

<b>WASPA Member (SP)</b>	iTouch
<b>Information Provider (IP)</b>	N/A
<b>Service Type</b>	Unsolicited SMS
<b>Source of Complaint</b>	Ann Ninaber
<b>Complaint Number</b>	#3581
<b>Code of Conduct Version</b>	5.7
<b>Date of Adjudication</b>	03/05/2008

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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:

“Would it all be possible for you to track the source of the following message:

“U don’t need a reason 2 send that special some1 a poem. Join today 4 unlimited poems & make everyday special. Sms POEM to 36030! (R5/5daysSubscription) Sms OUT to 36030\”

I would really appreciate your help.”

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## **SP Response**

An initial response was received by the SP wherein it requested contact details of the Complainant. Such details were provided the same day. Since then 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**

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.

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## 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 various 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 she 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 R7 500, 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 provide the Complainant with details of where the messages originated from.

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