

REPORT OF THE ADJUDICATOR

Member	MiraNetworks
Service Type	Communication

1 COMPLAINT NO. 0609

Complaint date:	26 October 2006
Code Version:	Code v4.7 and Rules v1.6
Information provider:	Comms International

1.1 The Complaint

The Complainant received the following SMS:

"Someone fancies you ... just text the word WINK to 40441 to find out who! Service provided by <http://www.mobilelovematch.com>

R20+SMS"

The Complainant alleges that the SMS is misleading and deceptive that there is no facility to unsubscribe.

1.2 Complainant's allegations

1.2.1 The Complainant alleges that the Member (through its Information Provider) has breached 4.1.2 of the Code in that:

"on the Website cited in the SMS, www.mobilelovematch.com it states 'text WINK + number of person you fancy'. This contradicts the instruction in the SMS which states "just send the word WINK...". On sending the word WINK, the service responds with another SMS that contains the correct instruction: "text back the number of a cellphone number of the person you think it is starting with WINK where 08xxx is cell number then i.e WINK08123123 to 40441. Clearly the service provider intends to mislead the

subscriber, forcing them to send two SMS messages at R20 each before participating in the service."

1.2.2 The Complainant alleges that 5.1.2 of the Code has been contravened in that there is no means of removing his number from the service database of the Information Provider.

1.2.3 The Complainant alleges that 5.2.1, 5.3.1, and 5.3.2 of the Code has been contravened in that:

"Since I have never agreed to this service sending me the message, it is spam. Furthermore, as a married man of 43 I don't believe that anyone I know would send me a "someone fancies you" message and in fact I believe that the so called service provider has simply spammed a database of number in the hope of attracting some R20 messages.

This kind of fraudulent services gives the whole industry a bad name."

1.3 Member's response

The Member responded to the Complaint on 27 November 2006 by forwarding an email from its Information Provider.

1.3.1 In regard to the alleged contravention of 4.1.2 of the Code:

"This is a service that has been succesful (sic) and we have matched numbers which prove it works. We have had very few complaints from people and had force no one to participate – the user does not need to participate if they do not wish. We have run the service successfully in the UK and Australia in exactly the same way. However, I have since stopped promoting this service as I have taken the points from board and am twicking the service to be less misleading and give the user every opportunity to know how the service exactly works.

1.3.2 With regard to the alleged contravention of 5.1.2 of the Code:

"Any emails we received from the LoveMatch service are dealt with straight away. However, after looking into this case we did not receive the alleged initial email from the consumer, we only ever received 1 e-mail and then unsubscribed him straight away."

1.3.3 With regard to the alleged contravention of 5.2.1 of the Code:

"The database concerned was obtained from an SA partner. We can provide full mo history for this msisdn if necessary."

1.3.4 With regard to the alleged breach of 5.3.1 of the Code:

"The database concerned was obtained from our SA partner. We can provide full MO history for this msisdn if necessary."

1.3.5 With regard to the alleged breach of 5.3.2 of the Code:

"As mentioned, we can provide proof of MO traffic on this msisdn from our SA partner, therefore this is not spam.

Each LoveMatch SMS links to the LoveMatch Website, which clearly displays the customer support email address. Any unsubscribed emails we receive from the LoveMatch service are dealt with straight away.

However looking into this case we did not receive the alleged initial email from the customer, we only ever received 1 email and then unsubscribed him straight away."

1.4 Provisions of the Code considered

4.1.2, 5.1.2, 5.2.1, 5.3.1 and 5.3.2

1.5 Decision

1.5.1 With regard to the alleged breach of 4.1.2 of the Code:

The alleged success of the service is no defence to the dissemination of an SMS which, in my view, is indeed misleading and deceptive.

The fact that the Information Provider has received "very few complaints" and "forces no one to participate" does not excuse the conduct either. It may be that no one is forced to participate but, on reading the SMS, it is my view that it is very easy for a consumer to assume that the SMS was sent at the instance of someone he/she knew and is duped into responding.

