



## REPORT OF THE ADJUDICATOR

<b>WASPA Member</b>	ABSA Bank Ltd
<b>Service Type</b>	Commercial SMS
<b>Source of Complaints</b>	Public
<b>Complaint Number</b>	4968
<b>Date lodged</b>	8 October 2008
<b>Code of Conduct version</b>	6.2

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### Complaint

The complainant stated that he regularly received the same SMS from ABSA and that there was no way in which to opt out. Further it was alleged that the number specified in the SMS was not "a valid cell number".

"Absa Guaranteed Growth rates for week ending 21/09/2008: Investment amounts below R100k 9.07%, R100k - R1m 9.21%, R1m - R5m 9.64%, R5m+ 9.68%." From the following number: +27820070491

The complainant continued:

"I have phoned the call centres and have been given the run around as no one seems to know who has to deal with this issue. I have no policy or account with ABSA.

I "logged" the complaint on [www.hellopeter.com/](http://www.hellopeter.com/) website at the following link: [http://www.hellopeter.com/my\\_comment.asp?recid=193360](http://www.hellopeter.com/my_comment.asp?recid=193360) Gwynn contacted me on 22 Sept 2008, and said they found the source and the SMS's would stop. Less than 10 min later I received another one. 29 Sept, I received another 2 SMS's and another on the 6th October.

Unfortunately I did not get her contact number."

SMS messages were still being received by the complainant on 13 November 2008.

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### SP Response

No response was received, despite reminders sent by the WASPA Secretariat to the contact address designated by the WASPA member for this purpose.

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### **Sections of the Code considered**

The following sections of version 6.2 of the WASPA Code of Conduct were considered:

#### **3.1. Professional and lawful conduct**

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

#### **5.1. Sending of commercial communications**

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word "STOP". If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply "STOP" procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent.

#### **5.2. Identification of spam**

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 (within the last six months) 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. Prevention of spam**

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.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

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### **Decision**

In the absence of any response from the WASPA member the member is found, on the evidence presented by the complainant, to have breached sections 5.1.1, 5.1.2, 5.1.3, 5.3.1 read with 5.2.1, and 5.3.2.

The failure of the WASPA member to provide a response, furthermore, constitutes a breach of section 3.1.1. in that the member has failed to conduct itself according to the standard required in its relationship with WASPA.

In mitigation it does appear that this is the first complaint to be raised against the member.

The following sanction is ordered.

1. The WASPA member is:
    - 1.1. ordered to take immediate steps to ensure that the complainant is unsubscribed from any distribution lists (if not already done) and in any event to confirm in writing to the WASPA Secretariat that it has done so within five (5) days of date of notification of this Adjudication, failing which the Secretariat is requested to lodge a further complaint on behalf of the Adjudicator for non-compliance with the WASPA Code of Conduct and the complaints process;
    - 1.2. fined the sum of R10 000, of which R7 500 is suspended for a period of six months subject to the member not being found to have breached the sections listed above (excluding section 3.1.1) during that time, and the balance payable to the WASPA Secretariat within five (5) days of date of notification of this Adjudication; and,
    - 1.3. issued with a formal reprimand in respect of its breach of section 3.1.1.
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