



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Integrat
Information Provider (IP): (if applicable)	Mobile Messenger
Service Type:	Subscription
Complainant:	Competitor
Complaint Number:	4580
Code version:	Code v6.1 and Ad Rules v1.6
Date of Report:	1/9/2008

Complaint

1. On the 22nd of July 2008 the Complainant, who is employed by a competitor of the SP, lodged a complaint via the WASPA website in the following terms:

Affiliations: I am employed by, or otherwise associated with one of WASPA's member companies

Affiliation_Information: I want to remain anonymous. I am a WASPA member.

Name_WASP: Unknown

OtherID: <http://my1pureluv.com/za/>

Code_Breached: 6.2. Pricing of services

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

Detailed_Description_Complaint: This website subscribes users to a service without displaying the price or any of the terms and conditions required. The

customer does not even know which company this is. This website breaches the code in the following ways:

1. Full cost of service is not displayed.
 2. Terms and conditions are not displayed
 3. helpline number is not displayed
 4. company name is not displayed
 5. The full bearer cost and other cost involved are not displayed.
 6. Requirements for full access to the service offered are not displayed
2. Also provided were five screenshots of the offending website which are included as annexures "A" to "E".
 3. The Complainant made a further submission on what appears to have been the 1st of August 2008:

The company has since changed their website, but still the code was breached. Again I attach the screenshots of the site as it breached the code.

The corrective action that was taken after the complaint was lodged does not change the fact that code was breached and that several customers were wronged as a result of this.
 4. The IP is an affiliate member of WASPA.
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Response

5. The SP and IP both responded in an email addressed to the WASPA Secretariat of the 21st of August 2008.
6. The IP's response read as follows:

We at Mobile Messenger agree that the violations [Ref# 4580] cited for www.my1pureluv.com/za/ are valid. We apologize for the recent infractions and any confusion they may have caused to the end user. We constantly strive to maintain all of our campaigns in full compliance with all carrier rules and regulations. Unfortunately, there are occasions (given technical glitches) when a page or website might not display in full compliance.

We reviewed the website at issue and confirmed that all infractions were indeed fixed. We will continue to monitor all of our campaigns in order to ensure that these types of violations do not occur again. Please be reassured that Mobile Messenger continues to be committed to keeping all of our campaigns in full compliance with all rules and regulations.
7. The SP's response was more comprehensive:

Integrat would from the outset like to make it clear that we are an aggregator and as such only act as a conduit for the messages or SMS component of the service and have no part and / or control in the production, design, creation and set up of the website that forms the basis of this complaint.

Firstly we are of the mind set that the complaint is very vague as no cell phone number (MSISDN) is provided, so that we might check our logs to verify the transactions that have taken place with the specific website and short code, to establish the detriment to the subscriber and Complainant. That being said - even though we go to great lengths to avoid technical deficiency which might affect subscribers, regrettably to our and the consumers disadvantage these things do happen. Mobile messenger would however be more than willing to refund any subscriber who has been affected by the technical fault with provision of the affected MSISDN numbers.

Secondly the "corrective action that was taken after the complaint was lodged" is also very vague as we are not aware of any other complaint that has escalated. Furthermore we have no way of tracing past or historical events on a website and therefore have to abide with the submissions of our clients that the site was not fully compliant due to a technical malfunction at the launching of same.

In addition, if one examines file "4580 01 5 jpg." as provided by WASPA and the Complainant it can clearly be seen that there is a tick box with the words: "I have read and agree to the terms and conditions." We are of the opinion that any reasonable person would attempt to find these before entering a website, moreover be extra cautious if none are displayed while he is prompted to accept them. If one is then prompted to agree to terms and conditions one would most certainly think twice and be very hesitant to enter such a site that necessitates you to agree to Terms and Conditions while none is present.

Integrat is committed to fair and honest dealings with subscribers at all times. We will not tolerate and permit content providers for which we aggregate to continue to provide services which are not absolutely compliant.

We will be doing extra compliance checks with the IP before the launching of any new campaigns as to ensure compliance of all mediums with the WASPA Code of Conduct, Advertising rules, and adjudication reports (*sic*) and any advisory notices.

We request that the Complainant in future provide the MSISDN numbers of customers who were aggrieved so that we can resolve these matters, and we therefore again confirm Mobile Messengers willingness to refund the faultily (*sic*) treated subscriber/s.

