



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Sybase 365
<b>Information Provider (IP)</b> (if any)	Blinck Mobile
<b>Service Type</b>	Television commercial
<b>Source of Complaints</b>	WASPA Monitor
<b>Complaint Number</b>	4189
<b>Date received</b>	19 May 2008
<b>Code of Conduct version</b>	5.7

---

### Complaint

The WASPA Monitor lodged this Complaint after viewing an advertisement placed by the IP during May 2008 in respect of its 31631 short code. The Monitor alleged breaches of section 1.2.3 of the WASPA Advertising Guidelines in that the terms and conditions were not readable due to other visual material running over and under said terms and conditions.

The Monitor also pointed out that three prior complaints had been lodged against the same SP for the same offence and submitted that this should be regarded as an aggravating factor.

---

### SP Response

The SP requested that the Monitor review previous complaints of a similar nature against it which were not upheld. The SP also expressed a concern regarding the quality of the footage lodged by the Monitor with the Complaint, expressing the view that such quality was unacceptably low. The SP provided a clearer version to underscore this point.

The IP, a WASPA affiliate member, lodged the following response:

“In response to this allegation, Blinck (trading the website Celldorado) wishes to reply as follows:

- (A) The font and size used are correct (Zurich 15pt), as indicated by the Code. We do not see how WASPA states that it is too small, when it is the font and size requested.

---

(B) The visuals of the ad are not running over the text. The text is perfectly readable and legible.

Based on it, we want to allege the lack of any violation or non compliance with the Code, and thus the archiving of this investigation.”

---

### **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 or IP 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.

The Adjudicator also had reference to section 6.1.1. 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.

---

## **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.

The Adjudicator consulted the decisions made in respect of complaints 3150 and 3545 and notes that similar complaints were dismissed therein. Report 3150 deals with allegations raised around colour schemes and animated effects which may have the effect of obscuring terms and conditions while Report 3545 pertains to font sizes and the difficulties in measuring them. The problems facing the enforcement of the font size provisions have been well-documented in other recent Adjudications and there is no reason to canvass these further at this time.

There is little to distinguish the instant complaint from the two cited above. At the same time the objective difficulties faced in properly measuring font sizes in television commercials do not enter into this matter, which relates rather to readability, which, by its very nature, must be subjectively assessed. In other words, the matter turns on the advertisement in question and precedent cannot be binding in this respect.

In viewing the advertisement the Adjudicator was of the opinion that the manner in which the terms and conditions are displayed is indeed a breach of section 2.2.3 of the Advertising Rules. In reaching this conclusion the Adjudicator noted that

- the terms and conditions are presented in white
- there is a clear gradient of readability depending on the background (solid or animated) against which the white text is contrasted
- the animated background consists of clouds moving rapidly across sky which does have the effect of lessening the readability of the terms and conditions
- where white clouds interact with white text this has the effect of obscuring such text
- the readability of the terms and conditions stands in stark contrast to the size and clarity with which the central call to action is presented.

Accordingly the advertisement is in breach of the prohibitions that

- 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.

It is submitted that the standard to be observed by a WASPA member in ensuring the readability of its terms and conditions in television advertisements is that they should take reasonable steps to ensure this. Put differently: South African law requires that reasonable steps be taken to ensure that applicable terms and conditions are brought to the attention of a potential consumer so that there is broad agreement on such terms and conditions when the consumer enters into the advertised contract.

In this matter the IP states that the “text is perfectly readable and legible” but the Adjudicator begs to differ. The Complaint is accordingly upheld.

In arriving at an appropriate sanction the Adjudicator is mindful that previous complaints have been dismissed. As a result they cannot be seen in aggravation and perhaps could be fairly viewed as causing a degree of confusion.

The following order is made:

- The Complaint is upheld.
- The IP is fined the amount of R10 000, payment of which is suspended for a period of 6 months from the date of this Adjudication on condition that the IP is not found to have breached section 2.2.3 of the Advertising Guidelines during this time (which reference shall include any following provision binding on the IP in any subsequent version of the Advertising Rules adopted by WASPA);
- The IP is ordered to review its television advertising and ensure that it has taken reasonable steps to comply with both the letter and the spirit of the WASPA Code and to ensure that colour schemes and animations (if any) optimise rather than detract from the readability of terms and conditions.