



## ADJUDICATOR'S REPORT

<b>WASPA Member (SP):</b>	Integrat
<b>Information Provider (IP):</b>	Glomobi
<b>Service Type:</b>	Subscription
<b>Source of Complaints:</b>	WASPA Monitor
<b>Complaint Number:</b>	4784
<b>Code of Conduct version:</b>	Code v6.1 and 6.2 and Ad Rules v1.6

### Complaint

A complaint was submitted by the WASPA Monitor regarding seven television advertisements broadcast during the month of August 2008. The relevant version of the Advertising Rules for purposes of this complaint is version 1.6 and the versions of the Code to be considered are version 6.1 (which was in force until 14 August 2008) and version 6.2. (which was in force from 14 August 2008 until 25 March 2009).

The complainant alleged that the terms and conditions of the advertisements were illegible. The complainant specifically alleged that the SP had used a white type on a pastel turquoise background and that this made the published terms and conditions illegible.

### Response of SP

The SP provided a detailed response for which it is commended. The response of the SP is set out in full 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 videos as provided by the content provider to yourselves for your ease of reference.
- This video is of a much better quality and a true reflection of the advertisement used for screening on television and the way that the consumer sees it.
- We are of the opinion that the colour schemes used by Glomobi in these advertisements are legible – Glomobi has always been using this colour scheme and it has become customary and a sort of a trade mark for Glomobi.

- In addition in the longstanding time that Glomobi has been using these advertisements we have never received an consumer complaint about the legibility of the Terms and conditions of the services offered.
- We have handled the complaint in a methodical way in accordance with the current Advertising Rules on TV commercials to duly illustrate compliance with these requirements our comment is given in bold after each requirement:

### 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.

**The T&C's in Glomobi's advertisements are displayed for the whole advertisement which in this instant subsists of 30seconds, this moreover gives the subscriber or user extra time to study and take in the terms and conditions. The requirement set here are for 10 seconds – the Glomobi advertisement gives the viewer 3 times the required length to read and take in the T&C's.**

Display Text Font:

'Zurich' font

**Glomobi Complies with this requirement.**

Display Text Font Size:

15 points MINIMUM

**Glomobi Complies with this requirement.**

Display Text Position:

On bottom edge of title face of the screen

**Glomobi Complies with this requirement.**

Display Text Type:

- No CAPS-only or Italics-only text is permitted for the T&C font.

**Glomobi Complies with this requirement.**

- 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  
**Glomobi text is static and horizontal for more then the requisite minimum display, T&C's text displayed for full duration of 30 second advertisement.**

- The T&C text may not scroll on the screen, either right to left, left to right nor any other direction.

**Glomobi's T&C's text does not scroll on the screen in any direction, it stays motionless for the 30 second duration, once again making it easier for the viewer to read.**

- 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

**Glomobi's T&C's are in a title safe area with a light blue background and as such it is not obscured by other text or visual information 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.

**Glomobi Complies with this requirement.**

- The T&C text must not be part of a colour scheme that may obscure easy reading of complete details of the T&C

**Even though the light blue and white are soft colours it still provide enough contrast so that it provides for easy reading of the complete details of the T&C's.**

- 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.

**The title safe light blue background ensures that the T&C text is not obscured by any background flashing or other visual animations and this provides for easy reading of the complete details of the T&C text.**

We would like to refer the adjudicator to **complaint # 376** in the matter of ***Exact mobile the WASPA Member*** with the following extract from the adjudicator's decision:

**"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."**

Bearing in mind that this complaint # 4784 was brought in terms of the advertising guidelines. after viewing the advertisement as provided by the content provider and given the similar circumstances and facts that the same principles of complaint number # 376 should apply, and therefore this complaint should be dismissed.

If an adjudicator should find that Glomobi's T&C's are illegible because of the colour scheme and prompt them to change same, Glomobi will have to change them now and once again for the new advertising guidelines which draft has already been published this will practically speaking be a waste of time and money.

- We are of the opinion that the revised advertising rules(already published in draft for comment) to be published shortly should also be taken into consideration in adjudication of this matter as it will most certainly have the effect that our client Glomobi will again have to revise their TV Commercials which comes at an extensive cost.
- We get the feeling that the WASPA Monitor is trying to enforce the new advertising guidelines while they haven't been published and implemented yet.

- In the light that Glomobi's current advertisement adheres to all the requirements as set out by the current advertising guidelines this complaint should be dismissed.

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**Decision**

The SP's response is that the advertisements in question comply with the letter of the Advertising Rules and that the advertisements therefore cannot constitute a breach of the WASPA Code. Before dealing with the question of whether the advertisements do in fact comply in all respects with the Advertising Rules, it is worth recording that it is incorrect to maintain that any advertisement that does comply with the letter of the Advertising Rules cannot also be held to breach the Code.

