



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Mobile Internet Gateway
<b>Information Provider (IP)</b> (if any)	Unknown
<b>Service Type</b>	Commercial SMS
<b>Source of Complaints</b>	Public
<b>Complaint Number</b>	#1141
<b>Date received</b>	23 March 2007
<b>Code of Conduct version</b>	4.8

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### Complaint

The Complaint relates to continued receipt of an unsolicited commercial SMS and raises an alleged breach of section 5.1 of the WASPA Code of Conduct.

In the words of the Complainant:

“I receive an unsolicited sms every Friday inviting me to go to the Sutra nightclub in Boksburg. In the sms are details about special prices etc. There is no number to phone to cancel the sms.”

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### SP Response

Despite a number of requests and reminders no response was received from the SP.

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### Sections of the Code considered

#### 5. Commercial communications

##### 5.1. Sending of commercial communications

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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.

## 5.2. 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.

## 5.3. Prevention of spam

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

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## Decision

In the absence of any Response from the SP the version of the Complainant is accepted. The implication that the Complainant neither directly nor indirectly gave his consent to being sent such SMSs is drawn and accepted.

The Adjudicator considered the reference by the Complainant to section 5.1 of the Code. On the basis of the facts presented, the lack of a Response and the fact that the Complainant is a member of the Public and precedent in this regard, this reference is taken to mean section 5 in its entirety

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In the absence of any Response from the SP it is further an unavoidable inference that the SP has not taken reasonable measures to ensure that its facilities are not used for the sending of communications of this nature.

The SP is found to have breached sections 5.1.2 and 5.3.1 (read with section 5.2.1) of version 4.8 of the WASPA Code of Conduct. It is furthermore impossible to avoid the inference that it has reached section 5.3.2 of the Code

The SP is ordered to ensure that the Complainant is unsubscribed from the service and to ensure that the service is either terminated or regularised and to provide details of the IP and steps taken to terminate/regularise the service to the Secretariat.

Given the reluctance of the SP to engage with this process and provide relief to the Complainant, the following order is made: the SP is ordered to pay a fine of R1 000 per business day in the Republic of South Africa applicable from the date of receipt of this Report by the SP until the date of receipt by the Secretariat of

- confirmation of the resolution of the matter to the Complainant's satisfaction;  
or
- a response from the SP which, in the reasonable opinion of the Secretariat, is a constructive effort to resolve the matter,

whichever is the earlier.