



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Sybase 365
Information Provider (IP) (if any)	mBill
Service Type	Competition / Subscription service
Source of Complaints	Mr M Becker
Complaint Number	4744
Date received	26 August 2008
Code of Conduct version	6.2

Complaint

The complainant lodged a complaint on 26 August 2008 via the WASPA website regarding mBill's 3G iPhone Trivia subscription service. The complainant was signed up for the service when trying to enter an online competition to win a gold iPhone.

The promotional material for the competition stated: **"shoot the gold iPhone"** for a chance to win it. It also stated - **"complete all 10 offers to be entered"**.

The complainant states that he followed these instructions and was then prompted to enter his cellphone number which he did. He then received an SMS from shortcode 31633 which stated: **"FreeMSG: Your PIN code is 6892"**. He received a second SMS a few minutes later which stated: **"FreeMSG: 2 play mTRIVIA send ur answer 2 each question, either A,B,C or D. Answer all 10 Qs correctly & go in2 draw 2 win a Gold iPhone! NEXT-Send question"**.

The complainant then received the first question from the number +2783919727301633 and duly answered back, as he believed that he needed to answer all 10 questions. After answering 6 questions correctly, he received another SMS which stated: “**Welcome to mTRIVIA! Ur chance to Playoff 2 WIN a Gold iPhone!R10/question/recd. STOP to quit mbill:0800980449**”.

The complainant, on realizing that he had been signed up for a subscription service, tried on a number of occasions to phone the given number, but his calls were never answered. The complainant alleges that the competition did not state anything about the cost, and it was only after already spending R60 that he received information regarding the costs involved.

The complainant subsequently visited the site again where the promotion is being held and discovered that it now states that 12 offers need to be completed. In other words, the rules of the competition have been changed.

The complainant has not stated which sections of the code he believes have been breached.

SP's response

The SP responded to the complaint by offering to refund the complainant the amount of R60.00. Despite further e-mail correspondence between the complainant, the SP and the WASPA Secretariat over a period of more than 4 months, no refund was paid to the complainant.

On 17 December 2008, the complainant received a cheque in the mail for the equivalent of R60 in Australian dollars.

Sections of the Code considered

3.3. Service levels

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

3.3.2. *Services must not be unreasonably prolonged or delayed.*

9. Competitions

9.1. Provision of information

9.1.1. *Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.*

9.3. General provisions

9.3.1. *Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.*

11. Subscription services

11.1. Manner of subscription

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.*

Decision

mBill's iPhone Trivia service promotion has been the subject of 2 separate emergency panel rulings as well as a number of related complaints which have been submitted to me for formal adjudication.

Pursuant to my rulings in complaint 5081 and 5395, the promotion has been found to be in contravention of sections 9 and 11 of the Code. The service and promotion has been suspended and mBill's membership of WASPA has been suspended.

In the current complaint, I also find that the IP has breached section 11.1.2 of the Code.

Sanction

The service and promotion were suspended and subsequently terminated pursuant to further complaints lodged against the IP.

All that is left for me to do is to order the SP to refund the amount of R60.00 to the complainant in South African rand within 7 (seven) days of receiving notice of this adjudication report.