo-test--result-319_104.html?checkSplash=ye)  
Please proceed to adjudication.”

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### **Service provider's response**

The SP provided the following response:

“The link to the mobile spy has been removed as per the original request. The original link we withdrew was: [http://www.youmobile-za.com/adv-geo-test--result-319\\_104.html?checkSplash=ye](http://www.youmobile-za.com/adv-geo-test--result-319_104.html?checkSplash=ye).

The link that was sent in this complaint was / is and has been withdraw with immediate effect.

[http://www.youmobile-za.com/adv-funclub-games-274\\_101.html?checkSplash=yes&r](http://www.youmobile-za.com/adv-funclub-games-274_101.html?checkSplash=yes&r).

We do apologise for the inconvenience caused in this regard, as this was overlooked by our third party media advertiser. The pages are now both withdrawn and all advertising has been stopped around the mobile spy application.”

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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.

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

3.7.1. Members will not provide any services or promotional material that:  
(a) contains a visual presentation of explicit violent sexual conduct, bestiality, incest or rape or extreme violence which constitutes incitement to cause harm;

**(b) results in any unreasonable invasion of privacy;**

(c) induces an unacceptable sense of fear or anxiety;

- (d) encourages or incites any person to engage in dangerous practices or to use harmful substances;
- (e) induces or promote racial disharmony;
- (f) causes grave or widespread offence; or
- (g) debases, degrade or demeans.

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.

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.

6.2.8. Pricing on any promotional material must use one of the following generally accepted formats for prices in Rands: "Rx" or "Rx.xx".

6.2.9. During any calendar month, if the total cost of any service exceeds R200 for that month:

- (a) Where the WASP is in control of the billing (e.g. an OBS), an additional communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.
- (b) Where the WASP is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.

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.

11.1.10. 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].

11.2.2. The reminder messages specified in 11.2.1 must adhere exactly to the following format, flow, wording and spacing:

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, sms HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

or

U r subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsubscribe, sms STOP [service keyword] to [short code].

11.5.6. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. U'll then b resubscribed @ [cost of service and frequency of billing].

The following sections of version 2.3 of the WASPA Advertising Rules were considered:

## 9.2.2 T&C DISPLAY RULES

### 9.2.2.1 Formatting & Font Criteria For T&C Text

- **The T&C text must be in 12 point font size**, or 50% of the largest access number on a

Web page, whichever is the greater. The T&C must be in a non-serif font.

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## 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.

The Adjudicator in this matter has come to the conclusion that this matter in its entirety relates to Adjudication 7631 where a decision has already been reached by the Adjudicator thereof.

The WASPA Secretariat is therefore referred to the decision in Adjudication 7631 with which the Adjudicator in this matter concurs and as such, the Complaint is upheld.

In addition, it has come to the Adjudicator's attention that the mere advertising or provision of a service that might cause an invasion of privacy (whether functional, working, available or not), as is the case in this matter, is a further breach of section 3.7.1 (b) of the Code of Conduct.

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### **Sanctions**

The sanctions stipulated in Adjudication 7631 refer.

For its breach of section 3.7.1 (b) the SP is fined R 20 000-00 payable to the WASPA Secretariat within 5 (five) working days after notification hereof.