Portion of the Code Considered

8. The Complainant correctly identified clause 6 of the Code of Conduct as being relevant in this matter:

6.1. WASPA advertising rules

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

6.1.2. The latest version of the WASPA Advertising Rules will always be available on the WASPA web site.

6.2. Pricing of services

6.2.1. All advertised prices must include VAT.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

...

6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

9. As the advertised service is a subscription service, Clause 11 of the Code of Conduct applies:

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

10. Clause 6.1.1 incorporates the Advertising Rules into the WASPA Code of Conduct by reference. The rules pertaining to web sites applicable here are as follows:

9.2.2 Cost OF ACCESS DISPLAY

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9.2.2.2 Position of Access Cost Text

- The T&C text must be placed close as possible to the unique access number.

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- The consumer should thus not have to scroll down significantly on that same page or follow any links to other pages to be made aware of the full pricing and T&C associated with a unique access number.

...

- No cost and/or T&C information may be placed on in-vue type pages.

9.2.3.2 Position of T&C display text

- For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number in a non-serif font.

- This T&C text must be placed close as possible to the unique access number.

9.2.9 CONTACT DETAILS: Provide web site address AND helpline number/shortcode // Advertisers must include a helpline number or a working web site address that has direct applicability and linkage to the advertiser

9.2.16 SUBSCRIPTION SERVICES

(i) Must Use The Words “Subscription Service”

If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words “Subscription Service” must be prominently displayed at the top section of the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed. No acronym, letter (eg “S”), number, abbreviation (eg “Subs”), icon, or any other mark may be used as an alternative to the words “Subscription Service” anywhere in the advertisement when that Content is only available at all and/or at a particular cost as part of a subscription service.

(ii) Must Indicate Charge/s:

The advertisement must indicate:

(a) The TOTAL charge that the consumer will incur for the subscription component of their access to that subscription service.

(b) The frequency (and the minimum frequency, if applicable) at which they will be charged for the subscription component of access to that subscription service.

(c) Whether, in addition to the periodic subscription charges in (a) & (b) above, there are any additional charges applicable to obtaining any particular service, Content or class of Content on the advertisement.

Decision

11. The IP has admitted to violations of the WASPA Code of Conduct, however it remains to determine which clauses have been breached and impose an appropriate sanction.
12. The Complainant cites clause 6 of the Code of Conduct, however, as the service in question is a subscription service, other portions of the Code of Conduct and advertising rules apply.
13. To address the specific breaches alleged by the Complainant *seriatim*:
 - 13.1. **Full cost of services is not displayed.** In terms of clause 6.2.2 of the Code of Conduct, the advertisement should have included the full retail price of the service. Advertising Rule 9.2.16 (ii)(a) (relating to subscription services) states that the total charge that the consumer will incur for the subscription component of their access to the subscription service must be indicated in the advertisement. As no indication as to cost appeared at all in the advertisement, the IP has breached both of these clauses.

- 13.2. **Terms and conditions were not displayed.** It is apparent from the advertising rules, specifically rules 9.2.2.2 and 9.2.3.2, that terms and conditions applicable to the service must appear on the same page as the "call to action" and should not be available on another page or incorporated by reference. The SP states in its response that a reasonable person would have followed the link to the terms and conditions on Annexure E. Be that as it may, there is still an infringement of the advertising rules which are meant to ensure that everyone is aware of the terms and conditions so that no abuse will take place. Any ambiguity here is removed by an inspection of clause 9.2.1 of the advertising rules which gives a clear overview. Accordingly the IP has breached the rules cited.
- 13.3. **Helpline number is not displayed.** Advertising rule 9.2.9 states that an advertiser must provide a web site address and a helpline number / shortcode. As neither of these was provided in the website complained of, the IP has breached the rule cited.
- 13.4. **Company name is not displayed.** Clause 6.2.6 of the Code of Conduct requires that the name of the SP or IP be included in advertising for premium rated services. This did not occur in the website complained of, and hence the IP has breached the rule cited.
- 13.5. **The full bearer cost and other cost involved are not displayed.** It is not known to the adjudicator, and probably not known to the Complainant either, if there were in fact any extra costs involved in this service. Thus the IP cannot be said to have breached advertising rule 9.2.16 (ii)(c).
- 13.6. **Requirements for full access to the service offered are not displayed.** This requirement is only necessary where the service in question does indeed have requirements for full access which are not available to all cellphone owners. Given that this is a SMS service, it is most unlikely that there will be any special requirements for the use of this service.
14. It came to the adjudicator's attention while examining the complaint that the IP is also guilty of the following breaches:
- 14.1. **Frequency not indicated.** In terms of advertising rule 9.2.16 (ii)(b) the frequency of a subscription service should be indicated in advertising. This was not done in the website in question, and the IP is thus guilty of an infringement of the cited rule.
- 14.2. **"Subscription service" does not appear.** This is clearly a subscription service, but of the five website pages included in the complaint, only the first and fourth included the words "this is a subscription service" at the top of the screen. Significantly, on the fifth page (or "step"), which includes the call to action and the reference to terms and conditions, there is no reference to this being a subscription service at all. This constitutes an infringement of both clause 11.1.1 of the Code of Conduct and advertising rule 9.2.16(i).
- 14.3. Given the potential for abuse of subscription services, any infringement of the Code of Conduct relating to subscription services is viewed in a serious light.

