

REPORT OF THE ADJUDICATOR

WASPA Member (SP): Buongiorno UK

Information Provider (IP): Not applicable

Service Type: Content subscription service

Complainant: WASPA Monitor

Complaint Number: 9508

Code Version: 9.0

Advertising Rules Version: 2.3

Complaint

The complainant is the WASPA Monitor ("the Monitor"). The Monitor's complaint concerns one of the SP's Fun Club campaigns which incorporates a website where visitors are invited to enter a mobile number in return for a featured content item or download. The SP has run a number of these Fun Club campaigns, which have been subject to scrutiny by WASPA adjudicators for some time. The complaint was filed pursuant to the Monitor's efforts to raise her concerns with the SP's non-compliance with the Code and the Advertising Rules.

This complaint is concerned with a "Tarot of Love" campaign ("the service") which the Monitor has described in her report, annexed to this report and marked "A". The main features of the service include a landing or splash page ostensibly inviting a visitor to the website to insert a mobile number and submit it. The goal appears to be to receive a Tarot reading on the visitor's mobile phone. There are three panels to the left of the landing page which feature three seemingly unrelated items although it is not clear from the screenshot what these three panels are supposed to achieve.

Once a visitor submits his or her mobile number he or she will receive a series of messages from the SP and will be directed back to the website to enter a confirmation code and then receive verification that the confirmation code is correct.

The visitor then finds himself or herself subscribed to the service at a rate of R3,00 per day.

The primary complaint appears to be that the website gives insufficient notice that it was a landing page for a subscription service. The screenshot of the website's landing page contains a horizontal line of text on the top right of the landing page which reads "R3 / Day Subscription Service". The only other indication that the service is a subscription service appears from the terms and conditions at the bottom of the landing page in a font that is as small as the line of text quoted above, if not a little smaller.

As the Monitor points out:

From the first page you are intrigued by: "Tarot of Love Good Luck Find out what the cards have for you" The tiny information in the top right hand corner written in white stating that it is in fact a subscription service and the pricing thereof is almost completely unnoticeable. The T&Cs are also written in a way which is unclear due to the busy background etc, this is in contradiction to the Advertising Rules.

Her further concerns are set out in her report.

Service provider's response

The SP takes issue with the Monitor's allegations and addresses her complaints on a virtual line-by-line basis in its response which I have annexed to this report and marked "B".

The SP has addressed each allegation the Monitor raised by section of the Code as well as her allegations concerning compliance with the Advertising Rules. The Monitor's response was to refer the complaint to adjudication.

Sections of the Code considered

This complaint was lodged on 13 May 2010, after version 9.0 of the Code was implemented. I have therefore applied version 9.0 of the Code to this complaint. I have highlighted provisions of the Code, which are particularly relevant to this complaint:

Code version 9.0

- 2.11. A "content subscription service" includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a "club" or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location-based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.
- 2.24: A "subscription service" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.
- 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.
- **3.1.2**: Members are committed to lawful conduct at all times.
- **4.1.1**. Members must have 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.
- **6.2.11**. The member providing the service must keep a record of the confirmation provided by the customer (for 6.2.9 (a)) or the notification sent to the customer (for 6.2.9 (b)).
- 6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

- **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.
- **11.1.6**. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.
- 11.2.1. 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.
- 11.2.2. 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.
- **11.2.4**. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:
 - (a) contain a PIN number which is then confirmed or validated on the web page, or
 - (b) contain a URL with a unique identifier, which, when clicked, validates the handset number.
- 11.2.5. 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].

- **11.2.5**. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/ month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.
- **11.4.1**. 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.
- **11.5.1.** A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.
- **11.5.2.** The reminder messages specified in 11.5.1 must adhere exactly to the following format, flow, wording and spacing:

You are 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

You are 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].

11.8.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.8.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.8.9. 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:

or

You've been unsubscribed from [service name].

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

Sections of the Advertising Rules considered [if applicable]

Sections 9.2 and 9.3.

Decision

The primary concern with this complaint, as with a number of previous Fun Club complaints, which have been referred to WASPA, is an apparent violation of section 11.2.2 of the Code, which states the following:

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.

