



ADJUDICATOR'S REPORT

WASPA Member (SP):	Integrat
Information Provider (IP):	Mozzi
Service Type:	Subscription
Source of Complaints:	WASPA Monitor
Complaint Number:	6802
Code of Conduct version:	7.0

Complaint

A complaint was lodged by the WASPA Media Monitor regarding an X-Ray Scanner subscription service ("the Service") offered by the IP and utilising the wireless application services of the SP.

The Monitor alleged that the advertising for the service and the practical method for subscribing thereto revealed that a specific content item was being bundled with a request to be subscribed to the service. The Monitor provided screenshots of the advertisements and web pages used to attract members to the service as well as copies of the text of SMS messages received by the Monitor when signing up.

The Monitor also alleged that the content being offered was deceptive and misleading; that pricing information for the service was not clearly displayed; that the terms and conditions and cost of access were not displayed in the minimum font size required by the WASPA Code of Conduct ("the Code") and that incorrect abbreviations had been used in the advertising and messages confirming the subscription request.

A full copy of the Monitor's report is set out below:

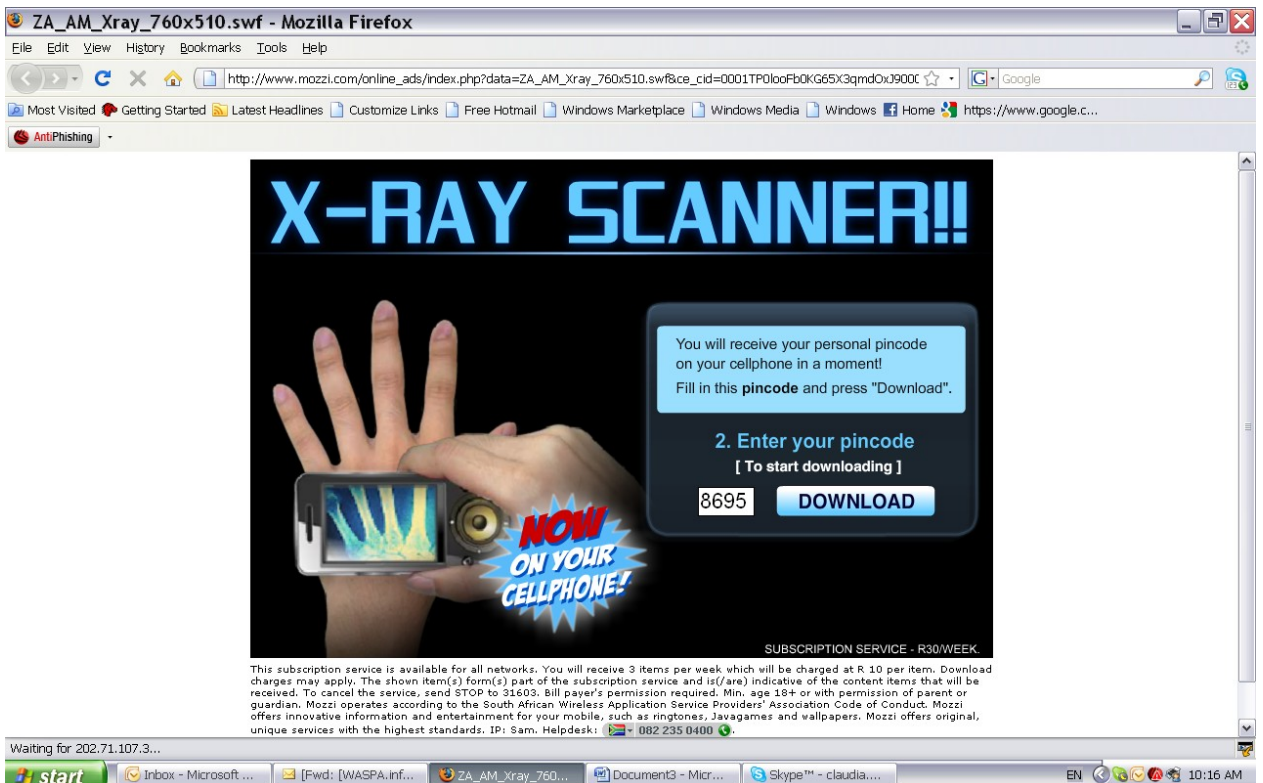
DATE: 12 JUNE 2009
PHONE NUMBER: 0769596058
SERVICE PROVIDER: INTEGRAT
STARTING BALANCE: R243.37
WEBSITE: http://www.mozzi.com/online_ads/index.php?data=ZA_AM_Xray_760x510.swf&ce_cid=0001TP0looFb0KG65X3qmdOxJ9000000