The Member itself concedes that the service is misleading by stating that it is "tweaking the service to be less misleading". [emphasis added]

Accordingly, taking all the above factors into account, I find that the Member has contravened 4.1.2 of the Code.

1.5.2 With regard to 5.1.2 of the Code:

The Complainant does not allege that he sent any emails whatsoever to the Member or its customer and, in fact, states that there was no means of removing his number from the database. The response does not appear to relate to the alleged breach and does not address the allegation that there was no means available to the consumer to remove his number from the database. Given that the Member has not addressed the allegations and its response has no bearing on the allegation, my finding is that the Member has contravened 5.1.2 of the Code.

1.5.3 With regard to the alleged contravention of 5.2.1, 5.3.1 and 5.3.2 of the Code:

5.2.1 of the Code sets out the definition of spam and cannot, on its own, be contravened. 5.2.1 of the Code gives content to the provisions of

5.3.1 and 5.3.2. The enquiry is therefore whether 5.3.1 and 5.3.2 have been breached taking into account the definition of spam in clause 5.2.1.

The Member's Information Provider is vague about the identity of the "SA partner". Even if the member had furnished the "MO history" this, by itself, would not have sufficed as evidence of a "direct and recent prior commercial relationship". Further, the Information Provider does not deny the Complainant's allegation that he did not requested the message. The Member does not advance any evidence to show that the Complainant's explicit consent was given to the "SA partner" to supply the Member with his contact information.

It is my finding that the information sent to the Complainant was unsolicited. The Member, through its Information Provider, has failed to take reasonable steps to prevent the spam and, given that the consumer experienced difficulty unsubscribing, it is clear that there was no mechanism in place to deal expeditiously with the complaint.

1.6 Sanction

Given that there are a number of complaints which are similar in nature, I will deal with each of these in turn before making a finding as to the sanction.

2 COMPLAINT NO. 0819

Complainant	Competitor
Complaint date	21 December 2006
Code Version	Code v4.7 and Rules v1.6
Information Provider	Comms International

2.1 The Complaint

The Complainant alleges that the Member sent a misleading SMS to him stating:

"win R100 airtime send AIR to 40441 for your question – service provided by xmasairtime.com.

R20 per SMS"

2.2 Complainant's allegations

The Complainant alleges:

"You'll note that there are five empty lines between the bulk of the text and the price. This is clearly an attempt to hide the price, which it very effectively does as a user reading the SMS will not know to scroll down past so many empty lines.

In this case a user is required to respond to the R20 number to get a question they then have to answer at another R20 to enter. Entry thereafter costs R40.

This technique of hiding the costs of highly priced SMS with multiple empty lines is an attempt to mislead the consumer and is currently probably affecting a large number of users."

2.3 The Member's response

Member responded on 12 January 2007 by forwarding an email from Comms International.

2.3.1 With regard to the five empty lines between the bulk of the text being misleading with regard to pricing, Comms International states as follows:

"... this was a technical error at our point and we did not pick up on. To this extent we have rectified the problem and the pricing is now within the body of the message rather than having the spaces".

- 2.3.2 With regard to the allegation the pricing contained in the advertisement is misleading and therefore contrary to 6.2.4 of the Code:

"Our SMS stated R20 per SMS not R20 to enter therefore why is this misleading?"

- 2.3.3 With regard to the allegation that the Member has contravened 6.2.5 of the Code in that the price was not easily and clearly visible:

"a technical error which is in the process of being rectified".

- 2.3.4 With regard to the allegation that the Member contravened 9.1.1 of the Code in that the full cost was not clearly displayed:

"It does apart from the technical error already mentioned."

- 2.3.5 With regard to the allegation that the competition service does not include details of how the competition operates, Comms International responds:

"How do you propose putting this into 160 characters?"

