



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Altech Autopage Cellular (Pty) Limited
<b>Information Provider (IP)</b> (if any)	SMS Portal
<b>Service Type</b>	Commercial / Bulk Messaging
<b>Source of Complaints</b>	Consumer
<b>Complaint Number</b>	0936
<b>Date received</b>	22 January 2007
<b>Code of Conduct version</b>	4.8

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### Complaint

The complaint, which was submitted to WASPA via its website on 22 January 2007, refers to an unsolicited commercial SMS which was sent to the complainant by an unknown sender.

The message reads as follows:

*"Dear HEINRICH Get a GREAT offer on a cellphone contract! No paperwork! Free sim & connection! Delivered to your doorstep! sms \ 'yes\ ' & we will call u 2 c what\ "*

The complainant's primary complaint was that the SMS received had no identifiable origin or costing information. The complainant did not opt-in to receive the commercial message nor was there any mechanism for him to opt out.

The complaint was initially dealt with according to WASPA's informal complaint procedure. The Service Provider notified the information provider of the complaint and the information provider confirmed on 12 February 2007 that the complainant's number had been removed from their database. However the complainant was not

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satisfied that the matter had been properly resolved and the complaint was then referred to the formal complaint procedure.

The complainant supplemented his initial complaint on 14 February 2007 by referring to the following sections of the code that he alleged had been breached:

*3.7.1. Members will not provide any services or promotional material that:*

*b. results in any unreasonable invasion of privacy*

*(I never signed up to their list and never gave permission for them to use my number)*

*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.*

*(No pricing of any sort was given, either for the response SMS or the advertised service)*

*4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.*

*(I have no idea who the message came from. In particular I don't know if it comes from my existing service provider or whether it is a rival service provider that is trying to get my business. I view this as a deliberate attempt to deceive me)*

*5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.*

*(No such information was available. The long code itself was not registered anywhere and calling it did not give any more information.)*

*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.*

*(No such facility was available)*

*5.1.5. Upon request of the recipient, the message originator must, within a*

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*reasonable period of time, identify the source from which the recipient's personal information was obtained.*

*(Since the originator was obfuscated, I was unable to get this information although I would very much like to know where they got my number from in the first place.)*

*Section 5.3 dealing with spam. The message was very clearly spam.*

*6.2.2. All advertisements for services must include the full retail price of that service.*

*(The message did not include any information with regards to pricing of the offered service or the response SMS)*

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## **SP Response**

The identity of the Service Provider and the Information Provider was initially difficult to ascertain due to the non-functionality of the long code number used in the original message to the complainant. WASPA was eventually able to identify the Service Provider as Altech Autopage Cellular and the information provider as SMS Portal.

After the complaint had been escalated to the formal complaint procedure, the service provider sent the following e-mail request to the information provider on 12 February 2007:

*As per our telephonic conversation please find below the e-mail detailing the complaints made to WASPA by a member of the public.*

*To summarize, the complaint is three-fold:*

- 1. The SMS was unsolicited. The subscriber had not agreed to opt-in to receive promotional messages.*
- 2. There was no mention of the cost of the return SMS.*
- 3. There was no mention of the company that had sent the SMS.*

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*In order to rectify this situation, please could you remove the mobile number 0834825287 with immediate effect.*

*I have also attached the latest WASPA code of conduct which details the required standard of SMS and other mobile related communication. As Autopage is a WASPA member we are bound by this code of conduct.*

*Please could you reply to this mail when the number has been deleted from your database so that I can give WASPA feedback.*

The information provider then responded on 14 February 2007 as follows:

*SMSPortal is a gateway providing users the ability to send sms's to a clientbase. It would be virtually impossible to ensure that all our users are using the system correctly and abiding by WASPA code of conduct. I receive 100's sms's per month with none of the information you request according to your complaint. Nobody details the cost of replying. The fact that the name of the company does not appear on the sms has been raised with the client and they have altered there message going forward.*

*I hope you understand our position.*

On 15 and 27 February 2007, the Secretariat gave the Service Provider the opportunity to supplement the response received from the information provider. However the Service Provider did not take the opportunity and the above constitutes the entirety of the response to this complaint.

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### **Sections of the Code considered**

The following sections of the Code were considered:

2.9; 2.18; 2.22; 3.7.1; 4.1.1; 4.12; 4.2.1; 5.1; 5.2 and 5.3.

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**Decision**

The SMS received by the complainant was a commercial message in terms of section 2.9 and was unsolicited as per the provisions of section 5.2.1 of the Code. The SMS must therefore be regarded as spam in terms of section 5.2.

The SMS was sent without a valid originating number and/or the name or identifier of the message originator. This constitutes a contravention of section 5.1.1 of the Code.

In the absence of a clearly identified message originator, there was no facility available to allow the complainant to remove himself from the message originator's database so as not to receive any further messages. This constitutes a contravention of section 5.1.2 of the Code.

It would also have been impossible for the complainant to request the identity of the source from which the complainant's personal information was obtained. This constitutes a contravention of section 5.1.5 of the Code.

In terms of section 5.3.1, the Service Provider is required to take reasonable measures to ensure that their facilities are not used by others for the purpose of sending spam. In terms of the current complaint, it is clear that the Service Provider has failed to take such measures.

Finally, no information regarding the cost of replying to the commercial message has been included in the message as required by section 4.1.1 of the Code.

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**Sanction**

It appears from the record of past adjudications that this is the first occasion that a complaint has been made against the Service Provider. However the sending of spam is a serious matter which infringes the privacy rights of consumers. In the present matter, the issues are aggravated by the fact that no message originator was identified with the message and the complainant therefore had no mechanism to prevent further unsolicited messages from being sent to him.

I am not satisfied with the information provider's explanation around the logistical difficulties of ensuring that their users send messages through their portal which are compliant with the Code.

The Service Provider is issued with a formal reprimand and is ordered to suspend the services of the information provider until such time as there is proper compliance with the provisions of the Code, particularly section 5.