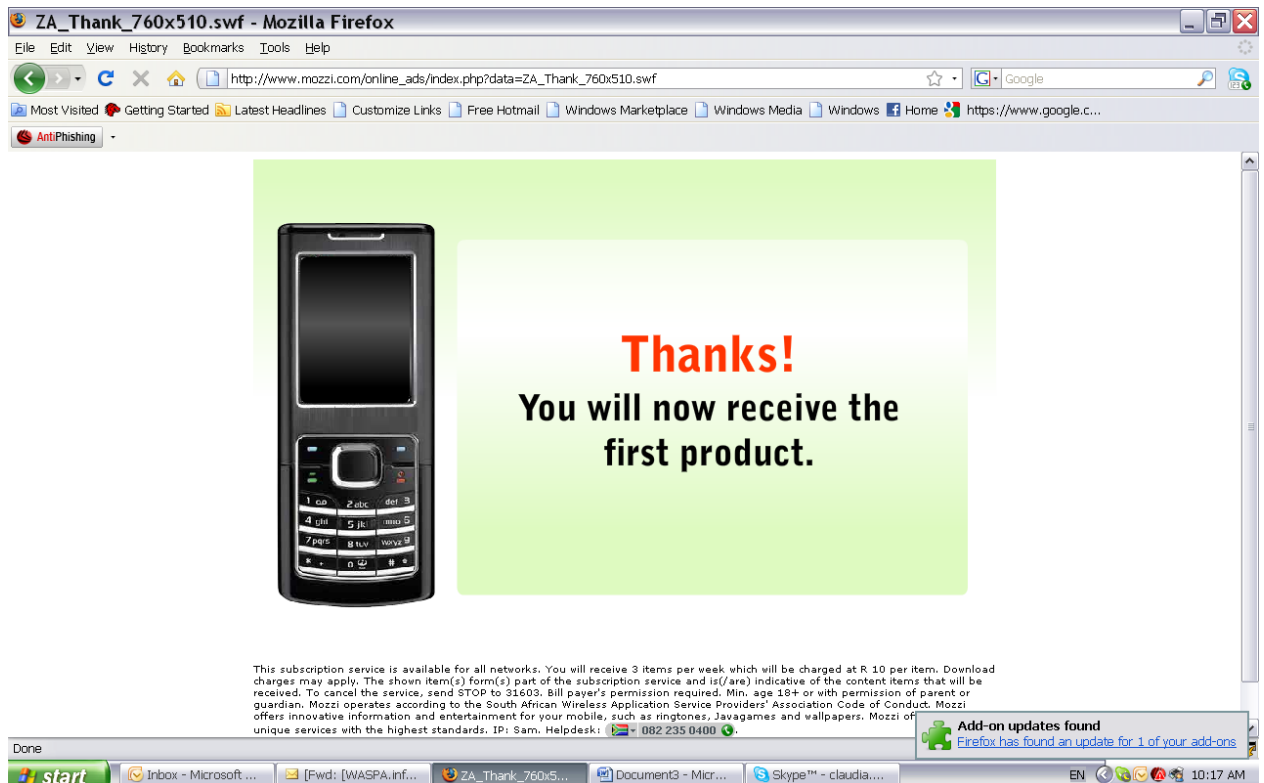
I entered my cell number and then I received a sms with a pin number:

Enter8695 on the website 2 get contents! U will b subscribed 2 the XRAY service fr Mozzi. R10/3sms/wk Help? 0822350400/www.mozzi.com. To end?stop to 31603

I entered the pin number:



And then I clicked download:



The I got a message in my inbox:

In a moment you will get your content from MOZZI!(Info: helpline 0822350400 R10/3sms/wk, end: stop to 31603). See also www.mozzi.com

Then I got a link to download the XRAY SCANNER in my service inbox. It was downloaded to my images.

