



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Mobile Messenger

Service Type: Subscription service

Complainant: Media Monitor

Complaint Number: 6859

Adjudicator: Kerron Edmunson

Code/Ad Rules version: 7.0, 7.4 and 2.3

Introduction

An emergency procedure notice was issued to the SP by a WASPA emergency panel on 3 July 2009 requiring compliance with an order issued in the following terms: “the panel orders the SP to immediately remedy the breach of clause 11.1.10”. The panel considered the risk to consumers of ongoing harm to be minimal and the balance of the matter was referred to adjudication. The additional findings of the panel are included within the adjudication and expanded upon.

Complaint

In June 2009 the SP was advised to remedy a breach of section 11.1.2 of the Code following a complaint by the Media Monitor that the SP was “making use of a quiz in order to sell sub services” on the website <http://myluvcrush.com/za/>.

The SP’s response was forwarded to the complainant who replied that the internet campaign “lures customers into a subscription service by answering questions on the web. In order to get results the user needs to supply their cellphone number by entering it onto the web. If the term “quiz” is being challenged then an adjudicator can decide on this, but in my opinion, asking a user to answer questions is a quiz. This campaign ultimately still operates on the same system – making use of an internet campaign as a marketing tool to lure customers into a subscription service. If the SPs wants to sell a subscription service offering love content and tips, why don’t they do just that? – promote a Love content subscription service? Instead they’re hiding the subscription service behind a web quiz campaign”.

SP Response

The SP disputed the breach of section 11.1.2 stating that the campaign was not a quiz or competition campaign but a “flirting tips and horoscope subscription service which provides users with love advice and characteristics of potential mates based upon their zodiac sign. As the user progresses through each page they are presented with questions which personalise the content they will receive, thereby customizing their subscription. Our client is enhancing the user experience by allowing the user to interact for content which specifically pertains to them. Each

page is fully compliant per COC Sections 6.2.4 and 6.2.5. The complete cost and frequency of the service is clearly visible. Per Section 11.1.1, each page explicitly identifies that the campaign is a “subscription service”. These details are offered above the banner and included in the summary terms. Per Section 11.5.1, instructions for subscription termination are clear, easy to understand and readily available on every page in the summary terms. Additionally, while HELP or support instructions are not required a customer care number and email address are provided to promptly address all inquiries in the summary terms.... “

The SP then offers to work with WASPA to improve the campaign’s design.

Following the emergency procedure notice, the SP addresses a further response to WASPA stating that they did not consider that they had breached section 11.1.10 of the Code, and that “the matter was withdrawn by the Media Monitor because [their] PINs are comprised of all necessary criteria. In fact the PIN messages go beyond the Code’s requirements as set forth in 11.1.10 by providing consumers with every opportunity to receive help 24x7 in addition to opt out instructions should the consumer decide to unsubscribe from the service....”

The SP also includes their template message for “approval” by WASPA.

Consideration of the WASPA Code

The emergency panel considered versions 7.0 and 7.4 of the Code and version 2.3 of the Advertising Rules as at 3 July 2009. They considered specifically section 11 of the Code. The following provisions are relevant (there is very little difference in wording between the 2 versions of the Code considered other than as indicated):

Section 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.

Section 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 11.1.10: 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].

From v7.4 of the Code:

Section 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.

For completeness we have also considered definitions which may be relevant under the Code:

- “2.9. A “**competition service**” is any competition or game with prizes or entry mechanism into a draw. Where an auction or a reverse auction has the characteristics of a competition service, it is considered to be a competition service.”
- “2.11. A “**content subscription service**” includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a “club” or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location-based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.”
- “2.23. A “**subscription service**” is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.”

It is also relevant to consider section 4 (provision of information to customers):

Section 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.

Section 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.

Decision

The panel considered that the first part of section 11.1.2 which requires that any request from a customer to join a subscription service be an independent transaction with the specific intention of subscribing to a service, must be complied with and therefore that there was a possibility that a service which is not a competition or a quiz can still be in breach of section 11.1.2. It is not relevant to consider provisions dealing with competition services, as the service does not fall within the definition.

During the course of the emergency panel hearing the panel tested the sign-up process for the Luvcrush service and noted that the process appeared to be compliant with section 11.1.11 of the Code. They therefore took the view that the potential for harm to consumers as a result of a possible breach of section 11.1.2 was mitigated by the SP’s compliance with section 11.1.1 of the Code.

Finally, the panel noted that the message sent to consumers in response to a sign-up query was not entirely compliant with the prescribed wording of section 11.1.10 of the Code and ordered the SP to amend the message accordingly to achieve compliance.

Taking the findings of the panel into account, and considering the SP’s various responses and the original complaint, we find that:

1. the SP appears to have complied with 11.1.1;

2. the service is not a “competition service” as defined;
3. the service falls within the definition of “content subscription service” as defined and therefore also within the definition of “subscription service”;
4. the internet campaign may well be a “quiz” but in our view this does not affect the definition of the service as a “content subscription service” particularly in light of the confirmatory message sent in relation to the service which the emergency panel agreed was sufficient to comply with 11.1.11, and nor does it constitute the service as a method of “luring customers” to unwittingly subscribe given the fact that the SP appears to have complied with 11.1.1;
5. accordingly there does not appear to be a breach of section 4; and
6. no consumers complained about the service and Media Monitor apparently withdrew its notice.

The complaint is not upheld. The findings of the emergency panel are endorsed.