



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Not specified
Service Type	Television advertising
Source of Complaints	WASPA Monitor
Complaint Number	4120
Date received	28 April 2008
Code of Conduct version	5.7

Complaint

The Complaint was lodged by the WASPA Monitor who alleged that certain aspects of a television commercial for the SP's 31606 shortcode were not compliant with section 1.2.3 of the WASPA Advertising Rules. The Monitor requested that the SP provide a remedial plan of action indicating how it would deal with the following:

1. The type font in the cost display box in the right hand corner is not legible. The font is out of focus, and not sharp enough.
2. The title safe border is also in the incorrect format - triangles are not meant to be used.
3. The T&C's are not legible due to an "out of focus type" here too. The T&C are also too small.

SP Response

The SP provided a detailed response, the essence of which was to the effect that the version of the advertisement viewed by the Monitor (and provided to the SP as part of the Complaint) was of an inferior quality. The SP provided a further, far clearer, version of the commercial and argued that the Code of Conduct had indeed been complied with in all respects.

The SP argued further that the instant Complaint closely mirrored that adjudicated upon under Complaint #3589 and made out a case for the two complaints to be treated in an identical matter. The SP in fact advanced its Response in respect of Complaint #3589 as the primary portion of its Response in this matter, which is reproduced in part below:

“We have dealt with this complaint in a methodical way duly illustrating compliance. We also hereby offer in accordance with the decision of the adjudicator in **complaint number # 376** (which is also discussed below) and with reference to the poor quality of the exemplar of the advertisement as received by WASPA, we have proceeded to send the video [As per link above] as presented by the content provider to yourselves for your ease of reference.

The WASPA advertising guidelines has set certain display rules for Cost and T&C information, which has been displayed in bold in this response, with our comment following thereto to illustrate the precise compliance with these guidelines.

Display of Access Cost:

...

Access costs must be displayed in number 18 point ‘Zurich’ font and placed in a special box or triangle in any top corner of the screen.

The content provider has assured us that the display of the Access cost in this advertisement was 18 point ‘Zurich’ font.

It is further quite clear that the Access cost was displayed in a special triangle in the top right hand corner of the screen with the colour red which in addition independently catch the attention of the viewers.

If advertising a subscription service the word “Subscription” must also be placed in the Access cost box/triangle at 12 point ‘Zurich’ font size.

The content provider has again assured that the display of the wording “Subscription Service” was indeed in 12 point ‘Zurich’ font size.

Display of T&C:

Must be displayed horizontally in 15 point (MINIMUM) ‘Zurich’ font.

The content provider assured us once again that the display of the T&C was in 15 point ‘Zurich’ font size and the fact that it was displayed horizontally can clearly be seen even in the poor quality model.

For a minimum of 5 seconds per mention by an announcer or the display on the screen of an access number, and in a title safe area.

(The T&C text must be static and horizontal for the requisite minimum display time, changing as is necessary to show all the T&Cs in equal time proportion.

The T&C text in this advertisement is at the bottom of the screen in a title safe area and each part of the dual T&C's are displayed for approximately 7(SEVEN)seconds each.

In view of the abovementioned it is clear-cut that the content provider has complied with the complete guidelines as shown above. We can however only submit that the font sizes are as prescribed. We have in addition roughly measured these to assist in showing that the fonts are identical to a Microsoft Word non-serif font size, when compared with the fonts as used in the complaint advertisement #3589. If this should prove not to be sufficient we shall have to be afforded more time to collect the original graphics etc. as to be used for authentication in this complaint.”

The SP concluded, in respect of this Complaint:

“As with the previous complaint the IP has offered to increase font sizes in adverts to be evidence for their good faith. After the adjudication in #3589 our offices has contacted WASPA to enquire of the time to be afforded to increase same as the adjudicator did not give a deadline/timelimit or transgression time.”

Further investigation

The Monitor was not, however, satisfied with this Response, indicating that, while she was now happy with the visibility of the terms and conditions, the following issues remained:

“The access cost in the top right corner is still illegible due to the black text on red background. The colour red tends to "bleed" on television, so should not be used below 90% luminance. This results in the black type being not being solid and looking "thin". In other words, the red is too dark!

