



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Mira Networks
<b>Information Provider (IP)</b> (if any)	<a href="http://www.sms.ac">www.sms.ac</a>
<b>Service Type</b>	Free SMS service
<b>Source of Complaints</b>	Mr Peter Fernleigh
<b>Complaint Number</b>	1380
<b>Date received</b>	7 June 2007
<b>Code of Conduct version</b>	4.92

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### Complaint

The complainant lodged a complaint via the WASPA website on 7 June 2007 regarding his inability to unsubscribe from the IP's free SMS service.

The complaint states that:

*I daily receive at least 3 SMS message everyday to my cell phone 082 777 2183. These messages always come for +27820048420 and start with "Your SMS.ac friendly broadcast: I request that these message cease.*

The WASPA Secretariat advised the complainant of the dispute resolution procedure on the same day. The complainant sent a further message on 14 June 2007 which stated:

*Thank you for your response. Unfortunately, I am still receiving these unsolicited text messages from +27820048420. To date 23 since the 8th June. When will these messages stop?*

On the following day, i.e. 15 June 2007, the complainant once again notified the Secretariat as follows:

*I have again today received three more SMS messages from +27820048420 making it 27 in total since the complaint was log and 6 messages after the 5 working days. Is my next step to take this complaint to Telkom and the Police to have action taken to stop this harassment.*

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### **SP Response**

The SP responded to the complaint on 13 June 2007 by forwarding a direct response from the IP. The IP alleges that the complainant personally registered for the free sms service on 16 January 2005 and received over 365 days worth of free sms's using the IP's Friends Broadcast service during the period July 23, 2006 to July 14, 2007, before filing a request for the service to stop.

The reference to 14 July 2007 appears to be incorrect considering the response was dated 13 June 2007.

The IP also stated that:

*Please be advised we have taken the necessary steps to assure that Mr. Fernleigh will no longer receive Friends Broadcast messages. Additionally, we have taken the extra precaution of deleting his number from our database completely.*

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

I have considered the following sections of the Code:

Section 3 (3.1; 3.3; 3.9);

Section 4;

Section 5;

Section 6.2.3; and

Section 11.

## **Decision**

The IP, in its response dated 13 June 2007, does not clearly state how the complainant was registered for its service and more particularly whether the complainant registered for the service via the IP's website. If he did in fact, register via the IP's website, the next question would be on what basis does the IP allege that its standard terms and conditions are binding on the complainant. I find the IP's response in this regard somewhat vague and confusing.

It also appears from the subsequent mails received by the Secretariat from the complainant after 13 June 2007 that he received a number of further messages from the IP after the IP had confirmed that he had been removed from their database. The IP has, in its response, acknowledged the instruction to stop the services but seems to have sent further messages in contravention thereof.

I am therefore of the view that the IP has failed to comply with section 5.1.4 and 10.3 of the WASPA Code of Conduct.

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## **Sanction**

This is one of a number of complaints received against the IP's free sms services and in particular the continued provision of these services after users have opted out.

I understand from the Secretariat that the SP has voluntarily suspended the IP's services.

My ruling is that this suspension be made permanent and that the SP will not reactivate the IP's free SMS services.