R10 was deducted from my phone.

Conclusion:

On coming across this webpage the customer is drawn to the huge advertisement of the XRAY SCANNER... The fact that it is a subscription service is very misleading. Only in the bottom right corner, written small does it say subscription service, and in the T&C's which are also very small, and is not compliant with the code. The XRAY SCANNER is also advertised in a way which leads the customer to believe that you are able to download an actual scanner, when in fact the link you receive gives you nothing but a moving picture on your phone. The message with the pin number is very confusing and abbreviations are used which are not allowed as well as the information being unclear. The next message I received (As my welcome message) format was also wrong and once again wrong abbreviations were used.

Bre[a]ches of the Code:

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.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

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.

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.

11.1.8. 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.

11.1.10. 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]. Help? Call [call centre

number + "(VAS)" if applicable]. To unsubscribe, [unsubscribe instructions].

Bre[a]ches of the Advertising Rules:

9.2.1.1. 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.

9.2.2.1. 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.

9.3.1 ABBREVIATIONS

Indication	Correct Abbreviation	Wrong Abbreviation
Additional type & cost	+ 3 SMSs or + Rx.yy (include spaces)	+3 messages or +Rx.yy (no spacing shown)
At	At	@ (<i>unless in an email address</i>)
Cost	R1 : R1.50	R1.00 : R1.5
Day	Day	Dy
Message	SMS	Sms or msg or MSG or msgs or txt or txts
Minimum	Minimum	Min or Mnm
Minute	Minute	Min
Minutes	Minutes	Mnts
Month	Month	Mth
Months	Months	Mths
Pricing	R7.50/week	R7.5/wk or 7.5R / wk
Pricing per period	/	per
Rand Pricing	R7.50	R7.5 or 7.5R or ZAR7.5 etc
SMS Messages	SMS or SMSs	Sms or msg or MSG or msgs or txt or txts
SMS Received	Received	Rvcd or Rcd
SMS Sent	Sent	Snt
Subscription	Subscription	Subs, or Sub or Subscr
Week	Week	Wk or wk

As you can see by the above screenshot taken from the Advertising Rules there are a number of wrong abbreviations used in the Welcome and Pin code messages I received from the SP.

Response of SP

The SP responded as follows:

Response to complaint #6802

Integrat is a WASPA member and as such committed to WASPA's code of conduct and advertising guidelines. All client who sign up with us are made aware of the abovementioned and are even invited to send there ads to us should they require assistance.

Please find below response on general complaints followed by specific breeches and specific responses to them.

General complaints:

Placement/clarity of the words subscription service

The fact that this is indeed a subscription service is clearly indicated on the ad and within the terms and conditions. The wording in the ad is coloured white on black, non-serif font to enhance clarity.

The client has changed the font sizw.

T&C's

The client has changed the size of T&Cs.

Abbreviations

Abbreviations have been amended.

Service

The nature of the service is explained in the T&Cs of the service.

Specific breaches of the Code:

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.

Response:

The nature of the service is clearly stated in the T&Cs.

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Rules, published as a separate document.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

Response:

The price of the service is clearly stated in on the ad as well as in the T&Cs of the service. The client has increased the size of the wording:
SUBSCRIPTION SERVICE R30/WEEK

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.

Response:

The nature of this service and that this is a subscription service is clearly stated repeatedly – on the ad as well as in the T&Cs of the advert.

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.

Response:

The nature of this service and that this is a subscription service is clearly stated repeatedly – on the ad as well as in the T&Cs of the advert.

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.

11.1.8. 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.

11.1.10. 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]. Help? Call [call centre number + "(VAS)" if applicable]. To unsubscribe, [unsubscribe instructions].

Response:

The nature of this service and that this is a subscription service is clearly stated repeatedly – on the ad as well as in the T&Cs of the advert.

The welcome message and PIN message contained all the required information and also clearly stated the service is a subscription service. The incorrect use of abbreviation was amended, but could not have affected the clarity of the facts regarding the service.

