



REPORT OF THE ADJUDICATOR

WASPA Member (SP): iTouch

Information Provider (IP):
(if applicable)

Service Type: Advertising

Complainant: WASPA Monitor

Complaint Number: 3588

Code version: Code v5.7 and Ad Rules v1.6

Complaint

1. On the 28th of February 2008 the WASPA Monitor lodged the following complaint:

DateBreach : First flighting 31 January 2008

WaspService : 36060 – iTouch

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. The colours used of the type on the orange background is also not effective and will need to be revised for easier reading.

ValidSubmission : yes

Submit : Submit

Attached file : 2008_01_31_36060.wmv

2. A short film clip of the advertisement in question was attached to the complaint. Unfortunately, the quality of this clip is such that the T&C text is 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. I have taken the reference to clause 1.2.3 having been breached as a reference to the WASPA Advertising Rules, and not the Code of Conduct.
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Response

4. It appears that the SP was in this case also the Information Provider. The WASPA Secretariat forwarded the complaint to the Member. The Member responded on the 14th of March 2008 as follows:

Below is a still image of the commercial in question. Although the terms and conditions were according to the sizing of the old WASPA code of conduct (size 15 zurich) we agree with the complainant regarding the illegibility of them.

The colour choice was poor and has since been changed to make the terms and conditions legible. The orange background has been removed insuring [sic] that the colour doesn't distract from the terms and conditions. We have also increased the size of all Terms and conditions to size 16 points Zurich and have placed them on a solid box with no smoothing or blurring ensuring that the consumer has full view of all relevant terms and conditions.

...

The above mentioned advert for Club Movilisto last flighted in January 2008 and will not be flighted on TV again.

5. As intimated above, the Member also attached to its submission a screenshot of the relevant advertisement, which is attached as annexure "A".
6. A comparison of the Complaint's clip with the screenshot provided by the Member was sufficient to satisfy me that there was no difference (apart from the huge difference in image quality) and that the screenshot provided by the Member can hence be used in assessing the merits of this complaint.

Portion of the Code Considered

7. The Complainant was incorrect in citing paragraph 1.2.3 of the Advertising Rules. That paragraph relates to "TV Programmes and Infomercials". The correct paragraph is 2.2.3, which is for relevant purposes identical.
8. 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.

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

Decision

10. As stated above, while it is impossible to use the clip 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 Member relate to the same advertisements, which they do.

11. The clip provided by the Complainant is of such poor quality that, even if the Member had complied fully with the provisions of the Code of Conduct and Advertising Rules, I would still not be able to make out the terms and conditions, so I would only be able to make a ruling based upon the screenshot provided by the Member.
12. The complainant makes two allegations regarding the reasons for illegibility, viz that the font is too small and that the background colour interferes with the foreground text. The Member admits that the terms and conditions are illegible, but also states that the text in question is 15 point Zurich. I cannot make a ruling on the font size, for the reasons given in my report in complaint 3545.
13. As the Member has admitted that the background colour of the advertisement interferes with legibility of the terms and conditions, there is no reason to analyse this aspect, and I can find that there has been an infringement of paragraph 2.2.3 of the Ad Rules based on this admission.
14. The complaint is accordingly upheld.

Sanction

15. In imposing the sanction I took the following into account:
 - 15.1. The fact that the Member made changes to the advertisement upon receipt of the complaint. I am puzzled as to how such a change could have been made in March to an advert which last flighted in January, but presumably the Member meant that all similar advertisements had been changed.
 - 15.2. The fact that the screenshot provided by the Member did not look terribly confusing as provided to me. As I did not have an acceptable clip of the actual advertisement to view I am forced to give the Member the benefit of the doubt as to the severity of the infringement.
16. The Member is accordingly issued with a formal reprimand for its breach of paragraph 2.2.3 of the Advertising Rules.

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2 April 2008

Annexure A



36060

Subscription
R5/5 days
Service
+625

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