White text on red will be more legible.

White text on black is even better (or the reverse).”

The SP thereafter indicated that the IP involved was happy to amend the advertisements as required but was at the same time wary of doing so due to the imminent revision of the WASPA Advertising Guidelines and its concern that it may be required to undertake the expense of amending the advertisements once again when Version 2 of the WASPA Advertising Guidelines were released.

Sections of the Code considered

The Monitor has cited section 1.2.3 of Version 1.6 of the WASPA Advertising Rules which relate to the use of access channels in

- Infomercials
- Scheduled TV programming

-
- In-programme promotions or any interactivity with the audience in scheduled TV programming
 - Any promotional competitions in any TV advertising where access to mobile content (e.g. ringtones) does not form the core of the advertisers normal business activities.

The Adjudicator, however, regards the Complaint as more properly brought under section 2.2.3 of the Advertising Rules which relates to television and cinema advertisements that primarily promote mobile content and where delivery is to mobile devices, as is the case in this matter. There is no prejudice to the SP in this regard.

2.2.3 T&C TEXT DISPLAY RULES

Trigger:

At any display of, or mention by a voice-over, of a unique access number

Display Length:

- Minimum 10 seconds
- If applicable, of the 10 seconds display time for T&Cs, a minimum of 5 seconds must be allocated to informing the user that they will be subscribing to a subscription service.

Display Text Font:

'Zurich' font

Display Text Font Size:

15 points MINIMUM

Display Text Position:

On bottom edge of title face of the screen

Display Text Type:

- No CAPS-only or Italics-only text is permitted for the T&C font.
- The T&C text must be static and horizontal for the requisite minimum display time, changing as is necessary to show all the T&Cs in equal time proportion
- The T&C text may not scroll on the screen, either right to left, left to right nor any other direction.
- The T&C text must not be positioned or formatted in a manner where it may be obscured by other text or visual information that may be displayed as part of the ad
- The T&C must be formatted so that each sentence is distinct. Each sentence must end with a period.

-
- The T&C text must not be part of a colour scheme that may obscure easy reading of complete details of the T&C
 - The T&C text must not be obscured by any background flashing or other visual animations that practically and objectively obscures easy reading of complete details of the T&C text.

Moreover the Monitor appears to have raised concerns relating to the cost of access display without referencing a relevant section of the Advertising Rules. The section to be consulted in this regard is 2.2.2, which reads:

2.2.2 COST OF ACCESS TEXT DISPLAY RULES

Trigger:

At any display of, or mention by a voice-over, of a unique access number

Display Length:

100% of the length of the advertisement

Display Text Font:

'Zurich' font

Display Text Font Size:

18 points MINIMUM

Display Text Font Position:

In a visible block or triangle in a top corner of the screen in the Title Safe Area (see diagrams)

Display Text Font Colour:

Contrasted colour superimposed on the block/triangle

Block/Triangle Colour

Contrasted colour, behind the display text

Display Text Type:

- Text must be static
- No Caps (except for the first letter of the first word) or italics may be used as the display font for the word subscription.
- No italics may be used as the display font for the price text.
- No text must be placed around the access cost text that may obscure clear reading

-
- The access cost text must not be positioned or formatted in a manner where it may be obscured by other text or visual information that may be displayed as part of the ad
 - The access cost must not be part of a colour scheme that may obscure easy reading of complete details of the access cost
 - The access cost text must not be obscured by any background flashing or other visual animations that practically and objectively obscures easy reading of complete details of the cost

Example:

R10/SMS or

R10/week

Subscription

Finally, the Monitor has also indicated in the Complaint that she believes the title safe border is in the incorrect format and that triangles are not meant to be used for this purpose. Pictorial examples aside the only references to a title safe border relevant to this matter is found in section 2.2.2 above as also section 2.2.1 of the Advertising Rules, viz.:

Display of T&C:

Must be displayed horizontally in 15 points (MINIMUM) 'Zurich' font for a minimum of 10 seconds per mention by an announcer or the display on the screen of an access number, and in a Title Safe Area. If a subscription service, 'subscription' T&C must be visible for a minimum of 5 of the 10 seconds. No scrolling of text containing any T&Cs are permitted. No CAPS only or Italics-only text is permitted for the T&C font.