Bre[a]ches of the Advertising Rules:

9.2.1.1. 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.

9.2.2.1. 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.

9.3.1 ABBREVIATIONS

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Cost	R1 : R1.50	R1.00 : R1.5
Day	Day	Dy
Message	SMS	Sms or msg or MSG or msgs or txt or txts
Minimum	Minimum	Min or Mnm
Minute	Minute	Min
Minutes	Minutes	Mnts
Month	Month	Mth
Months	Months	Mths
Pricing	R7.50/week	R7.5/wk or 7.5R / wk
Pricing per period	/	per
Rand Pricing	R7.50	R7.5 or 7.5R or ZAR7.5 etc
SMS Messages	SMS or SMSs	Sms or msg or MSG or msgs or txt or txts
SMS Received	Received	Rvcd or Rcd
SMS Sent	Sent	Snt
Subscription	Subscription	Subs, or Sub or Subscr
Week	Week	Wk or wk

As you can see by the above screenshot taken from the Advertising Rules there are a number of wrong abbreviations used in the Welcome and Pin code messages I received from the SP.

Response:

The service has been amended and the sizes of T&Cs and pricing is now correct. The incorrect use of abbreviation has also been amended.

The incorrect use of the above items has been an oversight that will not be repeated.

Please verify that the web spot has been corrected.

http://www.mozzi.com/online_ads/index.php?data=ZA_AM_Xray_760x510.swf&ce_cid=0001TP0looFb0KG65X3qmdOxJ9000000

The client does not believe that any subscriber has been wronged by his product and would be more than willing to refund any subscriber who feels that the service nature and price was misleading due to the oversights in terms of text sizes and incorrect use of abbreviations.

Decision

The service was investigated by the Monitor on or around 12 June 2009 and the alleged breaches of the Code were reported on 16 June 2009 at which time version 7.0 of the Code was in force. It has been noted that the service continued after 17 June 2009 until it was suspended by the Emergency Panel on 13 July 2009, therefore version 7.1 (which came into effect on 17 June 2009) of the Code would apply in respect of that latter period, however the relevant standards required by the Code remain unaltered from version 7.0 to version 7.4.

Bundling of content item with request to join a subscription service

Section 11.1.2 of version 7 of the Code reads as follows:

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.

Section 11.1.2 of the Code is similarly worded as reads as follows:

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.

The web page used to advertise the services advertised only the X-Ray Scanner content item in the main section of the advert. Although some mention was made in the terms and conditions text that the item shown was indicative of the type of items that were available, such information was not displayed in the minimum font size and would very likely have been overlooked by many consumers. The specific button a consumer was required to click on to start the request process was labelled "GET IT". "IT" is ambiguous in this context and could refer to either the required pin code or the specific content item being advertised. The "DOWNLOAD" button, when clicked, results in a consumer receiving a link to download the specific X-Ray Scanner content item (nothing else appears to be accessible for download as a result of clicking on that button). It is also clear from the Monitor's report that when the pin number is entered onto the web page and the "DOWNLOAD" button is clicked, the consumer is simultaneously subscribed to a subscription service at a cost of R30 per week. This method of subscribing the consumer to the subscription service falls foul of section 11.1.2 of the Code as it bundles subscription to the service with the process of requesting and downloading a specific content item, i.e. it is not an independent subscription transaction but involves the simultaneous provision of access to an advertised content item too.

Access cost and terms and conditions font sizes

The access costs and terms and conditions were not displayed on the web pages in the minimum font sizes required by sections 9.2.1.1 and 9.2.2.1 of the Advertising Rules. It has been noted that these font sizes were subsequently adjusted after the breach had been brought to the SP's attention.

Abbreviations used in welcome message

The abbreviation of "wk" for "week" and the use of lower case "sms" for "SMS" are not permitted in terms of section 9.3.1 of the Advertising Rules. It has been noted that these abbreviations were corrected after the breach had been brought to the SP's attention.

Pricing information

The pricing information contained in the SMS received by the Monitor described the relevant charges as "R10/3sms/wk". This is highly confusing as it appears that the charges are R10 per week for 3 SMS's whereas the actual charges are R30 per week for 3 SMS's. Revealing pricing information in this way breaches section 4.1.1 of the Code which provides as follows:

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.

