



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Blinck Mobile
Information Provider (IP) (if any)	Celldorado
Service Type	Subscription service
Source of Complaints	Mr J Cobbett
Complaint Number	6843
Date received	19 June 2009
Code of Conduct version	7.4

Complaint

The complainant states that while he was browsing the advertising section on the Facebook website, he noted that the SP was offering an "IQ" test bundled with a subscription service that charges R60/week.

The complainant alleges that 11.1.2 of the code has been breached in that a quiz has been bundled with a subscription service.

The complainant provided the following link to the advert together with a screenshot of the page.

See:

http://www.celldorado.com/ZA/ADS/577328486/?trackid=548372962&tick=0&transactionid=41f509_6465d_4a3b6d40_c4239eb4_37

SP's response

The SP responded to the complaint by arguing that its “IQ Test” is not a quiz that is being used as a marketing tool to sell its subscription services. The IQ Test is a game that is the first item of one of its subscription services, and it is marketed as such.

The questions a customer answers on the web pages before signing up are example questions of the IQ Test. Once the customer signs up, the customer will get the full IQ Test on his phone, and other games that are part of this subscription service.

The game “the IQ Test” is downloaded to a customer’s phone and can be played as much as one likes. So, by signing up for this subscription service the customer is not entered into a competition or quiz but will receive games, including but not limited to the IQ Test.

The interpretation the WASPA Media Monitor gives to article 11.1.2 of the Code of Conduct is very alarming to us. This interpretation would in fact mean that games like the IQ Test or Love Test (both games are downloaded to a customer’s mobile phone) are not allowed to be sold anymore as part of a subscription service.

It is the SP’s opinion that the interpretation of the WASPA Media Monitor clearly overshoots the purpose of clause 11.1.2 of the Code. In its opinion, clause 11.1.2 aims to prevent having consumers do a quiz online, and then have these consumers fill in their MSISDN to send them the results by sms while at the same time subscribing them to a subscription service.

Marketing a game that can be downloaded to a customer’s phone, like the SP does with regard to the IQ Test, is not a breach of this clause. The questions put on the landing pages are a preview of the first item of the SP’s subscription service and are not used to send the customer a result of any sort. Once the consumer subscribes, he or she gets the full product, and can play the IQ on his or her phone.

Because of the lack of clarity on the meaning and purpose of article 11.1.2, the SP temporarily suspended the landing pages for the service until further clarity is provided.

Sections of the Code considered**11. Subscription services****11.1. Manner of subscription**

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 and may not be an entry into a competition or quiz.

11.1.3. 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.

11.1.4. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

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.

11.1.6. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.7. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

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.

11.1.9. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

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].

11.1.11. If a subscription service can be initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation must be obtained from that customer's mobile handset before any billing may take place for that service.

Decision

The link provided by the complainant is no longer accessible as the SP has temporarily suspended same. However I have perused a screenshot of the landing page in question. The following can be noted from the landing page:

1. There is a clear reference to the content being part of a subscription service on the top right hand corner of the advert. It reads:

"Subscription service – R60/week"

2. There are also thumbnail examples of other mobile games that form part of the subscription service along with the following wording:

"Get this and many more mobile games"

3. There is also a reference to "1/10" across the page which indicates that the content advertised is not a standalone item and that there are other questions to follow.
4. There is a further reference to "subscription service – R60/week at the bottom of the page.
5. The following statements are included In the terms and conditions at the bottom of the page:

"You will receive 3 games per week which will be charged at R20 per item."

"The shown item(s) form(s) part of the subscription service and is (are) indicative of the content items that will be received."

The purpose of section 11.1.2 of the code is to prevent unsuspecting users who enter a competition or participate in a quiz from being subscribed to a subscription service when they had no intention of joining such service on their own.

The IQ test which forms the subject matter of the current complaint could be construed as a quiz. However, the SP has clearly highlighted at various places in the relevant advert that the IQ test is one of many content items that can be obtained if one joins this particular subscription service. The reasonable consumer would not be misled by this advert into believing that the IQ test is being offered as a single content item.

The advert also complies with sections 11.1.1 and 11.1.3 of the code.

The complaint is accordingly dismissed.