

WASPA Member (SP)	iTouch
Information Provider (IP)	N/A
Service Type	Unsolicited SMS
Source of Complaint	Jonathan Russell
Complaint Number	#3349
Code of Conduct Version	5.7
Date of Adjudication	03/05/2008

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:

“I received a commercial message from an unknown company telling me that they were going to take my insurance premium from my bank account. The only seemingly identifying feature is the acronym “MBFS”. I immediately phoned my insurance company “Mont Blance Financial services” but they denied sending me any messages regarding my premium.

The message reads as follows:

“A friendly reminder that we will be debiting your insurance premium of R3,692.26 on 2008-01-15 from your stipulated bank a/c. MBFS”

A second message was received a month later:

“A friendly reminder that we will be debiting your insurance premium of R1,144.60 on 2008-02-15 from your stipulated bank a/c. MBFS”

Please could an investigation be performed into who sent this message so that I can remove myself from their list.”

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.

Sections of the Code considered

The following sections of version 5.7 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.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. In this particular instance, the WASPA Secretariat has made no less than six attempts in its efforts to elicit a response from the SP at the contact details last provided by it.

The Adjudicator is therefore satisfied that the SP had more than enough time to file a response as is required by section 13.3.4 of the WASPA Code of Conduct. In the absence of the SP raising such a response, the Adjudicator has to assume that the SP, as is indicated in section 13.3.5 of the WASPA Code of Conduct, does not wish to respond to the claim. In light of these circumstances the Adjudicator has no alternative but to accept the uncontested version of the Complainant.

The Complainant stated that he has received an unsolicited message. This would imply that none of the exclusions provided for by section 5.2.1 were fulfilled.

It is therefore held that the SP **has breached** section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct.

In determining an appropriate sanction, the following factors were considered:

- 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; and

- The failure of the SP to respond to the Complaint.

The SP is fined the sum of R5 000, 00 payable to the WASPA Secretariat within five (5) days of notification hereof.

The SP is further ordered to ensure that the Complainant is not made subject to any similar breaches of the WASPA Code of Conduct for which it (SP) is liable and is strongly advised to remove the Complainant from any mailing lists which might be construed as giving future rise to a similar Complaint. The SP is further ordered to identify the sender of the message and inform the Complainant accordingly.