Deceptive advertising

Having studied the advertisements in question, I am of the opinion that not all consumers would appreciate that what was being advertised was essentially a content item (i.e. a video or "wallpaper") and not an actual scanner. Section 4.1.2 of the Code requires that members must not knowingly disseminate information that is deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission. I find that the advertisement for the content item and service would have been likely to mislead some consumers and do not think it possible that this would not have been known by the IP. It would not have been difficult to mark these kinds of advertisements as joke offerings but this was not done.

SP's failure to suspend services

A member is required to be familiar with the provisions of the Code of Conduct. Even after this particular service and its advertisements were brought to the attention of the member on 17 June 2009 (the date on which the member confirmed receipt of the complaint), no decisive action was taken by the member at that time. Instead the member requested an extension of the time period within which it would respond to the complaint. Its response was for the most part defensive with only limited acknowledgement that the Code had been breached.

Section 3.9 of the Code not only requires members to bind information providers to comply with the provisions of the Code but also permits a member to suspend the services of any information provider that provides a service in contravention of the Code. In the present matter, the advertisements are deceptive and misleading, yet even after the numerous breaches of the Code ought to have been clear to the SP, it did not suspend new subscriptions to the service until the Emergency Panel directed

it to do so almost a month later on 13 July 2007. In such circumstances, I find the SP to have breached section 4.1.1 (outlined above) and 4.1.2 of the Code in that the member did not demonstrate fairness towards consumers and knowingly distributed information that was likely to mislead.

Summary

In summary, I find that sections 4.1.1; 4.1.2; and 11.1.2 of the Code and sections 9.2.1.1; 9.2.2.1 and 9.3.1 of the Advertising Rules have clearly been breached.

Sanction

In light of the severity of the breaches the following sanctions are imposed:

1. The suspension of all advertising for the service ordered by the Emergency Panel on 13 July 2009 date is confirmed and any further advertising of this service in contravention of the Code is prohibited.
2. The SP is directed to pay R50 000 ("the 1st Fine") to WASPA within 5 working days of delivery of this report for breach of sections 4.1.1 and 4.1.2 of the Code failing which the SP's membership shall be suspended until such time as the 1st Fine has been paid in full.
3. In respect of the breaches of section 11.1.2 of the Code and sections 9.2.1.1; 9.2.2.1 and 9.3.1 of the Advertising Rules, the SP is directed to pay over to WASPA an amount of R125 000 ("the 2nd Fine") drawn from all revenue received by the SP from the date of delivery of this report from all cellular network operators (including both the SP and IP shares thereof or their respective commissions therein) in respect of any of the IP's subscription services irrespective of the date on which such services were actually rendered or the date on which the right to payment of such revenue actually accrued.
4. The SP or any other person may also settle the 2nd Fine or any portion thereof in cash by such other means as they deem fit.
5. The SP is directed to deliver to WASPA, within 7 days of delivery of this report, a list of all short codes, long codes and alphanumeric identifiers assigned to the SP and being used by the IP as contemplated by the provisions of section 3.11.1 of the Code.
6. Until WASPA provides written notification of receipt of payment of the 2nd Fine in full:
 - 6.1 the SP is directed to withhold payment of all amounts due by it to the IP as contemplated by the provisions of section 13.4.1(i) of the Code;
 - 6.2 the SP is directed to provide WASPA with monthly statements of account ("the Statements") detailing all revenue either paid over or due to be paid over to the SP by any cellular network operator in respect of any and all services provided by the SP to the IP from 1 May 2009;
 - 6.3 the SP is directed to deliver a written consent to WASPA within 7 days of the delivery of this report irrevocably authorizing WASPA to verify and audit the accuracy of the Statements with the relevant network operators concerned;

- 6.4 all members, including the SP, are directed to suspend the provision of all subscription services to the IP from 23h00 of the first Sunday following delivery of this report; and
- 6.5 all members are directed to send a SMS message to any affected subscribers advising that the relevant services have been terminated due to a breach by Mozzi of the WASPA Code of Conduct.