- 2.4 Provisions of Code considered

6.2.4, 6.2.5, 9.1.1, 9.1.2 and 9.1.4

- 2.5 Decision

- 2.5.1 With regard to the alleged contravention of 6.2.4 of the Code:

There is no clear indication in the message that further premium messages are required to obtain the full service. It is not clear that, in order to enter, the consumer must send two SMS's, which will cost R20 each. A reasonable consumer would not reach the conclusion, on reading the SMS complained of, that he/she would have to pay R20 to receive the question and then pay a further R20 to enter. My finding therefore is that a "clear indication of the pricing" was not given and, consequently, the Member has breached 6.2.4 of the Code.

- 2.5.2 With regard to the alleged contraventions of 6.2.5 and 9.1.1 of the Code:

The Member admits that it has contravened these portions of the Code but states that the contraventions were as a result of a technical error which has since been rectified. Even if the 5 empty lines can be put down to a technical error, the price if noticed is not the full price.

The Member has also contravened 9.1.2 of the Code in that the service does not include details of how the competition operates. This can easily be done with reference to a website.

Also, with regard to the contention that the breach arises from a "technical error" it is noteworthy that the Member was aware of this when it responded to complaint on 27 November 2006. At that stage, the Member would have been aware of the 5 line gap in the SMS and acknowledged, in its response, that the service was misleading. The Member, it would appear, did not take any steps to make the service less misleading and continued to operate knowing full well that the service was misleading.

2.6 Sanction

As stated above, as the Complaints under consideration are similar in nature, the issue of a sanction will be considered after consideration of the various complains. Any mitigating factors advanced by the Member will be taken into account.

3 COMPLAINT NO. 0894

Complainant	Consumer
Date of Complaint	07 January 2007
Code version:	Code v4.7
Information Provider	Comms International

3.1 The Complaint

The Complainant complains about the same SMS complained of in Complaint 0609 above (see paragraph 1). It is alleged that the information is spam, a breach of a privacy, deceptive and further that there is no facility to unsubscribe.

3.2 Complainant's allegations

The Complainant alleges as follows:

"Detailed description of Complaint: 1. Unsolicited messaging/spam SMS. 2. Disruptive and caused social problems in my home environment. 3. Messaged (sic) at an inappropriate time. 4. No Opt out or means of getting removed from the database (sic). 5. Where and how was my information harvested. 6. total violation of respect and privacy. 7. Even if i used the service paying R20 to find an adimer (sic) is bordering on theft and it would be a rip off to pay this price for the nature of the information."

3.3 The Member's response

3.3.1 The Member responded on 22 January 2007 by forwarding an email from Comms International.

3.3.2 Complaints numbered 0894, 0898, 0905 and 0929 are dealt with in one batch in the response.

3.3.3 As an introduction, Comms International writes:

"In response to the above complaints I have read through all of the points given and take on board these, below I have taken the main breaches from each complaint and responded."

3.3.4 With regard to the alleged breach of 4.1.1 of the Code:

"We take this on board and have rectified the relevant errors."

3.3.5 With regard to an alleged breach of 4.1.3 of the Code:

"I was not aware these were not and will be rectified with immediate effect."

3.3.6 With regard to an alleged breach of 4.1.7 of the Code:

"We are not a member so should we need to do this, if so then please advise and we will rectify?"

3.3.7 With regard to an alleged breach of 5.1.2 of the Code:

"This has been rectified."

3.3.8 With regard to an alleged breach of 6.2.2 of the Code:

"Been rectified."

3.3.9 The Member also tenders a formal written apology to the Complainant apologizing for any inconvenience as well as offering to reimburse him.

3.4 Portions of the Code considered

4.1.1; 4.1.3; 4.1.7; 5.1.2 and 6.2.2

3.5 Decision

The Member is accountable for the actions of its Information Providers. Comms International admits the breaches of the Code by acknowledging that rectification is required in respect of each alleged breach - rectification would not be required if there was no breach. Comms International is responding on behalf of the Member who is indeed required to adhere to all the provisions of the Code of Conduct – as an industry player, ignorance is no excuse. The Member is, in any event, obliged to inform its Information Providers of the Code. Certainly, Comms International is aware of the other provisions of the Code as is clear from its other responses. The offer of rectification is noted, as is the offer to write a letter to the Complainant and to reimburse the Complainant.

