



REPORT OF THE ADJUDICATOR

WASPA Member	AMV Holdings
Information Provider (IP) (if any)	n/a
Service Type	Advertising
Source of Complaints	Competitor
Complaint Number	6058
Date lodged	19 March 2009
Code of Conduct version	6.2

Complaint

This is an anonymous competitor complaint lodged against the WASPA member in respect of an alleged breach of the WASPA Advertising Rules requiring the display of certain terms and conditions of service.

“On Wednesday the 18th of March at 11:39PM an ad was aired on SABC 1 using the number 31931. It is impossible to read the terms and conditions on this because of images and movement behind it. A solid block should be placed behind the T&C to make it readable.”

SP Response

The SP provided an initial response during the informal resolution process. Once the matter moved to formal resolution an additional response was filed.

The first response read as follows:

“We are aware of an issue last week where SABC incorrectly ran an outdated version of our advert. We believe it was this advert that the user depicts below.

We believe the terms/pricing on all our current adverts to be extremely clear to our users however as a precaution we are in the process of reviewing all our TV advertisements to ensure that our terms are displayed to a user as clearly as possible.

We have also contacted SABC directly and ensured that the older ad is deleted from their records to ensure that this issue cannot re-occur. We are in the process of collecting the full facts including an admission from SABC and will be back in touch within 3 working days.”

The complainant indicated its dissatisfaction with the above in the following terms:

“This advert has been running several times for quite a while. If logs are pulled from SABC it will be clear how many times this ad has run and how long it has been running.

The code has been breached not once but many, many times with this advert. I have seen these adverts for a while before the complaint was lodged.

This does not change the fact that the code was breached. This complaint has not been resolved yet.”

The SP's additional response read:

“Upon further examination I can confirm that an outdated version of our Night advert was aired on SABC last week.

We originally believed this to be an error on the part of SABC however it transpires that that our agency was responsible for providing them with an old version of the advert.

The advert in question had a non-compliant background. Our newer adverts have the compliant black background.

The old version should not have aired.

The difference between the versions is primarily the background colour.

We don't agree that the terms were not readable on the older version.

We agree that it was non-compliant in respect of the missing black-background. But the terms were legible, we can provide you with a copy of the advert and a comparison with the black background to enable the adjudicator to view for themselves.

We have had firm discussions with our agency with regard to this and ensured that they remove the old version and re-instruct all TV partners to ensure the old versions are not in their circulations.

We regret this administrative error.”

Sections of the Code considered

The following section of version 6.2 of the WASPA Code of Conduct was considered:

6.1. WASPA advertising rules

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

The following section of version 2.3 of the WASPA Advertising Rules was considered:

1.3.4¹. Mandatory T&C Display Rules

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- 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
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Decision

The Member has admitted the breach and the Adjudicator confirms that there has been a breach of section 1.3.3 of the Advertising Rules. The Adjudicator finds further that only a single breach has been established.

In setting an appropriate sanction regard has been had to:

- the claim that the error was an administrative one coupled with the admission of non-compliance
- the lack of continuing consumer harm
- the vagueness of the complaint stemming from a competitor and the resulting inability to quantify the number of times the advert may have been shown beyond “several times for quite a while”
- the fact that it was a television advert, albeit flighted late at night

The WASPA Member is ordered to pay a fine of R10 000 in respect of the breach of the Advertising Rules.

¹ Due to an error in the numbering of the Advertising Rules this should be 2.1.2 on page 65 of the document.