The SP's response to this specific allegation is as follows:

We do no promote a competition into a subscription service nor is the customers intension to join the service accidental.

It is intentional upon the initiation of the service by the user. The service initiation is in no way misleading, as all information states the fact that it is a subscription service.

The dominant impression the Web page gives is that the service is a content service, not a subscription service. While there are references to the service's subscription nature, the question is whether these references are prominent enough to change the website's dominant impression that it is intended to deliver a specific content item. The operative word here is "prominent". The screenshots in both the Monitor's report and the SP's submissions do reflect a line of text stating "R3/DAY SUBSCRIPTION SERVICE" in white font on a black background. The question is whether this is prominent and satisfies the formatting requirements in the Code and the Advertising Rules.

Definitions of "prominent" include the following:

Something that is prominent is very noticeable or is an important part of something else.¹

and

Standing out, or projecting; jutting; protuberant.

Likely to attract attention from its size or position; conspicuous.²

A synonym of "prominent" is "conspicuous" which is defined as follows:

If someone or something is conspicuous, people can see or notice them very easily.3

and

Obvious or easy to notice.4

¹ http://www.google.com/dictionary?aq=f&langpair=enlen&q=prominent&hl=en

² http://en.wiktionary.org/wiki/prominent

³ http://www.google.com/dictionary?hl=en&g=conspicuous&sl=en&tl=en&oi=dict_lk

⁴ http://en.wiktionary.org/wiki/conspicuous

Determining whether text is "prominent" is a subjective test that takes into account the text's formatting and placement relative to the balance of the content on the website concerned. In this particular case the website contains text with varying fonts, formats and styles. A visitor's attention would likely be drawn first to the "Tarot of Love" and the imagery below it, along with the prominent field to enter a mobile phone number and the "CLICK HERE" button. The main text, imagery and button certainly stand out and are "likely to attract attention". Relative to this text the subscription advisories in the top right corner and in the terms and conditions do not stand out, attract attention and are inconspicuous. This subscription information text does not appear likely to grab a visitor's attention when arriving at the website.

"Access Cost Text" on the website, the reference to the service's pricing in the top right corner, is supposed to be either "80% of the largest access number on the page, or 15 point font size, whichever is the greater" in accordance with Rule 9.2.1.1. The difficulty with this provision is that it refers to an "access number" as a reference point and yet the website does not make use of an "access number". It makes use of a different subscription mechanism than the one envisaged in the Rules. The intention of the Rule is fairly clear, though, and it appears designed to ensure that there is a correlation in a visitor's mind between the subscription nature of the service, the subscription cost and the mechanism used to subscribe to the service.

On the whole, the text indicating the service's subscription nature and pricing is not prominent on the website the service is promoted on. The dominant impression the site gives visitors remains that it is a specific content item service and not a subscription service. In arriving at an appropriate sanction, below, I am mindful of the SP's apparent efforts to improve the subscription text's visibility on the website.

I agree with the Monitor's concerns about the SP's use of the word "FREE" in its message to new subscribers. The concern is that is appears to be in direct contravention of section 6.5.1 of the Code and Rule 9.3.11 of the Advertising Rules. Notwithstanding the SP's protestations, the word "FREE" has been used in the context of a paid service and, if anything, it is likely to confuse would-be subscribers further about the nature of the service.

I uphold the complaint.

Sanctions

The SP is sanctioned as follows:

Breach	Sanction
Section 11.2.2 of the Code	The SP is fined R50 000 for its contravention of this section of the Code.
	The SP is directed to terminate the service and any similar Fun Club service until such time as it complies with the provisions of the Code. The SP is advised to consult with the Monitor in this regard.
	The SP is fined R25 000 for its use of the word "FREE" in the context of a paid service in contravention of these provisions.

The fines which I have imposed are payable on demand by the WASPA Secretariat.

