

WASPA Member (SP)	iTouch
Information Provider (IP)	N/A
Service Type	Misleading Info
Source of Complaint	Gareth Weppenaar
Complaint Number	#3596
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 recieved an sms from what appears to be 35050, the sms states the following:
 \"Click here, you win tickets to the mycokefest 2008 from 35050!\""

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:

9.1.6. Competition services and promotional material must not:

- (a) use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants;
- (b) exaggerate the chance of winning a prize;
- (c) suggest that winning a prize is a certainty;

(d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

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 he has received a misleading message.

It is therefore held that the SP **has breached** section 9.1.6 of the WASPA Code of Conduct.

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

- The prior record of the SP with regard to breaches of section 9.1.6 read 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.