I find that the Member has breached 4.1.1; 4.1.3; 4.1.7; 5.1.2 and 6.2.2 of the Code.

3.6 Sanction

The issue of sanction in regard to the various contraventions is dealt with below. The offer of an apology and the statement that there has or will be rectification is noted.

4 COMPLAINT NO. 0898

Complainant	Consumer
Date of Complaint	09 January 2007
Code version	Code v4.7 and Rules v1.6
Information Provider	Comms International

4.1 The Complaint

The Complainant complains of the same SMS that is the subject matter of Complaint 0609 above. The Complainant alleges that the Member's Information Provider has hidden the price of the SMS and that the website has no pricing. It is further alleged that there are no contact details or terms and conditions or a link to the WASPA website for a means of unsubscribing.

4.2 Complainant's allegation

The Complainant alleges that:

4.2.1 4.1.1 of the Code has been contravened in that:

"The SMS that is received does not appear to advertise the cost of the service. The recipient is required to recognize that there is hidden content at the bottom of the SMS. They use carriage returns to manipulate the recipients perception that there is no further information in the SMS. Scrolling down reveals that the price is R20 per SMS. Their website also has no pricing information (www.mobilelovematch.com). This is unacceptable."

4.2.2 4.1.3 of the Code has been contravened in that:

"The service web address is www.mobilelovematch.com. This site has no information regarding pricing, contact details, email address or physical address. Again, this is unacceptable."

4.2.3 4.1.4 of the Code has been contravened in that, as its Information Provider has failed to furnish contact details, it is not possible for the consumer to request the terms and conditions.

4.2.4 4.1.5 of the Code has been contravened in that, in the absence of contact details, it is impossible to make a Complaint to the Member.

4.2.5 4.1.6 of the Code has been contravened in that its Information Provider has not informed the consumer that it is bound by the WASPA Code of conduct or made the customer aware of the WASPA Complaints procedure.

4.2.6 4.1.7 of the Code has been contravened as there is no link to the WASPA Code of Conduct.

4.2.7 4.1.2 of the Code has been contravened as the Information Provider has failed to provide a facility to allow the recipient of a message to remove himself from the message originators data base.

4.2.8 5.1.4 of the Code has been contravened in that:

"Given that no mechanism is advertised, you can only assume that to remove yourself from their database you need to SMS the word \ 'STOP' \. However, each SMS costs R20. They provide no mechanism on their website to OPT out of the service"

4.2.9 5.1.5 of the Code has been contravened in that in the absence of contact details it is impossible to request the source from which the recipient's personal information was obtained.

4.2.10 6.2.2 of the Code has been contravened in that:

"Their website does not contain any pricing information. Furthermore their SMS attempts to conceal that the cost per SMS is R20. To interact with the service requires you sending two SMS's. This is very misleading as it actually costs R40 (2 x R20) to use the service. This is unacceptable."

4.2.11 6.2.4 of the Code has been contravened in that the cost of all communications required from the transaction is not clear.

4.2.12 6.2.5 of the Code has been contravened in that the Information Provider's website does not contain pricing information.

4.2.13 10.1.1 of the Code has been contravened in that no warning is given to the users regarding the risks involved when contact information is given out to other individuals and no advice is given in regard thereto.

4.2.14 11.2.1 of the Code has been contravened in that no "help" information is made available nor is any keyword advertised.

4.2.15 In conclusion, the Complainant states that:

"This is very misleading, as it requires you to SMS WINK first, then SMS again "WINK + mobile of the person you like. If it's a match you are notified of who the original person was. The transaction cost is R40 and you might not even find out who it was! The SMS clearly states: 'just text the word WINK to 40441 to find out who!'. Furthermore, they attempt to conceal the cost of the SMS's by using carriage returns in the message. The price appears right at the bottom of the SMS. Only advanced mobile users will realize that there is content at the bottom of the SMS."

4.3 Member's response

The Member's Information Provider's responses are as set out above under paragraph 3.3 of this adjudication.

