

**WASPA alternative appeals panel
Complaint 1317**

REPORT OF THE ALTERNATIVE APPEALS PANEL

Date: 29 February 2008
Appellant: Global Moderating Associates Limited
Complaint Numbers: 1317
Code version: v4.92

1 INTRODUCTION TO THIS APPEAL

- 1.1 This appeal concerns the adjudication of a complaint relating to the “chatting4you” service lodged with WASPA on 08 May 2007 by an anonymous member of the public. The initial complaint cited Sybase 365 for providing the premium rated SMS Service and Mira Networks for providing the Online Billing Service.
- 1.2 It fact, it transpired that Sybase 365, a member of WASPA, was the Service Provider and Global Moderating Associates Limited (GMA), an Affiliate member of WASPA, was the Information Provider in this complaint. It became clear from information provided during the adjudication process that Mira Networks (Mira) could be excluded from the complaint. The adjudicator’s Report acknowledges this.
- 1.3 Only the Information Provider, GMA, appealed.
- 1.4 The complaint was submitted when version 4.92 of the Code of Conduct was in force.
- 1.5 Given the rapid pace of events following the initial complaint and the decision by the WASPA Secretariat to invoke the emergency complaints procedure under section 13.7 of the Code, the panel has thought it useful to summarise the events chronologically below:

1.5.1

	Date	Time	Party	Action
1.	08 May 2007	16:55	Complainant	Initial complaint made via WASPA website
2.	08 May 2007	17:13	Complainant	Full details & supporting info. provided for complaint. Secs. 3 (Professional and Lawful conduct) , 6 (Advertising Rules), 10 (Contact and Dating Services) & 11 (Subscription Services) of Code cited
3.	10 May 2007	09:23	WASPA	Serves notice on Sybase 365

**WASPA alternative appeals panel
Complaint 1317**

			Secretariat	and Mira Networks invoking emergency procedure
4.	10 May 2007	11:43	Sybase 365	Responds to notice invoking emergency procedure, acknowledging incorrect pricing and voluntarily suspending the service pending rectification
5.	11 May 2007	11:36	WASPA Emergency Panel	Reviews complaint under emergency procedure and orders remedies, including suspension with immediate effect
6.	11 May 2007	13:49	WASPA Secretariat	Advises Sybase 365 and Mira Networks that the formal complaints procedure continue
7.	18 May 2007	17:16	Sybase 365	Submits response to complaint, confirms GMA to be the IP. Clarifies exclusion of Mira Networks and again acknowledges incorrect pricing. Submission includes detailed response from GMA confirming rectification
8.	21 June 2007		WASPA Adjudicator	Finalises Report. Sanction included suspension with immediate effect
9.	07 August 2007	16:31	Global Moderating Associates	Addresses email to WASPA Secretariat confirming intention to appeal and submitting letter dated 21 July 2007 in support. Admits incorrect pricing and confirms rectification
10.	04 September 2007	10:53	WASPA Secretariat	Advises Sybase 365 that appeal info had been received from GMA and enquires whether Sybase 365 intends to appeal
11.	09 January 2008	10:28	WASPA Secretariat	Assigns appeal to the alternative appeals panel
12.	28 January 2008	09:37	WASPA Appeals Panel	Requests confirmation of (i) whether the service complained of had in fact been suspended; and (ii)

**WASPA alternative appeals panel
Complaint 1317**

				whether the WASPA Secretariat had issued notice of suspension to the networks
13.	28 January 2007	09:43	WASPA Secretariat	Confirms that the Sybase 365 and GMA had acknowledged the orders of the emergency panel issued on 11 May 2007. Service remained suspended
14.	06 February 2007	11:37	Sybase 365	Confirms they are not appealing, nor are they providing services to GMA

1.5.2 The summary above shows that:

1.5.2.1 1 complaint was received on 08 May 2007.

1.5.2.2 The service was suspended on 10 May 2007, (i) voluntarily, (ii) on the orders of the emergency panel, and (iii) on the orders of the adjudicator, and (iv) pending this appeal.

