



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	TIMw.e. New Media Entertainment South Africa
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainant:	Member of the public
Complaint Number:	5972
Code Version:	6.2 (consideration also given to version 7.4)
Advertising Rules Version:	2,3

Complaint

The complainant was subscribed to a service described as “IQ-WORLD Test” (“the service”) on the Web. The complainant contended that he was incorrectly billed for use of or access to the service in or about February 2009. He complained that he was being charged for a service he did not subscribe to.

He has alleged that he requested that he be unsubscribed from the service and refunded the amounts which were deducted from his mobile phone account. The complainant demanded that he be unsubscribed from the service and refunded the charges that were deducted from his account in the sum of roughly R30 (6 amounts of R4.99).

The complainant appears to have been unsubscribed on or about 3 March 2009 according to the documentation I was furnished with. The complainant, who I understand to be a tourist, was not satisfied with the outcome of the matter and lodged the following complaint on 6 March 2009:

No I am not very happy with what has transpired.I am an overseas visitor who just happened to check the news on NEWS24.co.za when I came across this advert to test ones IQ.I filled in the application form but when continuing,learnt

that this service was charged. I immediately stopped all further contact on the net and shutdown their site. I was very shocked to learn that my Vodacom Prepay account had been debited by TIMw.e. TIMw.e deducted 6x times the amount of R4.99 from my Vodacom Account. I most definitely never subscribed to their network. I never completed their offer and never received a result from the IQ test nor any email contact from their network. I therefore find the deduction of the amounts from my account have been done against my wishes.

Service provider's response

The SP confirms that the complainant was subscribed to the service on or about 13 February 2009. It pointed out that the terms of use were displayed on the website concerned and the terms clearly indicate the charges that are payable for access to the service. In the circumstances the SP refused to issue a refund to the complainant.

Sections of the Code considered

This complaint was filed prior to an update to the Code. I have accordingly considered versions 6.2 and 7.4 for the purposes of this report in order to determine compliance with the Code (referencing version 6.2) and the remedy for non-compliance (referencing version 7.4). I have considered the following sections of the Code:

Version 6.2	Version 7.4
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.	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.
4.1.3: Each Member must provide their full contact details on the Member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.	4.1.3: Each Member must provide their full contact details on the Member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

Version 6.2	Version 7.4
<p>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.</p>	<p>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.</p>
<p>11.2.4: Members must ensure that the termination mechanism is functional and accessible at all times.</p>	<p>11.5.5: Members must ensure that the termination mechanism is functional and accessible at all times.</p>

Sections of the Advertising Rules considered

Rule 9.2 generally.

Decision

The service is somewhat misleading. A screenshot of the service is annexed to this report and is marked Annexure "A". On the face of it the purpose of the service is to test a site visitor's intelligence but there are a number of other indicators on the site that reveal that the service is, in fact, a subscription service through which a subscriber receives "3 games + 1 truetone for only R4,99 per day." This is a violation of 11.1.2 of both versions of the Code and appears to be an example of bundling is not permitted.

This violation of the Code of Conduct is particularly problematic given its prevalence. The SP, in particular, has engaged in this practice for some time using a variety of campaigns. The SP has asserted that its terms are plainly visible on its website and customers can hardly complain when they find themselves being billed for a subscription service despite being enticed to subscribe using a single service item like the service this complaint concerns. This particular type of service has since been explicitly banned by the current version of the Code (specifically section 11.1.2).

This is a disingenuous argument as the overwhelming impression a customer has from inception is that he or she is completing an online IQ test, not that he or she is subscribing for mobile content items at R4.99 per day. The SP has placed a checkbox on the site that a customer is presumably required to check and confirm that the customer wants the "best contents ever for only r4.99/day" but this is one of

two mentions of a subscription service for mobile content on a website where the dominant impression a customer has is that the service offered is an online IQ test.

I am also of the opinion that the service infringes section 4.1.2 because the service is plainly misleading and perhaps even designed to confuse customers due to its exaggeration of the IQ Test as the focal point of the service whereas the IQ Test is, in fact, incidental to the subscription service.

The terms of use are furthermore deficient in that they do not contain necessary information about the SP including “full contact details on the Member’s web site, including the registered company name, telephone and fax numbers, e-mail address and physical address”. This is a requirement of 4.1.3 of both versions of the Code.

Furthermore the text of the terms of use, such as they are, does not appear to be compliant with the provisions of Rule 9.2 of the Advertising Rules which address the formatting of terms of use on a website, in particular:

Section	Content
9.2.2.1	Formatting & Font Criteria For T&C Text <ul style="list-style-type: none"><li data-bbox="475 1081 1299 1182">• 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<li data-bbox="475 1182 1299 1218">• All T&C information must be placed horizontally


Decision

There appears to be a violation of rule 9.2.2.1. The font size of the terms and conditions text appears to be smaller than 50% “of the largest access number” on the site. There doesn’t appear to be an access number outside of the terms and conditions, per se, so I have taken into account the remaining text on the site and used this as a basis for comparison. The intent of this rule seems to be to ensure that the terms and conditions are relatively prominent having regard to the balance of text on the page. This has not been done.


Sanctions

1. To the extent the service remains active, the SP is required to suspend the service and 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 any of the SP's subscription services during such period of suspension, however it may process any unsubscription requests;
2. The SP shall send an sms notification to all existing subscribers of the service in the format prescribed in 11.4 of the current Code;
3. The SP shall ensure that its terms of use are amended in accordance with 4.1.3 of the Code and Rule 9.2 of the Advertising Rules;
4. The SP shall ensure that any reference to the availability of single items is removed from the service's site such that the site only makes reference to its subscription content in clear and unequivocal terms;
5. The SP shall refund any amounts deducted from the complainant during the period 13 February 2009 to and including 3 March 2009 as a result of his initial subscription to the service;
6. The SP is fined -
 - 6.1. R75 000 for its non-compliance with 4.1.2 of the Code;
 - 6.2. R20 000 for its non-compliance with 4.1.3 of the Code; and
 - 6.3. R75 000 for its non-compliance with 11.1.2 in that it bundled a single item with a subscription service.

The fines must be paid to the WASPA Secretariat within five (5) days of notification of this report's findings.



IQ-WORLD Test



Subscription Service, R4.99/day

LOGIN

E-MAIL ADDRESS

If you already played, login and check the ranking.
Check your friends IQ.

DAILY RANKING!

CHECK

TIME

240 SECONDS

TEST YOUR IQ

AGE F M

START TEST!

yes! I want the best contents ever for only r4.99/day.

Have you measured your intelligence?

[KNOW MORE](#)

- Intelligence is the mental capacity to reason, plan, solve problems, and understand abstract ideas, using language and learning.
- The IQ - intelligence quotient - is an index calculated from the scores obtained in tests that comprise the intelligence related capabilities.
- 100 is the average IQ value, considered "normal intelligence".
- The IQ test takes into account the person's age, gender, right and wrong answers and the time needed to respond.

Take the opportunity to find out your IQ score and invite your friends to compare results!

Terms of use

Games Club! This is a weekly subscription service. Every week you get 3 games + 1 truelone for only R4.99 per day! To cancel the service just send stop games to 33535 or contact support.za@tmwv.com. This service requires WAP. VAS rates apply. No free minutes apply. Network WAP/GPRS rates apply. Failed requests billed. Displayed items are only examples of content. We have contents for all mobile models available in the market, e.g. Samsung SGH-E250, SGH-E370, SGH-I750, SGH-D900, Motorola V360, W375, V3, V220V220ENS, C650, Nokia 2760, N70, N73, E65, 5200, 6085, 6101, LG KG290, etc.