4.4 Provisions of the Code considered

4.1.1, 4.1.3, 4.1.7, 5.1.2, 6.2.2, 6.2.4, 6.2.5, 10.1.2, 11.2.1 of the Code.

4.5 Decision

4.5.1 With regard to alleged contraventions of 4.1.1, 4.1.3, 4.1.7, 5.1.2, 6.2.2 of the Code

Comms International admits that it has contravened the following provisions of the Code by stating that rectification is required or has been affected:

4.1.1, 4.1.3, 4.1.7, 5.1.2, 6.2.2 of the Code.

4.5.2 With regard to the alleged contraventions of 4.1.4 and 4.1.5 of the Code:

Comms International does not respond to these allegations of breach nor is the allegation disputed. The charges do, however, flow from the fact that Comms International has failed to provide full contact details on its website in contravention of 4.1.3 of the Code. The failure of Comms International to address the allegations in regard to these alleged breaches, which can be taken as an admission, leads me to the conclusion that these provisions of the Code have been breached, particularly as no contact details were made available.

4.5.3 With regard to the alleged contravention of 4.1.6 of the Code:

Comms International has not responded to the allegation that this provision of the Code has been contravened, this can be taken as an admission. I find that the Member has contravened 4.1.6 of the Code.

4.5.4 With regard to the alleged contravention of 5.1.4 of the Code:

Although Comms International has admitted to failing to provide a facility to allow the recipient to remove himself from the database, the Member cannot be found guilty of a contravention on the assumption that, had there been a facility, it would have cost more than R1 to unsubscribe. Accordingly, my finding is that the Member has not breached 5.1.4 of the Code. If there is no facility, there can be no associated cost and hence there can be no breach of the Code.

4.5.5 With regard to the alleged contravention of 5.1.5 of the Code:

The Member cannot be found to be in contravention of 5.1.5 of the Code as, in the absence of contact details, no request could be made and therefore the message originator cannot be taken to have failed to respond to the request within a reasonable period of time identifying the source from which the personal information was obtained. The fact that a recipient is unable to make a request due to the lack of contact details is an aggravating factor to be taken into account when deciding upon a sanction in respect of the breach of 4.1.3 of the Code.

4.5.6 With regard to the alleged contravention of 6.2.4 of the Code:

The SMS complained of does not make it clear that multiple communications are required to obtain content and that a cost will be associated with each communication. Accordingly, I find that the Member has contravened 6.2.4 of the Code.

4.5.7 With regard to the alleged contravention of 6.2.5 of the Code:

Comms International does not respond to this allegation nor does it dispute that the price fails to appear in all advertisements. Accordingly, I find that the Member has contravened 6.2.5 of the Code by failing to provide the pricing information.

4.5.8 With regard to the alleged contravention of 10.1.2 of the Code:

Comms International does not respond to this allegation nor does it dispute that it has failed to warn users of the risks involved when contact information is given out to other individuals. Comms International does not give advice on sensible precautions to take when meeting people through this service. Accordingly, I find that the Member has contravened 10.1.2 of the Code.

4.5.9 With regard to the alleged contravention of 11.2.1 of the Code:

Comms International does not respond to this allegation nor does it dispute the allegation that it has failed to provide "help" information. The absence of a response can only be taken to be an admission as to the correctness of the allegation. Accordingly, I find that the Member has contravened 11.2.1 of the Code.

4.6 Sanction

The issue of sanction in regard to the various contraventions is dealt with below.

5 COMPLAINT NO. 0905

Complainant	Consumer
Date of Complaint	09 January 2007
Code version	Code v4.7 and Rules v1.6
Information Provider	Comms International

5.1 Complaint

The Complaint is regarding the SMS complained of in Complaint number 0609 above.

5.2 Complainant's allegations

5.2.1 The Complainant alleges that the Member has contravened 4.1.2 of the Code in that it has disseminated spam.

The Complainant states:

"The 4 line break between the URL and the price is not a typo, it is how the SMS was sent. The break in the SMS before the price was configured not to show up on the cellphone screen unless you scroll down. The URL ends midway up the screen on the 3 cellphones I have forwarded that SMS to. There is therefore the perception that the SMS is finished.

