



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP):** Mira Networks

**IP:** Two Tones (also an SP)

**Service Type:** Unsolicited commercial messages

**Complainant:** Member of the public

**Complaint Number:** 4561

**Adjudicator:** Kerron Edmunson

**Code version:** 5.7 (13 December 2007 to 30 June 2008)

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### Introduction

Whilst the complaint was submitted in July 2008 when ostensibly version 6.1 of the Code applied, the substance of the SP response indicates that action was taken in response to the complaint at the time of the complainant directly to the SP, in June 2008. The previous version of the Code, version 5.7, was then in force.

As Mira Networks referred the complaint to Two Tones and in various correspondence they refer to themselves as “Text Cosmo”, for convenience I am referring to Two Tones/Text Cosmo as the SP in this decision. The SP admits having sent the message complained of.

It is also relevant to note that although I regard the SP as having supplied insufficient information in response to the complaint, they were requested by WASPA and by the complainant on some 6 separate occasions to supply additional information and on each occasion the response was similarly light. Therefore either they have no additional information to supply, or they have not had regard to the provisions of the Code in relation to unsolicited communications and privacy. In any event, I do not consider it necessary to make a 7<sup>th</sup> request for information which they seem disinclined or unable to provide and will make a finding on the information before me.

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### Complaint

The complainant was sent an unsolicited SMS from “a Mira Lonnumber” (+27 82 004 8422), advertising one of their short codes, 31300. The complainant responded by asking where they obtained his number from and why he was sent the message. The response received by him was to the effect that, initially, they had not sent him the message at all, but then (and from the same number) that his number had been blocked – I have set out the full response below.

**SP Response**

In response to the complaint directly, the SP advised “your cell number xxx has been blocked from our systems and you will no longer receive any marketing messages from us. My colleague actually processed this block/stop request on 4 June. Sorry for the delay in response to this matter.”

In response to a WASPA notification, the SP responded “your mobile number was supplied by the consumer data provider Exponent Communications Limited <http://www.exponentcomms.com> (“Exponent”).

The complainant indicated to WASPA that this response was not satisfactory in that it did not answer his initial question about where they got his number from, and he also asked for someone to mail through proof that the consumer data provider had provided the SP with his number, and the WASPA Secretariat again followed up with the SP.

The SP replied that they had contacted Exponent and would forward their response.

The response received was duly forwarded and read “sorry for the late reply however I can confirm your number was supplied to Text Cosmo from our data brokering company Exponent Comms. We provide opt in databases from various territories around the world, if you require further information please do not hesitate to contact myself directly.”

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**Consideration of the WASPA Code**

The complainant has not referred to specific sections of the Code, however it is obvious that the following sections must apply:

**Section 2.9:** “*commercial message*” means a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

**Section 2.22:** “*spam*” means unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1.

**Section 3.1.1:** Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application providers, and WASPA.

**Section 5.2.1 (identification of spam):** 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.
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**Decision**

Clearly the message sent to the complainant is spam within the definition of section 5.2.1. It is also clear that the SP does not deny this as it both confirms having sent the message, by implication, and confirms that it has removed the complainant's number from its database. It also confirms having received the number from a consumer database provider.

WASPA does not have a relationship with database providers and they are not bound by the Code. However, WASPA members clearly are bound by the Code.

The SP did not indicate in its response that Exponent, the organisation "supplying the originator with the recipient's contact information has the recipient's explicit consent to do so". The intermediary referring to Exponent as their data brokering company, did not refer to Exponent or themselves having had explicit consent from the complainant to release his number to Exponent or to the intermediary, or to the SP.

It is obvious that the SP is required to ensure that when sending unsolicited commercial communications it has explicit consent to do so in terms of section 5.2.1. There is no indication whatsoever from any response received to any of the many enquiries made of it, that the SP had explicit consent via Exponent or the intermediary. In the circumstances, the SP is in breach of section 5.2.1.

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**Sanction**

The complaint is upheld and the SP is required to do the following:

- (a) refresh its understanding of the Code and particularly its requirements in relation to spam;
- (b) in response to queries from complainants regarding the origin of their personal information (as used by the SP), to indicate with greater clarity and particularity the precise origin of their information confirming explicit consent received from the complainant to the use of their personal information in the manner suggested by the commercial communication and to confirm to WASPA that it has put such a process in place in writing within 30 days of the date of this decision; and
- (c) to pay to WASPA a fine of R10,000 within 5 days of publication of this decision.