COMPLAINT AGAINST BUK (iTouch)

BACKGROUND:

12 MAY 2010

BELOW IS CORRESPONDENCE BETWEEN BUK AND MYSELF IN AN EFFORT TO GIVE BUK A HEADS-UP ON THEIR NON-COMPLIANT WEBSITE. THEIR FIRST HEADS-UP WAS GIVEN ON 29 APRIL 2010 (page 6 of this document) AND AS AT 12 MAY 2010, NO RESOLUTION SEEMS TO BE IN SIGHT. FROM THE DISCUSSIONS BELOW, IT IS CLEAR THAT BUK ARE NOT TAKING THEIR HEADS-UP SERIOUSLY. IT IS IMPORTANT TO NOTE THAT A HEADS-UP IS THEIR TO ASSIST THE SERVICE PROVIDER, BUT BUK HAVE PROLONGED THIS PROCESS AND NO RESULTS HAVE THUS FAR BEEN ACHIEVED.

EMAIL SENT 12 MAY 2010: (most recent)

Sharief

Please see the mail i returned to you on 5 May 2010 - communicating that it was still not EXPLICITLY displayed. "VISIBLE" is not good enough - the Code clearly reads "explicitly identified as a SUBSCRIPTION SERVICE".

As for the new page, the same applies. The Words SUBSCRIPTION SERVICE and the PRICING is not clear on that page. Again, "VISIBLE" is not good enough.

I give you a heads up so that we do not have to proceed to a complaint. However we seem to be spending unnecessary time sending emails back and fro with no results being achieved. It appears that BUK are simply not taking a heads-up seriously. Hence, I'm lodging a complaint.

Regards

Ilonka Gray

WASPA Media Monitor

From: Sharief Holt [mailto:sharief.holt@buongiorno.com]

Sent: 07 May 2010 02:25 PM

To: 'Ilonka Gray'; 'Rosalinda van Rooyen'

Cc: complaints@waspa.org.za; cgraycom@mweb.co.za

Subject: RE: heads up

Hi Ilonka,

Attached is the mail I sent to you on the 5th May 2010. The below Url, Is not the same page issue we discussed. Please let me know what exactly you need done on the below page link, as the subscription wording is visible.

Regards Sharief

From: Ilonka Gray [mailto:ilonka.gray@telkomsa.net]

Sent: 07 May 2010 01:58 PM

To: 'Ilonka Gray'; 'Sharief Holt'; 'Rosalinda van Rooyen' **Cc:** complaints@waspa.org.za; cgraycom@mweb.co.za

Subject: RE: heads up

Dear Sharief

As I have not received any feedback from you on this site and we have been trying to fix this since 29 April, i will be proceeding to a complaint.

A complaint will also be lodged on this site:

http://www.blinko.co.za/za_35050_sp_web/site/pages/splashPage_04.b sp?service=funclub

Regards

Ilonka Gray WASPA Media Monitor

From: Ilonka Gray [mailto:ilonka.gray@telkomsa.net]

Sent: 05 May 2010 09:56 AM

To: 'Sharief Holt'; 'Rosalinda van Rooyen'

Cc: 'complaints@waspa.org.za'; 'cgraycom@mweb.co.za'

Subject: RE: heads up **Importance:** High

Dear Sharief

The revised site is **still not** adequately displaying "Subscription service".

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. 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, except as provided for in 11.1.3.

The type is not big enough and is fighting with very strong and bold headlines. You also have moving visuals on the page. No average consumer when visiting that page would even see the words subscription service. This must be treated differently – either by enlarging the type substantially, or making it part of your headline.

Also, on the next page, once the user has entered their cellphone number, there is no mention that it is a subscription service - this must be included on page 2 as well.

Please can you make these changes adequately so that we do not have to proceed to a complaint.

Regards

Ilonka Gray WASPA Media Monitor

From: Sharief Holt [mailto:sharief.holt@buongiorno.com]

Sent: 04 May 2010 02:39 PM

To: 'Ilonka Gray'

Cc: 'Rosalinda van Rooyen'; complaints@waspa.org.za; cgraycom@mweb.co.za

Subject: RE: heads up

Hi Ilonka,

The new page displaying the subscription service message more clearly has been uploaded and live,

You will find the page @ the below url.

