



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	Buongiorno UK
<b>Information Provider (IP):</b>	Not applicable
<b>Service Type:</b>	Subscription service
<b>Complainants:</b>	Anonymous
<b>Complaint Number:</b>	8309
<b>Code Version:</b>	7.4
<b>Advertising Rules Version:</b>	2.3

### Complaint

This is a formal complaint.

The Complainant wrote:

“Love quiz service.

1. Banner is advertised of subscription service - nowhere on the banner does it state subscription service.
2. Users are requested give their names to get their love compatibility score
3. Users are routed to a page where they can subscribe to content items.”

The Complainant requested additional information:

“Could the SP please advise when the ad has been removed as it is still available at the moment?”

The Complainant provided the following feedback:

“Please send this complaint for adjudication - we are not satisfied that this advert is using a love quiz to lure subscribers into a subscription service. Please take note that this service is still available and still not compliant.”

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### Service provider’s response

The SP wrote:

“We thank you for bringing this to our attention. The advertisement in question was not supposed to have been live. This is by all means an oversight from our third party website advertiser. We have requested that the advertisement be pulled with immediate effect and will advise once done.”

The SP provided a further response:

“We have since assessed the advertisement and have noted the changes that need to be amended. In the link <http://mymobile.co.za/about.php> the banner has been changed to include the subscription service text. In the link [http://www.youmobile-za.com/adv-love-calculator-324\\_101.html?check](http://www.youmobile-za.com/adv-love-calculator-324_101.html?check) the page shows the subscription service information as well as the terms and conditions, which include the pricing of the Service offered, as was always the case in the second link provided by the complainant. The page also shows the user the unsubscribing instruction and link to the full terms and conditions of the service, which informs of the Service in detail, as well as the WASPA link in the event of any problems or issues raised with the mobile content service. We trust that this creative is now WASPA compliant and thank you for bringing this matter to our attention.”

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### **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.

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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.

It has come to the attention of the Adjudicator that the advertisement has been removed from the various links and that it is no longer available.

The SP in this matter has not denied the allegation and has in fact acknowledged that the said advertisement was not in line with the Code.

It is therefore found that the SP was in breach of sections 4.1.1, 4.1.2, 11.1.1 and 11.1.2 of the Code of Conduct.

With regards to its shifting of blame to its third party, the Adjudicator feels it necessary to refer the SP to Adjudication 7631 where the relevant Adjudicator made the following remarks in its decision related to third parties:

*“There is an abundance of precedent to the effect that a WASPA member cannot escape responsibility for compliance with the Code of Conduct by raising a defence that the non-compliant conduct was undertaken by a third party with which the member had contracted for the provision of marketing and other services. This position is normally expressed with regard to the relationship between WASPs as aggregators and information providers – see Appeal 4580 @ paragraph 6.1.8 and Appeal 0985 @ paragraph 6.3.4 – and this Adjudicator cannot see any cogent reason as to why this principle should not be extended to apply to the relationships between WASPA members and affiliate marketing entities. The following excerpt from the findings of the WASPA Alternative Appeals Panel in Appeal 4580 is particularly apposite:*

*“It is imperative that the parties have proper agreements in place to manage their contractual relationships and to define their roles and responsibilities under the Code and generally in relation to consumers.”*

*2. It is accordingly found that the member bears direct responsibility for any breaches of the Code of Conduct related to the promotional site and sign-up procedure as tested by the Monitor.”*

The Complaint is upheld.

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## **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 action subsequently taken by the SP to rectify its breach.

The sanctions in Adjudication 8411 refer.