The Adjudicator also had reference to sections 6.1.1. & 6.2.5 of Version 5.7 of the WASPA Code of Conduct:

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

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

Decision

It is firstly necessary to clarify the manner in which the Monitor evaluates compliance when viewing an advert with particular reference to the quality of the recording. The Monitor

watches the adverts on "PVRed" recordings of TV broadcasts. Due to the fact that it isn't possible to copy a recording from a PVR to a PC, WASPA also maintains a subscription to a clipping service, which allows the Monitor to download inferior versions for reference and for the purpose of lodging the complaint.

There is therefore no merit in a defence that the version viewed by the Monitor is inferior: it is merely the version used for reference purposes which is inferior. It is of course necessary that the Adjudicator should have reference to a high quality version, such as has been provided by the SP in this matter, for the purposes of adjudicating the complaint.

Turning to the matter at hand...

It does indeed appear that the WASPA Advertising Rules will shortly be amended and that the amendments will involve, inter alia:

- An increase in font sizes
- Price box to be increased in size
- Total upfront price to be displayed
- Information timings.

It is correct to state that there has been uncertainty as regards the date of implementation of the next version.

The Adjudicator accepts the submission of the SP with regard to the precedent cited. A brief excursion through recent decisions in this regard reveals that a number of Adjudications have expressed a strong view that the sections of the Advertising Rules dealing with font sizes for terms and conditions and pricing text are not actionable, i.e. they are not capable of being adjudicated upon.

The Complaint cannot be sustained and is dismissed.

In Adjudication 376 (23 October 2006):

"The adjudicator noted the SP comment..."it is impossible to clearly see the wording of the Terms and conditions in any TV ad." This comment is extremely valid as many advertisements which are fully compliant with the requirements of the WASPA Advertising Rules, may nevertheless contain wording (both price and terms and conditions) that are wholly or partly illegible on most television screens. This comment is taken as a valid criticism of the WASPA advertising rules and not as an admission of any wrongdoing on the part of the SP. Based on the copy of the advertisement supplied and the complainants own reaction having seen this advertisement on a different screen, the complaint was not upheld."

In Adjudication 3545 (31 March 2008):

"I refer to the adjudicator's report in complaint 376 where certain recommendations were made by the adjudicator, amongst which was the recommendation that the font of the terms and conditions be no smaller than that used for the access number. I agree with this suggestion.

There is also a lack of clarity with regard to how font sizes should be worked out for television advertisements. The Code Committee must formulate rules in this regard which can be easily followed by both members and adjudicators."

In Adjudication 3589 (6 April 2008):

"I am satisfied that the Complaint has been lodged on the basis of a subjective evaluation of the advertisement but relates to sections of the Advertising Rules where compliance is assessed on a strictly objective basis (i.e. has the required minimum font been used?).

The Complaint is dismissed.

As a postscript this Adjudicator endorses and supports the statement made by the Adjudicator under Complaint 3545 requesting that WASPA's Codecom take steps to clarify this aspect of the Advertising Rules."

The Adjudicator understands the frustration of the Monitor as it is apparent that, notwithstanding objective compliance with the provisions of the Advertising Rules, there is often an undesirable lack of clarity of text used in television advertisements, particularly when viewed on smaller screens.

Given the pending amendment of the Advertising Rules in this regard this Adjudicator is of the opinion that, in the absence of an objective assessment of font sizes utilised as being non-compliant with the provisions of the Advertising Rules, it would serve little purpose for the Secretariat to continue to accept and process complaints of this nature.

This Adjudicator wishes to call upon WASPA to urgently finalise the new version of the Advertising Rules, realizing that the continued failure to do so is not in the interests of consumers and that the WASPA Monitor is not able to perform her mandated function in this specific regard.

With regard to the aspect of the Complaint relating to the title safe area the Adjudicator is of the opinion that the elements of the advertisement do fall within this area as defined and that

there is nothing in the Advertising Rules that actually requires this line to be delineated through the use of different colours. The access cost display is clear.

The Complaint is dismissed.