



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Marketel
Information Provider (IP) (if any)	None specified
Service Type	Adult promotional SMS
Source of Complaints	Public
Complaint Number	#0461
Date received	30 September 2006
Code of Conduct version	4.6

Complaint

The Complainant, a member of the public, complained about receiving numerous promotional messages in respect of an adult service, providing the following example:

“> Want to play? Sms LUST to 37750 now! (R7.50) Preview Afr on 082 2347373 or Eng 0822347070 or LIVE on 0822347825 CALL NOW! VAS rts www.decadentangels.co.za”

He stated further that he had had no option to leave the service and had sent SMSs to the SP but to no avail. The receipt of these messages had caused him personal trauma and he required that the SP make amends in respect of the damage caused.

The Complaint could not be resolved through the WASPA informal resolution procedure and has now been referred to an adjudicator.

In follow-up correspondence initiated by the WASPA Secretariat the Complainant indicated that the SP had contacted him once and gave the impression that his complaint was not being taken seriously.

SP Response

No Response was received from the SP despite repeated reminders from the WASPA Secretariat.

Sections of the Code considered

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

5.1. Sending of commercial communications

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. Where feasible, persons receiving commercial messages should be able to remove themselves from the database of a message originator using no more than two words, one of which must be 'STOP'.

Decision

In the absence of a Response there are very few facts on which to base this Adjudication.

The essence of the Complaint is that the Complainant was unable to remove himself from a database so as to cause him to stop receiving commercial messages from the SP. It does not appear that the Complainant is alleging that receipt of the messages was, at least initially, unsolicited.

From the example message provided by the Complainant a *prima facie* breach of section 5.1.2 of the Code of Conduct is apparent.

Accepting the version of the Complainant, and in the absence of any Response, the SP is found to have breached section 5.1.2 by not providing the required removal facility.

The matter is distinguishable from the Adjudicator's decision in respect of Complaint #0629 in that, in the absence of any Response, it must be assumed that the SP has no facility rather than having failed to advertise its facility.

It is a further finding that the SP has, on the facts before the Adjudicator, failed to act in a professional manner in dealing with this Complaint. This is found to be a breach of section 3.1.1 of the Code.

After:-

- review of previous Complaints involving breaches of the above provisions
- consideration of the paucity of information before the Adjudicator
- consideration of the relatively clean record of the SP

the following sanction is imposed:

“The SP is reprimanded in respect of the breach of section 3.1.1 of the WASPA Code of Conduct. In respect of the breach of section 5.1.2 the SP is issued with a fine of R5 000.00, which fine is suspended for a period of six (6) months from date of this Report; provided that no further breaches of section 5.1.2 of the Code of Conduct occur during that time.”

The awarding of redress for emotional distress and travel expenses is beyond the competence of WASPA Independent Adjudicators.