



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	MTN Innovation Centre
<b>Information Provider (IP)</b> (if any)	N/A
<b>Service Type</b>	Commercial SMS
<b>Source of Complaints</b>	Public
<b>Complaint Number</b>	#1982
<b>Date received</b>	20 August 2007
<b>Code of Conduct version</b>	5.3

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### Complaint

The Complainant raised a breach of the prohibition on the sending of unsolicited commercial SMSs as set out in the WASPA Code. The detailed description of the Complaint read as follows:

"On 20/08/2007 14:22:58 I was sent a SMS spam to my number of 0843691973, reading "Eyeperoptics Menlyn 0123681928 - Its time for your yearly eyetest!" from +278400012620123. I tracked the number with [www.smscode.co.za](http://www.smscode.co.za), and found the company responsible was Airborne (Pty) Ltd, with a number of 0118089117. When I phoned the number, Telkom said the number does not exist."

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### SP Response

No response was received from the SP despite numerous attempts by the WASPA Secretariat to the last notified contact details of the SP.

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### Sections of the Code considered

**Sections of the Code considered**

The following sections of version 5.3 of the Code of Conduct were considered:

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.

5.3.1. 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.

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**Decision**

In the absence of any response from the SP, and noting that the WASPA Secretariat has made numerous attempts to elicit such response from the SP at the contact details last provided by it and that the Adjudicator is satisfied that the SP has been given proper opportunity to respond as required by the Code of Conduct, the Adjudicator accepts the uncontroverted version of the Complainant.

Held: The SP has breached section 5.3.1. read with section 5.2.1 of the WASPA Code of Conduct.

Sanction: The following factors were considered in evaluating an appropriate sanction in this matter:

- The industry imperative to root out the sending of spam
- The prior record of the SP with regard to breaches of section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct;
- The relatively clean record of the SP and the fact that it has not previously been sanctioned for a breach of section 5.3.1 read with section 5.2.1 and
- The failure of the SP to respond to the Complaint.

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The SP is fined the sum of R5 000, payable to the WASPA Secretariat within five days of notification hereof. Payment of an amount of R3 000,00 is suspended for a period of six (6) months subject to the SP not being found to have breached section 5.3.1 read with section 5.2.1 during this time.