Thx Sharief

From: Ilonka Gray [mailto:ilonka.gray@telkomsa.net]

Sent: 04 May 2010 12:54 PM

To: 'Sharief Holt'

Cc: 'Rosalinda van Rooyen'; complaints@waspa.org.za; cgraycom@mweb.co.za

Subject: RE: heads up **Importance:** High

Dear Sharief

Is this how you have explicitly identified this page as a subscription service?

Have I got the right page here?

Ilonka



From: Sharief Holt [mailto:sharief.holt@buongiorno.com]

Sent: 04 May 2010 09:24 AM

To: 'Ilonka Gray'

Subject: RE: heads up

Hi Ilonka,

Did you copy the entire link up till the end as well as include the = sign?

Please let me know.

Thx Sharief **From:** Ilonka Gray [mailto:ilonka.gray@telkomsa.net]

Sent: 04 May 2010 09:14 AM

To: 'Sharief Holt' **Subject:** RE: heads up

Hello Sharief

The page doesn't seem to be working. I tried yesterday also.

Ilonka

From: Sharief Holt [mailto:sharief.holt@buongiorno.com]

Sent: 04 May 2010 09:01 AM

To: 'Ilonka Gray'; 'Rosalinda van Rooyen'

Subject: RE: heads up

Hi Ilonka,

The page has been amended. Please review and let me know if all is in order.

Many Thanks Sharief Holt B! 7.A

FIRST HEADS-UP SENT TO BUK:

----Original Message----

From: Ilonka Gray [mailto:ilonka.gray@telkomsa.net]

Sent: 29 April 2010 10:53 AM

To: 'Rosalinda van Rooyen'; 'Sharief Holt'

Subject: heads up

Dear Rose / sharief

Please can you guys explicitly identify this page as a subscription service and also increase the type font of your T&C's.

Regards

Ilonka Gray WASPA Media Monitor

IN ADDITION TO THE ABOVE EMAILS, A FURTHER TEST WAS CONDUCTED

BY THE WASPA TESTER ON 12 MAY 2010 (following various emails to BUK).

DATE: 12 May 2010 PHONE NUMBER: 0715847768

STARTING BALANCE: R110 SERVICE PROVIDER: iTouch

WEB SITE:

I went to the above website:



One can see from the above web page that it is clearly not explicibly stating it is a subscription service, also the main

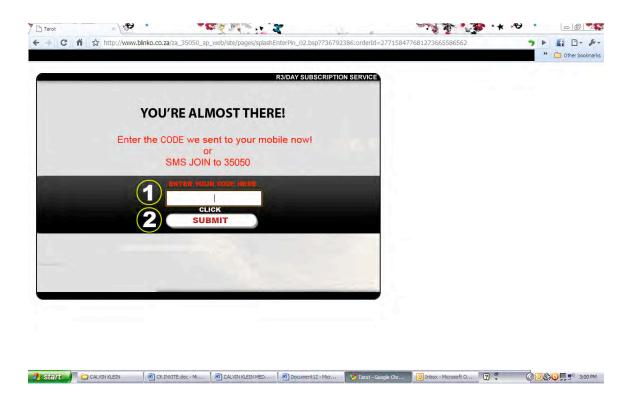
advertising states "GOOD LUCK! Find out what is in the Cards for YOU!" this can soo easily be mistaken for a Tarot of Love reading.

The T&Cs:

SUBSCRIPTION SERVICE. By entering the PIN that was sent to your cellphone you will be entered into 35050 VIP subscription service, and you acknow are subscribing to the service. This subscription service is available to MTN, Vodacom and Cell C users. You will be billed R3 every day. You will recein your welcome messages. By clicking on the WAP link you will be able to download unlimited items for you phone. These items are not charged for subscription fee. Download charges apply and standard text messaging rates may apply. The shown item(s) form(s) part of the subscription is/are indicative of the content items that will be received. You may stop this subscription service at any time by sending a text message with the word 35050 you must be the owner of the device or you need to acquire the bill payers permission to join this subscription service. For help call 021417 cellphone handset must be WAP enabled to download the products. You will have the option to download as many items as you like of the wap 35 wap site, this includes but is not limited to ringtones, animations, videos, wallpapers and games. You are also agreeing to receive occasional promotional messages.