By way of analogy, a person driving under the prescribed speed limit may comply with all traffic regulations but may still be convicted of the general offence of reckless driving if their driving is reckless in the circumstances. Conversely, a person driving at 125 km/h on a freeway may be in breach of a specific regulation but might not be convicted of reckless driving in the circumstances.

Section 6.2.5. of both version 6.1 and version 6.2 of the Code provides generally that the price for a premium rated service must be "easily and clearly visible" in all advertisements and must appear with all instances of the premium number display. Where a price for a premium rated service is displayed in a manner that complies with the letter of the Advertising Rules, including all minimum font standards, but which is nonetheless not "easily and clearly visible", that advertisement would not breach the specific font rules but would breach section 6.2.5 of the Code. The Advertising Rules merely represent the minimum standards which, if departed from, would automatically result in a breach of the Code.

It is also worth noting the statement in the pre-amble to the Advertising Rules to the following effect:

*"While this document has specific instructions on formatting, timing and the information required and definitions pursuant thereto, WASPs and their Information Providers may not seek to circumvent these criteria in any way by attempting to exploit any potential loopholes in the Rules where by doing so they may deprive the consumer of the minimum information required to make informed choices as the cost of access to Content/services and the terms and conditions associated with such access."*

Turning now to deal with the factual question of whether the advertisements in question do actually comply with the letter of the Advertising Rules, I have found that in the video submitted by the SP the display of access cost pricing is not displayed in 18 point Zurich font as required by section 1.2.2 of the Advertising Rules. The font used by the SP can be described as a stencil font, in any event it is not 18 point Zurich font.

I have also found that the white lettering on a transparent or 'safe' turquoise background with additional images underneath the transparent background make the information contained in the terms and conditions somewhat difficult to read. For most of the time in the advert, the words "This is a subscription service" are not as difficult to read as the actual pricing information which is harder to read by virtue of the additional image of a silver or grey cell phone key pad being positioned behind the transparent blue background underneath the area where the pricing information is displayed.

The standard required by the WASPA Code is not that pricing information for premium rated services must simply be “legible”, but that it must be **“easily”** legible. With regards to the advertisements in question, the access costs pricing information is not “easily” legible, nor is the pricing information contained in the terms in conditions section “easily” legible by virtue of the colour schemes used, the transparent background and layering of images. These factors combine to make the pricing information difficult to read.

Furthermore, the font used to display the access costs is not 18 point Zurich font but a stencil font which is much harder to read.

The complaint of a breach of section 6.2.5 of the Code and section 1.2.2 of the Advertising Rules is upheld.

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### **Sanction**

In determining an appropriate sanction, I have considered the fact that the advertisement provided by the SP shows the access costs in a stencil font rather than a Zurich font. A stencil font is not commonly used in electronic media and some specific attention must have been given to the use of this particular font over any other font type. If there was a specific reason for selecting this font type, it is difficult to image what that reason must have been as the font does not appear to be consistent with the overall design or aesthetic quality of the advertisement. A stencil font is plainly unsuitable for purposes of displaying pricing information as the broken letters and characters make it harder to read than a continuous font. I regard the SP’s failure to use the Zurich font as prescribed by the Code and its decision to rather use a stencil font to display pricing information in a television advertisement to be a serious breach of the advertising rules.

I have also taken into account that advertisements intended to be broadcast on television carry the potential to result in substantial unfairness to consumers if pricing information is not easily legible. No detailed information was given as to the frequency of the advertisements being used, but the SP indicated its reluctance to have to change the advertisements which clearly indicates that the advertisements were flighted a number of times.

Finally, I have also taken into account that the same SP and Information Provider have previously been found to be guilty of breaching the WASPA Code and Advertising Rules when it comes to the display of access costs in television adverts. I have taken particular note of the nature of the breaches perpetrated by the SP and IP in complaint no. 2048 in which the following is stated in the adjudicator’s report:

“The finding by the Adjudicator [is] that the advertisement breaches the Cost of Access Display rules set out in the WASPA Advertising Rules, specifically that 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. Having viewed the advertisement the Adjudicator is of the opinion that the failure of the SP to create a separately-coloured block with the cost of access text superimposed thereon in a contrasting colour combined with the positioning of the graphic behind the cost of access text display obscures such text to an unacceptable degree.”

In light of the seriousness of this breach and the repeated breaches of the Code by the same SP and IP regarding the ease with which pricing information in television advertisements can be read consumers, I have determined that a fine of R150 000 must be paid to WASPA within 10 days of the delivery of this report.

