



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Viamedia
	Cell C
Telephone Network(s)	MTN
	Vodacom
Information Provider (IP) (if applicable)	Xplicit Mobile
Service Type	Adult Content
Source of Complaints	Public
Complaint Number	#0019

Complaint

A complaint was received regarding unsolicited commercial messages from the SP on behalf of the IP on the basis that the message was unsolicited and that clear pricing information was not given. The message contained adult content and originated from number +27839197491.

The Secretariat conducted an investigation into the service offered by the SP.

The following breaches of the WASPA Code of Conduct were raised:

4.1. Provision of information to customers

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

and

5.2. Identification of spam

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

Investigation

The Secretariat received a response from the SP incorporating a response from the IP. The SP indicated:

- The price advertised on of the product was R30 not R60. The price of R30 was clearly indicated in the SMS update sent to the complainant. The SMS update sent to the complainant was:

SMS Sent to +2783***** (16/09/2005 15:30:19)

Wanna see SHOCKING, stolen, porno pics of Paris Hilton? sms PARIS to 42441. Free taste at <http://xPLICIT.co.za/x/>. 18+ONLY! NeedWAP. R30. 2StopSMSsDial *120*739#

- The clarity of the pricing information is appropriate having regard to the space limitations of SMS and the other restrictions and requirements that need to be included in the SMS, such as “Age restrictions”, “WAP required”, “Opt out mechanism” and the like.
- The message received by the complainant was an update sent to an existing user. The complainant had recently made use of the service (he sent STRIP to XPLICIT Mobile on 13/07/2005 at 23:17:57) and all advertising material indicates that updates will be sent.
- It will immediately remove the complainant from its updates list.

Decision

The Adjudicator did not uphold either complaint.

The Adjudicator did not uphold the complaint in respect of Clause 4.1 of the WASPA Code of Conduct, as the copy of the SMS content sent to the complainant and submitted in response to this complaint, appears to be clear and accurate having regard to the space constraints of SMS as a messaging technology.

The Adjudicator did not uphold the complaint in respect of Clause 5.2 of the WASPA Code of Conduct, as the IP, through the SP submitted that the complainant has previously purchased content from the IP. Such a transaction would create the “direct and recent prior commercial relationship” contemplated in Clause 5.2.1(a) of the WASPA Code of Conduct. As such, the message received by the complainant did not amount to an unsolicited commercial messages or spam.

The Adjudicator noted that the WASPA Code of Conduct does not give a complainant the opportunity to dispute factual allegations in the SP’s response. Should the complainant dispute the factual allegations in such submission, he may submit a further complaint.