It is clear that the T&C information is not abiding by the rules and regulations as in the Advertising Rules.

I entered my cell phone number and clicked on CLICK HERE



I then received a sms:

>>>Your CODE 8722<< enter it in the web confirmation page 7 get ur FREE item.35050 best mobile service R3/day subscription GAMES & TONES enjoy the fun

I noticed that the format of this message is misleading, what is this FREE item they speak of? It also seems like a marketing message for a service rather than showing once you enter your code you will be subscribed to the subscription service at hand. It should be something as follows:

>>Your CODE is 8722 << enter it in the web confirmation page and you will be subscribed to the 35050 Games and Tones subscription service at R3/day.

I entered the pin code onto the web site and clicked on **submit**:

The screen changed to:



☐ CALVENCEEN ☐ CALVENCEEN ☐ CALVENCEEN ☐ CALVENCEEN MED. ☐ CALVEN

Title: CLICK ON THE LINK TO GET UR 35050 APPLICATION Address:

http://wap.35050.co.za/za_35050_wap/site/pages/downloada pp.bsp

Welcome 2 35050. Go to Wap.35050.co.za on ur mobile 4 Unlimited games, Mp3's & more! Help: 0214178001 Sms STOP VIP to 35050 2 unsub (R3/day subscription)

I checked my balance and R3 was deducted for the subscription fees.

I then followed the web link to see what application I would receive, I was asked to enter my cell phone number to register on 35050.

I was asked to save an alias I chose: 212

Conclusion:

From the first page you are intrigued by: "Tarot of Love Good Luck Find out what the cards have for you" The tiny information in the top right hand corner written in white stating that it is in fact a subscription service and the pricing thereof is almost completely unnoticeable. The T&Cs are also written in a way which is unclear due to the busy background etc, this is in contradiction to the Advertising Rules.

After entering your number on the web page you receive the pin/confirmation sms which states:

">> Your CODE is 8722 << enter it in the web confirmation page & get ur FREE item.35050 best mobile service R3/day subscription GAMES & TONES enjoy the fun" the lay out of this message is soo easily mistaken for a marketing message as it does not clearly state "by entering the pin on the web confirmation page you will be subscribed to the 35050 Games and Tones service at a charge of R3/day" It rather promotes a FREE item that any customer would be fooled to enter the CODE onto the web page so that they can receive the "FREE" item. The use of the word "FREE" is only allowed to be used if there are absolutely no charges at all, but in this message that is not the case, as when you enter the CODE to receive the "FREE" content you are charged R3 for entering the service and will be charged R3 every day thereafter until you unsubscribe.

Also after entering the pin number onto the web page, the web page states:

"Error! An error has occurred please try again" on a blank white page, therefore one would think that no subscription went through and that there was a problem with the Tarot Love reading which was what you were interested in from the beginning.

You receive a welcome message anyway, although the format is once again easily mistaken for a marketing message and doesn't really make you aware that you have subscribed to a subscription service for "games and tones" which you actually had no intention of doing what so ever.

Breaches of the Code:

- 4.1.1. Members must have 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.
- 6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

- 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.
- 11.2.2. 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.

- 11.4.1. 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.

Breaches of the Advertising Rules:

9.2 DISPLAY RULES FOR COST AND T&C INFORMATION

9.2.1 Cost OF ACCESS DISPLAY

9.2.1.1 Formatting Of Access Cost Text:

§ Access cost text must be of a size that is at least **80%** of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif font

- The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.
- The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.
- All access cost information must be placed horizontally

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
- · All T&C information must be placed horizontally

9.3.11 Free Services

The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

9.3.15 SUBSCRIPTION SERVICES:

(i) Must Use The Words "Subscription Service"

If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words "Subscription Service" must be prominently displayed as per specification within the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed.

