



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Integrat
<b>Information Provider (IP)</b> (if any)	Creative Messaging
<b>Service Type</b>	Subscription service
<b>Source of Complaints</b>	Anonymous
<b>Complaint Number</b>	8475
<b>Date received</b>	14 January 2010
<b>Code of Conduct version</b>	8.0

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### Complaint

The complainant has identified a number of URL's for promotional web pages for a number of content subscription services offered by the IP under the short code 41176.

The complainant states that there were no examples shown of the content available from these services other than the wording "IQ games" or "ringtones". There is no clear indication as to what consumers would get from these subscription services.

The complainant also alleges that the word "subscription service" is published in very small font in the terms and conditions at the bottom of each promotional web page. There is no notification that these are subscription services at the top of the relevant pages and the notification in the terms and conditions is not visible enough for viewers.

The complainant provided copies of screenshots of the landing pages at the following URL's:

<http://zaiq.moboo.me/index.php?a=732&l=50042&check=1&z=1eccef4bb304fbd20d51528576091c52>

<http://zaiq.moboo.me/index.php?a=732&check=1&z=54a8a125e642cd6b291b3bc5d92b9200>

<http://zaiq.moboo.me/index.php?a=732&l=50050&check=1&z=cf8a4f2709f59a211fdd0bd34b692b04>

<http://zaton.es.moboo.me/index.php?a=730&l=1400&check=1&z=924cf692583d5827e9228a01651cec23>

<http://zalove.moboo.me/index.php?a=731&check=1&z=185b79e0ddee54303eaf78c5ae69241e>

<http://zalove.moboo.me/?a=731&l=51105&check=1&z=5d1788958659f2a4c47ab279d5c3156e>

<http://zalove.moboo.me/?a=731&l=51106&check=1&z=6dc5c795792112fc4093724703a62ed9>

<http://zalove.moboo.me/?a=731&l=51401&check=1&z=d0b19b77de4f2f38e5670f1bc57d3280>

<http://zalove.moboo.me/?a=731&l=51402&check=1&z=6c7a77f68afbabaaf53029c492a015ea>

<http://zalove.moboo.me/?a=731&l=51403&check=1&z=241d51696d958cc00ab7b18f30d72263>

<http://zaton.es.moboo.me/index.php?a=730&l=9023&check=1&z=8ece731751ba6b31952b60ae7c3c2be5>

**SP's response**

The SP stated that the IP had recently opened a new account with it and according to the SP's records, had not been given permission yet to launch its services. The IP's initial WASPA application was rejected due to non-compliant services and the SP had been engaging with the IP on changes to the services.

The SP requested confirmation from WASPA as to whether the IP's membership is active and that the complaint be redirected to the IP if its membership was active. However the SP does state that the complaint may be premature because they have not given the IP the go ahead to market these services. There have only been test transactions on this account.

The SP did acknowledge that the relevant URL are not compliant with the WASPA Code. The SP suspended the IP's account with immediate effect until further notice. The IP was also instructed to remove all the listed URL's and to re-submit them to the SP in a secure environment for review. Upon confirmation of the URL's being removed, the account was reinstated but with limited functionality and only stop commands were passed on to the IP and no further subscriptions were allowed.

The IP was also asked to provide full disclosure on any other services not listed to enable the SP to do a full compliance review. The short code will only be fully reinstated once the SP is satisfied that the services are fully compliant.

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**IP response**

The IP states that the promotion of short code 41176 had not really started yet. They just tried to test the market with one or two affiliates and that there was very little traffic through these sites.

The IP confirmed that the relevant web pages at the given URL's had been removed.

The IP apologised for the inconvenience caused.

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### **Complainant's reply**

The complainant states that the IP should have made sure that the landing pages were compliant before the promotions were launched.

The complainant questions how they could have accessed the landing pages if the program had not been started or was not active.

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### **Sections of the Code considered**

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. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

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**Decision**

The SP has acknowledged that the promotional material found at the URL's provided by the complainant were not compliant with the WASPA Code. In particular, the IP has failed to provide proper notification on the web pages in the prescribed format that the services are subscription based, as required by section 11.1.1 of the Code, read together with the Advertising Rules.

The IP has also failed to provide at least two examples of the content available for each service as required by section 11.1.3. By advertising only one content item, customers may be misled into joining the service while only intending to request the advertised content item or to enter the relevant IQ test or quiz. Should this occur, the IP would also be found to have contravened section 11.1.2 and 11.1.5 of the Code.

Despite what has been said by both the SP and IP about these pages not being actively marketed yet, it is apparent from the fact that the complainant was able to access the pages that the promotions for these services were active and made available to consumers.

I accept the SP's statement that it had not yet approved these promotions and was unaware of the fact that they were already being marketed by the IP. The SP cannot be held accountable in this regard.

I have also noted the IP's statement that there was very little traffic while the sites were live. However, this does not change the fact that the potential harm could have been caused to consumers accessing these pages.

The complaint is accordingly upheld.

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**Sanction**

There have been no other complaints lodged against the IP regarding these promotions. It would therefore appear that this is the IP's first offence. However it should be said that the IP is not off to a good start as a new member of WASPA.

The relevant pages have been taken down and the URL's have been blocked by the SP. There is also no evidence of any actual consumer harm being caused by the contraventions.

In light of the foregoing, the IP is given a final warning to comply with section 11 of the WASPA Code and any other provisions relevant to the subscription services it intends bringing to the South African market.

The IP is also fined an amount of R50 000.00 which will be suspended for 3 months. This fine will become due and payable should the IP be found guilty of any further contravention of the WASPA Code within the 3 month period, and will be claimed in addition to any further sanctions that may be given against the IP pursuant to such further complaint.