This is clearly highly deceptive and in extreme bad faith. This was no mistake and is an attempt to get the user to reply not knowing that it is a R20 shortcode. It is this type of behaviour which gives this industry such a bad name."

5.3 Portions of the Code considered

4.1.2 and 5.2 of the Code.

5.4 Member's response

The Member's Information Provider's response is as set out in paragraph 3.3 of this adjudication.

5.5 Decision

5.5.1 With regard to the alleged contravention of 4.1.1 of the Code:

By stating that rectification is required, Comms International admits that it has contravened this provision in the Code.

5.5.2 With regard to the alleged contravention of 5.2 of the Code:

Comms International does not respond to the allegation that it sent spam to the Complainant and does not dispute the allegation. There is no information given that would go to show that the communication is not spam. Accordingly, I find that the Member has contravened provisions 5.3.1 and 5.3.2 of the Code.

6 COMPLAINT NO. 0928

Complainant	Consumer
Date of Complaint	11 January 2007
Code version	Code v4.7 and Rules v1.6
Information Provider	Comms International

6.1 Complaint

The Complainant complains that he received the following unsolicited SMS:

"Hi hunny, i am looking for some hot action tonight, are you alone?"

6.2 Complainant's allegations

The Complainant alleges that the SMS was unsolicited and further that he found the message offensive and misleading. He states that it is necessary to scroll down to get the name and further scrolling to see the price.

6.3 Provisions of the Code considered

4.1.1, 4.1.2, 5.2, 5.3.1, 5.3.2 and 10.1.2 of the Code.

6.4 Member's response

The Member addresses this Complaint in its batch response.

6.5 Decision

6.5.1 With regard to the alleged contravention of 4.1.1 and 4.1.2 of the Code:

This message can only be seen as deceptive and misleading, particularly as it implies that the sender is known to the recipient and has an intimate relationship with the recipient. The fact that the price is hidden and it is necessary to scroll down to see the price adds to the deceptive nature of the SMS. Accordingly, I find that the Member has contravened 4.1.1 and 4.1.2 of the Code.

The Member has also contravened 5.3.1 and 5.3.2 of the Code as no evidence has been advanced to show that this message is not spam. This is also a contact service and the consumer is not warned of the risks involved.

10.1.2 of the Code has been breached as no warning as to the risks associated with dating services is given.

7 COMPLAINT NO. 0929

Complainant	Competitor
Date of Complaint	15 January 2007
Code version:	Code v4.7 and Rules v1.6

7.1 Complaint

The Complainant complains of the SMS that is the same in content and form as that set out in Complaint 0894.

7.2 Complainant's allegations

7.2.1 The Complainant makes the bald allegation that the Member has contravened 3.9.1 of the Code. The Complainant does not advance any supporting information as regards this alleged contravention.

7.2.2 The Member makes the following additional allegations:

"1. The dishonesty of their service – this is a bulk outbound (so no-one actually fancies me). This means that they are being deceptive (CoC 4.12)

2. The layout of the SMS is deceptive (with the price being hidden at the bottom of the SMS) (CoC 4.1.1). When reading this SMS on a phone's screen, there are 4 blank lines between the website URL and the R20+SMS pricing information. This has been purposely "hidden" there to mislead users. (CoC 6.5.2)

3. There are no contact details on their website (4.1.3)

4. There is no pricing on their website (4.1.1)

5. There is no optout mechanism in the SMS or on the website (5.1.2)

6. The wording states that you need to reply with the word WINK to see who fancies you – the return SMS, then says reply with the number of who you think fancies you to see if there is a match. So the first SMS you receive is completely misleading, because a customer would have incurred R40 before actually seeing if there is a match. (CoC 6.2.4)"