From: "Sharief Holt" <sharief.holt@buongiorno.com>

Subject: Re: [WASPA.complaints] [formal] WASPA Code of Conduct

complaint Ref:# 9508

Date: 18 May 2010 4:02:18 PM SAST

To: <complaints@waspa.org.za>, "'Rosalinda van Rooyen"

<rosalinda.vanrooyen@buongiorno.com>

Reply-To: "complaints@waspa.org.za" <complaints@waspa.org.za>

3 Attachments, 152 KB

Dear Waspa,

On the 13 May 2010 at 09:11 am I received a complaint from Lorraine Hartzer on behalf of WASPA I would like to make it know that the complaint was lodged by the WASPA Media Monitor and that to date we at Buongiorno South African have not received any complaints regarding the below page from any customers or member of the public.

We would also like to make it known that the below page, we feel is, not misleading in any way and thus we are not in breach of the code. The top right corner displays the pricing and the fact that it is a subscription service

The font size is 15 and is clearly readable and not obscured. As it is clearly visible in the advertising rules for web page marketing, section 9.2.1.1.

9.21.1 Formatting Of Access Cost Text:

- Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif Font
- The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.
- The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.
- All access cost information must be placed horizontally.

In the terms and conditions, it is shown once again that this page is a subscription service.

In the Terms and Conditions we inform the user that by entering the pin number sent to him or her that they would be entered in our 35050 vip subscription service. The Terms and Conditions are informative of the service and our call centre 24x7 contact details in the event of any problems the user might experience during the subscription process.

9.22.1 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. All T&C information must be placed horizontally
- The terms and conditions in the below page are placed horizontally and are size 12 Arial. Both of which are 100% compliant of 9.2.2.1 of the Web page advertising rules. Arial according to the said advertising rules is a non-serif font which is also in compliance.



Media Monitor Wrote: GOOD LUCK! Find out what is in the Cards for YOU!" this can soo easily be mistaken for a Tarot of Love reading.

This statement by the media monitor is indeed correct as we are offering a Tarot of Love application.

The wording at the Top of the Page "Tarot of love" clearly states it is a Tarot Of Love Page and is not in any way Misleading.

We refer to http://www.google.co.za/images?um=1&hl=en&safe=off&ie=ISO-8859-1&tbs=isch%3A1&sa=1&q=tarot+of+love+cards&aq=f&aqi=&aqi=&aqi=&gs_rfai

The link given is to show that Tarot Cards are indeed associated to Tarot of Love Reading and thus we encourage the secretariat to view the google link provided. We are not misleading the public by advertising a love Tarot and then giving them access to a different product, the product advert for the Tarot of Love application is on the WAPSITE.

The Waspa Media Monitor Wrote:I noticed that the format of this message is misleading, what is this FREE item they speak of?
The message refered to by the media monitor is in reference to the pin message, reading: >>>Your CODE 8722<< enter it in the web confirmation page & get ur FREE item. 35050 best mobile service R3/day subscription GAMES & TONES enjoy the fun.

The free item refers to the 35050 application, which the user is able to download at no extra charge in relation to the 35050 service offerings. The application can / is stored on the users handset for easy access into the 35050 service.

The WASPA Media monitor has found Buongiorno in breach of the following clauses of the code:

6.1.1

6.5.1

11.1.1

11.2.2 1141

Buongiorno has also been found in breach of the following clauses of the advertising rules:

9.3

We will address each one of these alleged breaches separately below:

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

The fact that we display the pricing and Subscription Service information, makes this breach of the code invalid, as all information is clearly displayed for the users perusal. The page displayed is not in breach of the waspa code of conduct and find this clause of alleged breach to be wrongfully logged against BUK. As stated above we are clearly displaying the pricing and are in compliance with the advertising rules for web page advertising

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

We do not feel that through any means of our advertising or communication with the customer that we are being false, deceptive, or misleading by any means. We are offering a subscription service that is clearly advertisied promoting a love tarot product for the customer to download. Still none of which is false, deceptive or misleading In no way do we mislead of omit any information to assist the user in making an informative decision. It is rather clear that all information given is comprehensive and informs the user that he or she is in fact interacting with a subscription service at R3/day.