15. The adjudicator noted the SP's comments relating to corrective action.
16. A visit to the website at URL <http://my1pureluv.com/za/> on the 28th of August 2008 revealed the following shortcomings that still exist despite the remedial action alleged by both the SP and IP:
 - 16.1. the name of the IP does not appear on the website itself. Where it appears in the "full terms and conditions" it is reflected as "Mobstar", while the IP's name is apparently "Mobile Messenger".
 - 16.2. The Terms and Conditions appear in a pop-up window, which is a contravention of advertising rule 9.2.2.2.
 - 16.3. The words "Subscription Service" or similar do not appear on page 5 (or "step 5") of the website, which contains the call to action.

Sanction

17. In imposing sanction the adjudicator took account of the fact that the IP is a first-time offender, and that it took steps, however inadequate, to remedy its various breaches of the Code of Conduct upon being notified of them.
18. The IP is ordered to immediately take the website at URL <http://my1pureluv.com/za/> offline until such time as the shortcomings set out in paragraph 16 hereof have been remedied.
19. The IP is ordered to immediately terminate the subscriptions of all subscribers to this service who subscribed via the website at URL <http://my1pureluv.com/za/>, but there is no obligation to make a general refund, subject to paragraph 20 below. If the website in question is made available again, the IP may accept subscriptions to the service once more, but may not resurrect the cancelled subscriptions unless the customer re-subscribes him- or herself. The IP may notify subscribers of the termination of the service if it so wishes.
20. The IP shall reimburse any subscriber who requests a refund of monies paid towards the service up until the date hereof.
21. The IP is ordered to pay the following fines within 5 days hereof:
 - 21.1. The IP is fined R30 000 in respect of breaches of the Code of Conduct relating to subscription services, to wit the infringements dealt with in paragraphs 13.1, 14.1 and 14.2. R25 000 of this fine is suspended for a period of 6 months from the date hereof, on condition that the IP does not infringe advertising rule 9.2.16(ii)(a) or (b), or clause 11.1.1 of the Code of Conduct during this period.
 - 21.2. The IP is fined R2 500 in respect of the breaches described in paragraphs 13.2, 13.3 and 13.4.

22. No sanction is imposed on the SP.

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Annexure A



Annexure B



Annexure C

The image is a screenshot of a web browser window. The browser's address bar shows three tabs: 'Most Visited', 'Getting Started', and 'Latest Headlines'. The main content area features a decorative purple and red striped border. At the top, the text 'My pure love' is written in a white, cursive font with a red ribbon graphic. Below this, a large white heart shape with a red outline and a drop shadow is centered. Inside the heart, the text 'step 3 - enter your first name' is written in a red, cursive font. To the right of the heart, a silver spatula is shown as if spreading frosting. Below the heart, there is a text input field with the label 'First name here:' and the text 'John' entered. To the right of the input field is a pink button with the text 'Continue' in white. At the bottom left of the browser window, the word 'Done' is visible.

Most Visited Getting Started Latest Headlines

My pure love

step 3 - enter your first name

First name here:
John

Continue

Done

Annexure D



Annexure E