7.3 Member's response

7.3.1 The Member's response is contained in its batch reply and is set out above at paragraph 3.3.

- 7.3.2 The contravention of 4.1.1, 4.1.3 and 5.1.2 of the Code is admitted by the statement that rectification is required.
- 7.3.3 There is no response to the allegation that it has breached 6.5.2 and 6.2.4 of the Code.
- 7.4 Provisions of the Code considered
- 4.1.1, 4.1.2, 4.1.3, 5.1.2, 6.2.4 and 6.5.2.
- 7.5 Decision
- 7.5.1 As the Complainant does not advance any information in support of its bald allegation that the Member has breached 3.9.1 of the Code, my finding is that this provision of the Code has not been breached.
- 7.5.2 The statement that rectification is required, is an admission of the contravention of 4.1.1, 4.1.2, 4.1.3, 5.1.2 of the Code.
- 7.5.3 The Member's Information Provider does not respond to the allegation that it has contravened 6.2.4 and 6.5.2 of the Code and, accordingly, in the absence of a response, this allegation must be taken to have been admitted. I find that the Member has contravened 6.2.4 and 6.5.2 of the Code.

8 SANCTION IN RESPECT OF THE CONTRAVENTIONS ARISING FROM COMPLAINTS

The contraventions are summarized as follows:

8.1	Complaint	Provisions of the Code contravened
1	0609	4.1.2, 5.1.2, 5.2.1, 5.3.1, 5.3.2
2	0819	6.2.4, 6.2.5, 9.1.1
3	0894	4.1.1, 4.1.3, 4.1.7, 5.1.2, 6.2.2
4	0898	4.1.1, 4.1.3, 4.1.4, 4.1.5, 4.1.6, 4.1.7, 5.1.2, 6.2.2, 6.2.4, 6.2.5, 11.2.1
5	0905	4.1.1, 5.3.1, 5.3.2
6	0928	4.1.1, 4.1.2, 5.3.1, 5.3.2
7	0929	4.1.1, 4.1.3, 5.1.2, 6.2.4, 6.5.2
8.2	The Member has contravened numerous provisions of the Code. The SMS's sent to consumers are deceptive and misleading with regard to the pricing and with regard to the information that is conveyed. An aggravating factor is the adverse social consequences that the SMS could have on a recipient's life. The SMS's are unsolicited and the Member provides no means of unsubscribing or lodging a complaint.	
8.3	In response to Complaint 0609, the Information Provider states that emails received from the LoveMatch are dealt with straight away. It is remarkable that every other Complaint following 0609 contains the allegation that there is no facility to unsubscribe.	
8.4	It is noteworthy that in response to Complaint 0819 lodged on 21 December 2006 the Member's Information Provider states that the reason that the price is not visible is due to a "technical error". The Member would, however, have known of this technical error since receipt of the complaint 0609. In its response to complaint 0609 the Member's Information Provider concedes that the SMS complained of is misleading and it is clear from the subsequent complaints that nothing was in fact done to make the SMS's "less misleading" and the Member's Information Providers continued to disseminate misleading SMS's.	
8.5	The SMS's are misleading as to their content and their pricing. The SMS's are also clearly unsolicited. Given that the Member's Information Provider sent out SMS's for a number of months with the prices below the screen, I doubt that the hidden price was a "technical error" as claimed.	
8.6	It is this conduct that has the potential to serious damage the reputations of other Members and brings the WASP industry as a whole into disrepute. It is	

detrimental and harmful to the businesses of those WASPS that operate within the provisions of the Code.

8.7 Given the potential damage to the industry and to the consumer a harsh sanction is warranted:

8.7.1 the Member is ordered to pay a fine of R80 000 within two weeks of being notified by WASPA secretariat of this adjudication;

8.7.2 the Member is to write to the Complainants apologizing for its Information Provider's conduct and refunding any amounts spent by the Complainants on the service;

8.7.3 the Member is instructed to suspend the Information Provider for a period of 6 months, effective immediately;

8.7.4 WASPA is directed to inform the network operators as well as other WASPA members of the suspension of the Information Provider and the reasons therefor.

DATED THIS 26TH DAY OF FEBRUARY 2007