6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges

The keyword free was in no way used in any promotional material. We merely informed our user of the free item, which is the 35050 application in this instance and thus feel that the breach of this code is without merit. The use of the word free was due to the fact that the application is something free for the customer, it is not charged for and is not deducted from their subscription credits.

It is in no way used as a keyword as stated in the clause of alleged breach.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any romotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material

The service is prominently described as a Subscription Service in all marketing material and thus also on the splash page above shows the intension of the service. It is noted that this clause of the code is certainly not valid for any reason as adverting of the service is within the relevant boundaries. Herewith the banner leading up to the above splash page: The wording clearly shows no competition or any other quiz to gain the user initiation of the service.



11.2.2. 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. We do no promote a competition into a subscription service nor is the customers intension to join the service accidental.

It is intentional upon the initiation of the service by the user. The service initiation is in no way misleading, as all information states the fact that it is a subscription service.

11.4.1. 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:

The name of the subscription service;

The cost of the subscription service and the frequency of the charges;

Clear and concise instructions for unsubscribing from the service;

The service provider's telephone number

We give the user clear instruction on how to end the service and show the user the relevant keywords needed to end the service. Should the user experience any problems they are given our 24x7 call centre contact number in the welcome message sent to him or her. The message shows the pricing and frequency of the billing that would occur during the subscription period.

The Welcome message reads as follows:

Welcome 2 35050. Go to Wap.35050.co.za on ur mobile 4 Unlimited games,Mp3's & more! Help: 021 4178001 Sms STOP VIP to 35050 2 unsub (R3/day subscription) Please note that message is informative of all relevant information and cannot be mistaken for an advert or marketing message as mentioned in the breach imposed by the Waspa Media monitor on Buongiorno UK.

Breaches of the Advertising Rules:
9.2 DISPLAY RULES FOR COST AND T&C INFORMATION

9.2.1 Cost OF ACCESS DISPLAY

9.2.1.1 Formatting Of Access Cost Text:

□ Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a nonserif font

- The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.

 • The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.
- · All access cost information must be placed horizontally

As shown in the advertised page the terms and pricing are placed horizontally.

The color scheme is not obscured and clearly readable. The cost text is in no way part of the color scheme on the advertised page.

The white font on black background is surely clearly / visible to the reader of the page and not in any way obscured from the users eye sight.

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 · All T&C information must be placed horizontally.

The advertised pages are surely not in any way misleading to the user or obscured. The font size of the T&C's are 12 point font size Arial and clearly displayed. In our Terms and Conditions we inform the user that he or she will be billed R3 every day during the subscription and this in its own right clearly stated in our T&C's and thus is more informative of what the user can expect.

The cost of the service is more clearly displayed in our terms and conditions as appose to saying R3/day, which is shown in the top right corner in this format and includes the wording subscription service.

The T&C's are displayed horizontally in the space provided and is not misleading to the user or any other person who come across the T&C's of the service. Our Tarot of Love page is in no way misleading to the user and thus it is stated that we've had no complaints in relation to the pages and feel the implicated breaches to be unsanctioned.

All information displayed is relevant to the service offering from Buongiorno UK.

9.3.11 Free Services

The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges

We as Buongiorno feel breach 9.3.11 to be repetitive in this here complaint. We have previously above explained that the Free word is / was not used on any marketing material nor was it used to prompt the user into a subscription service. The free word was used to inform the user of the 35050 application, which is free at no extra cost to the user and is / can be stored on the users mobile device for easy access into the 35050 service.

The application is given free to the user and is not part of the pricing incurred during the subscription period, while subscribed to the service.

9 3 15 SUBSCRIPTION SERVICES:

(i) Must Use The Words "Subscription Service"

If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words "Subscription Service" must be prominently displayed as per specification within the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed.

The wording subscription service is displayed on the website advertised page. The font size is 15 point font size and visible to the user, as seen in the above splash page.

The wording is not obscured, so it is noted that the Waspa Media Monitors finding of this breach is without merit, as per the Waspa Code Of Conduct.