1.5.2.3 The service has never been re-instated.

1.5.2.4 While the panel has no knowledge of how long the chatting4you service operated in SA prior to the complaint, it has taken cognisance of (i) the fact that service operated for less than 24 hours after the complaint was lodged as well as (ii) the speedy action taken by the Sybase 365.

1.5.3 Given that both Sybase 365 and GMA acknowledged breaches of sections 3, 6 and 11, the panel will deal only with the issue of the sanctions imposed as a result of the breaches and will not deal with the related facts as these are detailed, on record and not disputed.

1.5.4 The panel will deal fully with the alleged breaches of sections 10.

1.6 We have (i) summarised relevant issues by way of background in part 1; (ii) summarised the complaints received and the response in part 2; (iii) considered the adjudicator's decisions in part 4; (iv) reviewed the grounds of appeal in part 5; and (v) made our finding in part 6.

2 SUMMARY OF COMPLAINT AND RESPONSE

2.1 Complaint Relating to Section 10 - Contact and Dating Services

2.1.1 *"The service appears to be in contravention of many of the clauses in section 10 for example 10.1.1, 10.1.2, 10.2.1, 10.2.2 as none of the required messages are apparent".*

3 RELEVANT SECTIONS OF THE CODE

3.1.1 The complaint related to four sections of the Code, being sections:

- 3.1.1.1 3 - Professional and Lawful conduct;
- 3.1.1.2 6 - Advertising and Pricing;
- 3.1.1.3 10 - Contact and Dating Services; and
- 3.1.1.4 11- Subscription Services.

As stated above, the panel is not going to address sections 3, 6 and 11 as the breaches are not disputed.

3.2 Section 2: Definitions

3.2.1 *Section 2.11: A “Contact and Dating” Service is any service intended to enable people previously unacquainted with each other to make initial contact and arrange to meet in person.*

3.3 Section 10: Contact and Dating Services

3.3.1 *Section 10.1: “Provision of Information” is followed by a detailed list of information to be provided to the consumer.*

4 DECISIONS OF THE ADJUDICATOR

4.1 Findings on Complaint and Sanctions

4.1.1 In summary, the adjudicator found that sections 3.1.1, 6.2.2, 6.2.3, 6.2.4, 10.1.2 10.2.1, 10.2.2, 11.1.1 and 11.3.2 of the Code had been breached by GMA and ordered:

- 4.1.1.1 That a fine of R200 000.00 be imposed, R125 000.00 of which was suspended for a period of 12 months, subject to GMA not breaching these sections again during that period. The adjudicator ordered the balance of R75 000.00 to be paid to WASPA within five days of notification of the order;
- 4.1.1.2 GMA to refund all users the amounts overcharged;
- 4.1.1.3 Both Sybase and GMA to continue with the suspension of the chatting4you service; and
- 4.1.1.4 The adjudicator also Issued both Sybase 365 and GMA with formal reprimands.

**WASPA alternative appeals panel
Complaint 1317**

- 4.1.2 The adjudicator found that Sybase 365 had acted in accordance with its obligations under sections 3.9.1 and 3.9.2 of the Code which require a member of WASPA to bind any Information Provider with whom they contract to ensure compliance with the Code and which empower members to suspend any service which is not compliant. The formal reprimand was issued because the adjudicator considered Sybase 365 to be aware of the non compliance of the service prior to receiving notification of the emergency procedure and its apparent tardiness in taking action.

5 GROUNDS OF APPEAL

- 5.1 There were in fact no grounds of appeal, rather, an appeal for clemency. GMA provided a letter under cover of an e-mail stating:
- 5.1.1 *"We strongly hope that the independent adjudicators will review the total archive of documents and are hoping for a more positive outcome"*
- 5.2 The attached letter, dated 21 July 2007, stated *inter alia* that they were:
- 5.2.1 Lodging an appeal;
- 5.2.2 Confirming their respect for the Code and recording their good relationship, track record and efforts in South Africa; and
- 5.2.3 Admitting to breaching the Code, alleging error and apologising.
- 5.3 The panel has taken note of a comment made by a Director of Sybase 365 in an email dated 10 May 2007 that GMS *"is a WASPA member over the past few days to ensure its compliance with the Code"*.

