



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Flycell / Integrat
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainants:	Anonymous
Complaint Number:	9878
Code Version:	9.0
Advertising Rules Version:	2.3

Complaint

The Complainant wrote:

“While browsing the web I was target by Quiz banner adverts (see Image 1), which led me to an online quiz. As I was presented by two different ads to the same product on the same web page, I suspect that there is an intensive web campaign being used. After answering 5 or so questions one gets to a page where one has to give one's cell phone number to continue (or to get one's quiz results or that's the impression gets) after which they send you a pin. The SMS with the pin only states: "Pin Number: xyx", this format is a contravention of 11.2.5. which requires a specific format. After entering the pin and clicking confirm one is subscribed. This is in direct contravention to 11.2.2. This is exactly the type of quiz that led WASPA to include the ban in 11.2.2. I will send through screen shots of the website via Email. ”

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

“No. I would like this to go formal. The service was maliciously tricking customers. Their approach was clearly intentional. They have lied in their response to this complaint, claiming that there was only 1 line, after their "Confirm" link, while there were 6 or 7. They spammed with adult content. They ask consumers to "confirm" age, who are then unwittingly subscribed to the service. I believe that many would have fallen prey to this. I think the service provider should be sanctioned. I would hope that they are instructed to unsubscribe all users to the service.”

Service provider's response

The first SP (Integrat) wrote:

“Herewith acknowledgement of this complaint – we would like the complainant to take note that we have requested advice from the WASPA monitor as to how this service can be made compliant and would very much like to resolve this informally on Flycell's behalf. We will ensure that her advice is implemented immediately.”

The second SP (Flycell) stated:

“Upon review of the details (i.e. attached screenshots) surrounding the complaint and the mandates of **11.2.2** and **11.2.5** of the WASPA Code of Conduct, we have decided to take down the Quiz ads. The same action will be taken for the Quiz landing page in question. We do however feel it important to note that prior to even going live with this Quiz landing page, we did submit a test landing page of this type for review and did get pre-approval that the page in fact was compliant and that we were good to go live with it. So apparently there must have been some sort of misunderstanding in implementing the page.

We are taking the necessary measures so that within the next day the page/ads in question will be no longer accessible.

We would also like to ask if in return given our due diligence to address this matter as well as given the fact that this serves as our first complaint if instead this could be handled as an **informal** complaint.

Thank you in advance for your attention to this matter. Please advise if further information is needed from our end.”

Later the first SP (Integrat) wrote:

“Would the complainant be willing to pursue informal resolution – the client is willing to work with WASPA to resolve and have removed the product.”

Finally the first SP (Integrat) stated:

“This is clearly not the client's (Flycell) response to the complaint by an attempt to resolve this informally. If this is not possible - please notify us and them so that they can revert accordingly.”

The second SP (Flycell) wrote:

“This note comes to you as the formal response to the complaint formed against Flycell. This note should be reviewed in conjunction to Flycell's initial response (sent on 7/8). The following are supporting items to further substantiate that this complaint should in fact be dismissed. We ask that WASPA please consider these points:

1) Flycell offers quiz type landing pages across its international footprint respectively. Prior to making these pages (amongst other types) live, it is the

primary focus of Flycell's compliance teams to ensure all offers or any forms of advertisements are presented to users in a manner that adheres to all general and/or carrier specific rules. Flycell in no way aims to be deceptive to its potential users. We ensure our offers are clear in detail so that users are aware of what the Flycell Club service can offer. In this case, to confirm we were following WASPA's Code of Conduct rules - in light of section 11.2.2 and section 11.2.5 - we did first reach out to Integrat and requested that they review and pre-approve the pages in question prior to launch. With pre-approval in hand (by the end of April 2010 timeframe), our assumption was that we were good to go live with the Quiz landing page and Quiz advertisement(s) in question and thus proceeded to do so.

2) As soon as Flycell was advised of complaint #9878, after re-assessment of sections 11.2.2. and 11.2.5 of the WASPA code of conduct, Flycell took swift action to remove the pages and adverts in question - making them inaccessible to users. Within a day from when the complaint notice was first received, the adverts were no longer live or available to users.

3) This is Flycell's first logged formal complaint. As Flycell continues to remain committed to compliance, we ask that this be kept in mind as WASPA comes to a final decision on how this complaint will be dealt with - in hopes it can be dismissed.”

Sections of the Code considered

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.

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.

11.2.5. 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]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

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 both SP's subsequent response.

The second SP (Flycell) in this matter did not deny that its services in question indicated a breach of sections 11.2.2 and 11.2.5.

An admission of contravention of the Code is therefore deduced.

After reviewing the landing pages in question, the Adjudicator is also of the opinion that there is a clear breach of both sections 11.2.2 and 11.2.5 which in itself might indicate a breach of section 4.1.2. The Adjudicator however does not have enough evidence to rule whether such action was convened knowingly by the second SP (Flycell).

The role of the first SP (Integrate) in pre-approving the site raises concern and as such, the first SP (Integrate) is found to be in breach of section 4.1.2.

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SPs with regard to breaches of the relevant sections of the Code of Conduct;
- The SPs' attempt in gaining pre-approval; and
- The SPs' subsequent response and withdrawal of the site.

1. The second SP (Flycell) is required to uphold its suspension or withdrawal of the service and access to the site it is hosted on until such time as it complies with the orders set out below. The SP may not initiate any new or existing billing transactions for the service during such period of suspension; however it may process any unsubscription requests;

2. The second SP (Flycell) shall send an sms notification, detailing such suspension, to all existing subscribers of the service (the second SP (Flycell) shall furnish the WASPA Secretariat with confirmation that it has notified its subscribers);

3. The second SP (Flycell) shall clearly indicate at the first point of contact with the service and all subsequent pages and sites (irrespective of medium) that the service is a subscription service and further precisely what the

subscription entails. These indications must be clearly visible and unambiguous.

4. The second SP (Flycell) shall ensure that any reference to or implication of the availability of single items or quizzes are removed from the service's site such that the site only makes reference to its subscription content in clear and unequivocal terms;

6. The second SP (Flycell) shall ensure that its terms of use are amended in accordance with Rule 9.2 of the Advertising Rules;

7. The second SP (Flycell) is formally reprimanded.

8. For its breach of section 4.1.2, the first SP (Integrate) is fined R 20 000-00, payable to the WASPA Secretariat within 5 (five) working days after receiving notice hereof.

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the second SP (Flycell) is indeed complying with its instructions.