In conclusion:

The informative information is relevant to the service and thus we feel the breaches implicated is not within reason.

We have in all aspects gone above bored in the creation of the Tarot Of Love page and made it clear to the user accessing the page and its intention to bill R3 every day until the service is stopped at his or her request. We have since had no complaints from our current users, nor from the public on our Tarot creative.

Following a Heads Up from the Waspa Media Monitor on the 29th April 2010 to change the font size on the page and type of font used we have undertaken to make the Subscription wording more outstanding, yet it is not good enough in light of these changes. We did however furbish the Media Monitor with the Amended page and thus still find ourselves faced with a formal complaint even after all changes were carried out.

We find the fact that a formal complaint has been logged against Buongiorno UK and that it has been sent to an emergency panel for review appalling following the changes as seen in the amended pages. We have adhered to the to the request of the Waspa Media monitor yet still find ourselves in this situation All pages promoting the service is in adherence to the Waspa Code of Conduct and thus we find the breaches imposed unfair and irrelevant in this matter

As per Section 3.1.1 of the Code: 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. We find emotions running high and that professionalism is not maintained when dealing with Buongiorno UK, a full Waspa

We are more than happy to divulge any further information in this regard that the secretariat might find relevant to this complaint and ask that all information sent to the Adjudicator be cc'd to B! UK.

Best Regards Sharief Holt Buongiorno / ITouch S.A

Reception: +27(0) 21 4152100 Email: sharief.holt@buongiorno.com









----Original Message-

From: WASPA Complaints (Lorraine Hartzer) [mailto:complaints@waspa.org.za]

Sent: 13 May 2010 09:11 AM

To: sharief.holt@buongiorno.com; 'Rosalinda van Rooyen' Subject: [formal] WASPA Code of Conduct complaint Ref:# 9508

Dear WASPA member,

The attached complaint has been lodged with WASPA against Buongiorno UK.

This complaint is being processed according to the formal complaint procedure described in section 13.3 of the Code of Conduct.

Accordingly:

- You have five working days to respond to the complaint, and to provide the WASPA secretariat with any information you deem to be relevant to this complaint.
- After five working days have passed, this complaint, together with your response (if any) will be assigned to an adjudicator for review, and if upheld, determination of appropriate sanctions.
- You do not have an obligation to respond to this complaint. Should the WASPA secretariat not receive any response from you within this time period, it will be assumed that you do not wish to respond.
- Your response, and any other correspondence relating to this complaint, must be sent to <complaints@waspa.org.za>. Correspondence sent to any
- other address may not be deemed to constitute a formal response. The WASPA Secretariat will confirm receipt of your response.

If you have any questions regarding the Code of Conduct or the complaints procedure, please address your queries to <complaints@waspa.org.za>.

Please confirm your receipt of this message.

Warm regards.

WASPA Secretariat

--- A copy of the complaint follows below ---

Date of breach: 12 May 2010
WASP or service: Buongiorno / iTouch
Clauses breached: 4.1.1
4.1.2
6.1.1
6.5.1
11.1.1
11.2.2
11.4.1
9.2 Ad rules
9.3 Ad rules

Description of complaint:

Following a heads-up given to BUK, (and various further emails) in an effort to remedy the problems encountered on their website, the attached complaint details many Waspa Code breaches.

Discussions were entered into with BUK, but it appears that co-operation is absent.

Please proceed to an emergency panel on this complaint.

I would like to request that this site is de-activated with immediate effect until all revisions have been made and sent to WASPA prior to making live again.

Urgent complaint:

The Monitor considers this to be an urgent complaint and requests that the Secretariat considers this for review by an emergency panel.

The WASPA Monitor has flagged this complaint for an emergency panel review. This may be avoided if you take immediate steps to remedy the breaches identified and notify the WASPA Secretariat accordingly.

The WASPA Monitor has indicated that this is a serious offence and cannot be resolved informally. The service provider is requested to provide a formal response to the alleged breaches so that this matter can be reviewed by an independent adjudicator.

Attached file : itouch12may2010.doc