6 FINDINGS OF APPEALS PANEL

- 6.1 *Findings Relating to Sections 3, 6 and 11 of the Code*
- 6.1.1 No findings are made on the facts and the panel accepts these as recorded in the adjudication documentation. GMA breached sections 3, 6 and 11 of the Code.
- 6.1.1.1 The panel will consider only the appropriateness of the sanctions imposed in this regard, below.
- 6.2 *Findings Relating to Section 10 - Contact and Dating Services*

**WASPA alternative appeals panel
Complaint 1317**

- 6.2.1 The panel finds that the adjudicator has erred in finding the service to be a “Contact and Dating Service” as defined in the Code.
- 6.2.2 The panel’s reasons for this finding are as follows:
- 6.2.2.1 Clause 30.3 of the Sybase 365 submission dated 18 May 2007 records that *“Section 10 of the Code of Conduct relates to Contact and Dating Services. The service operated by the Information Provider is not a contact or dating service but a chat service and does not fall within the provisions of section 10”*. The panel agrees;
- 6.2.2.2 The opening paragraph of the letter dated 14 May 2007 received from GMA and attached to the abovementioned submission states *“... we have also attached our best service description of our Mobile Chat Service”*. The letter includes:
- 6.2.2.2.1 References to the website www.chatting4you.com and proceeds *“The 31737 chat is a mobile service where you can send a chatting message...”*
- 6.2.2.2.2 The official service description as follows:
- Service name: Chatting4you Chat
 - Helpdesk e-mail: info@chatting4you.com
 - Internet T&Cs: www.chatting4you.com
- 6.2.2.2.3 Promotion of the service as follows:
- Nature of the service (chat service)
- 6.2.2.2.4 The Content Provider Contact is recorded as:
- GMA Limited. Chatting 4 You Division
- 6.3 The Code does not specifically define a “Chat Service”, but includes it in the section 2 definitions as follows:
- 6.3.1 *“Section 2.12. A “content subscription service” includes any subscription service offering access to content including, by way of example sound clips, ring tones, wallpapers, images, videos, games, text or mms content or information.”, and continues, “Services which are not considered to be content subscription services include: dating services, chat services,...”*
- 6.3.2 The code therefore recognises “dating” services and “chat” services as two distinct categories outside of content provision. A dating (and contact) service is defined in section 2.11 as *“any service intended to enable people previously unacquainted with each other to make initial contact and arrange to meet in person”*. Consumers are afforded the higher level of protection required by the section 10 requirements for information to be made available, precisely because of risk of meeting. Conversely, a simple chatting service the

**WASPA alternative appeals panel
Complaint 1317**

intention of which excludes the primary objective of meeting, carries a lower risk and therefore does not require that any additional information be made available to the consumer.

6.4 The panel finds that the chatting4you service is a chat service and not a dating or contact service. The requirements of section 10 of the Code do not apply. GMS did not breach section 10 of the Code.

6.5 *Findings of the Panel Relating to Sanctions*

6.5.1 The panel makes the following order:

6.5.1.1 We direct that the fine of R200 000.00 imposed upon GMA be reduced by 75%, the resulting amount of R50,000 is payable to WASPA for the breach of sections 3, 6 and 11;

6.5.1.2 GMA is to refund all consumers overcharged as a result of the breaches, wherever possible. The panel acknowledges that it has no means of enforcing this requirement and appeals to the expressed good intentions of GMA;

6.5.1.3 The appeal fee is not refunded.

Panel Note: The history of this appeal includes the involvement of Sybase 365 and the adjudicator's reprimand is part of the record. Apart from historical references, the panel has not felt it necessary to include Sybase any further because the WASP suffered no financial sanction and declined the opportunity to appeal against the reprimand.