

REPORT OF THE ADJUDICATOR

WASPA Member (SP): Sybase 365
Information Provider (IP): Blinck Mobile Limited
(if applicable)
Service Type: Advertising
Complainant: WASPA Monitor
Complaint Number: 3545
Code version: Code v5.7 and Ad Rules v1.6

Complaint

1. On the 21st of February 2008 the WASPA Monitor lodged the following complaints:

DateBreach : 4 January 2008

WaspService : 31631

ClausesBreached : 1.2.3

DescriptionComplaint : The terms and conditions of this commercial is not legible due to the fact the the font size of the T&C\'s are too small.

ValidSubmission : yes

Submit : Submit

Attached file : 2008_01_04_31631.wmv

AND

DateBreach : 13 February 2008

WaspService : 31631 - Micawber

ClausesBreached : 1.2.3

DescriptionComplaint : The terms and conditions of this commercial is not legible due to the advertisement visuals running over and under the T&C\'s.

The T&C\'s font is also too small.

ValidSubmission : yes

Attached file : 2008_02_13_31631.wmv

2. A short film clip of the advertisement in question was attached to each complaint. Unfortunately, the quality of these clips was such that the T&C text was too blurred to be made out. It was not possible to either make out the words or to make a meaningful determination of the font size.
 3. The complaints were initially assigned complaint numbers 3545 and 3546 respectively, but the WASPA Secretariat combined them under number 3545.
 4. Presumably the reference to clause 1.2.3 having been breached refers to the WASPA Advertising Rules, and not the Code of Conduct. I have taken it to mean this.
 5. On enquiry by the adjudicator, the WASPA Monitor advised that she did not make a formal measurement of the font size, but rather made a determination as to whether the average viewer would be able to read the text. The advertisements were viewed on a 74 cm television set.
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Response

6. The WASPA Secretariat established that the Service Provider in this case was Sybase 365, and forwarded the complaint to that member. The SP responded on the 29th of February. Its response related to both complaints and may be summarised as follows:
 - 6.1. The SP did not supply the advertised service, which was in fact provided by Blink Mobile Limited ("the IP"), which has an "SMS Services Agreement" with the SP in terms of which the SP makes shortcode(s) available to the IP. The IP in turn agrees to abide by the WASPA Code of Conduct (as required by clause 3.9.1 thereof) and agrees to become a member of WASPA (I note that the IP is indeed listed as a WASPA affiliate member on the website at URL www.waspa.org.za.)
7. The SP attached to its response a response from the IP. The IP began by citing paragraph 1.2.3 of the WASPA Advertising rules and then made the following submission:

The complainant states that the T&C text displayed in the commercial is illegible due to its font size being too small. Font size is, on television, a relative measure, and will increase or decrease in direct proportion to the size of the TV screen on which it is displayed (as the advertisement itself is scaled in size to accommodate the screen on which it is displayed). As such Blink has interpreted the "absolute" 15 point font size requirement in reference to the standard for PAL television production within South Africa (720x576). In reference to this standard the T&C text displayed within these commercials is 15 point Zurich as required by WASPA. Attached to this

response are a screen capture from each of these commercials, and a (similarly scaled) black and white graphical representation of standard PAL (720x576) with 15 point text superimposed. A cursory comparison will clearly show that the text sizes are the same. And in all other ways Blinck considers that these advertisements are in compliance with the WASPA Advertising Rules. (Please see Adjudicators Report: Complaint 3150 in reference to colour schemes and visual animations in the vicinity of the T&C text)

Blinck considers it likely that the complainant was viewing the advertisement on a small television screen which scaled down the advertisement and T&C text. If the complainant was calculating the text size requirement as an absolute value, and not adjusting for scaling of the advertisement onto a screen smaller than the reference size, this would account for the conclusion that the text was not the correct size.

8. As intimated above, IP also attached to its submission screenshots of the relevant advertisements as well as a black and white representation of a standard PAL screen. It was not possible to attach these to the report.
9. A comparison of the Complainant's clips with the screenshots provided by the IP was sufficient to satisfy me that there was no difference (apart from the huge difference in image quality) and that the screenshots provided by the IP can hence be used in assessing the merits of this complaint.

Portion of the Code Considered

10. Both the Complainant and the IP were incorrect in citing paragraph 1.2.3 of the Advertising Rules. That paragraph relates to "TELEVISION ADVERTISEMENTS & CINEMA ADVERTISEMENTS". The correct paragraph is 2.2.3, which is for relevant purposes identical.
11. The paragraph reads as follows:

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.

12. The Advertising Rules are given force by reference to clause 6.1.1 which incorporates them into the Code of Conduct by reference.
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Decision

13. As stated above, while it is impossible to use the clips supplied by the Complainant in determining font size in the relevant advertisements, they can at least be used to confirm that the screenshots supplied by the IP relate to the same advertisements, which they do.
14. I can thus use the screenshots supplied by the IP in determining *if* the Terms and Conditions are indeed of the correct font.
15. In the case of a newspaper or magazine advertisement the determination of font size would be a fairly simple affair, but with television advertisements the process is altogether more complex. As the IP points out, the font size is relative to the screen on which the text is displayed. As adjudicator I am thus faced with two problems:

- 15.1. Is the IP's method of coming to the correct font size, that is using a screen size of 720x576 and sizing the font accordingly, the correct method?
- 15.2. If this method is correct, how should the adjudicator compare the font? Presumably by working out how big the font presented on the screenshots would be if displayed on a 720x576 screen and determining if the font is indeed 15 point. This however is a guess on my part.
16. There is no indication in either the Code of Conduct or the Ad Rules as to the correct method of determining the font size to be used.
17. Even if such an indication existed, an adjudicator does not have the knowledge or expertise to work out if the font used was actually correct. If expert evidence of some kind were provided then this problem would be to some extent ameliorated.
18. The method used by the WASPA Monitor in determining if the font size was large enough is not sufficient as there is nothing in the Code of Conduct supporting such a method.
19. I can accordingly not make a ruling on this matter both because the method of calculating the font size is not set out in the Ad Rules, and because I have not been presented with the expert evidence required to make such a calculation.
20. On the question of whether the terms and conditions in the second complaint were obscured by the background graphics, I am not of the view that the background graphics had the effect of practically and objectively obscuring the text.
21. The complaint is accordingly not upheld.

Recommendations

22. 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.
23. 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.

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31 March 2008