



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	iTouch
Information Provider (IP): (if applicable)	N/A
Service Type:	Subscription
Complainant:	WASPA Monitor
Complaint Number:	5096
Code version:	Code v6.2 and Ad Rules v2.3
Date of Report:	22/1/2008

Complaint

1. On the 31st of October 2008 the WASPA Monitor lodged the following complaint:

Date of breach: 29 october 2008

WASP or service: iTouch - 30123

Clauses breached: 6.5.1.

The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

Description of complaint:

Please see the attached ad

This is a recording made on 29 Oct 2008 between 13h30 and 14h30.

As you will see, this is an ad from Loadin' clearly using "FREE" as the keyword.

The WASPA Monitor has indicated that this is a serious offence and cannot be resolved informally. The service provider is requested to provide a formal response to the alleged breaches so that this matter can be reviewed by an independent adjudicator.

Attached file : 30 123.WM

2. I viewed the attached video file, and found that it was consistent with the complainant's version in that consumers are enjoined to sms the keyword "free" to the short code 30123 in order to subscribe to the SP's service.
 3. The SP was notified of the complaint on the 31 October 2008 by the WASPA Secretariat, and was also sent a reminder to respond to the complaint the 18th of November 2008. No response was forthcoming from the SP.
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Portion of the Code Considered

4. The following portion of the WASPA Code of Conduct is relevant:

2. Definitions

The terms below have the following meaning throughout this document:

...

2.14. A "keyword" is any word used in an SMS or MMS sent by a customer to request a service.

...

6. Advertising and pricing

...

6.5. Use of the word "free"

6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

Decision

5. In the advert in question, the SP clearly enjoins consumers to SMS the keyword "free" to the SP's short code "30123".
 6. Such an action is an infringement of section 6.5.1 read with the definition of "keyword".
 7. Notwithstanding the lack of a response from the SP, I have no hesitation in finding that the SP's conduct is an infringement of Section 6.5.1 of the WASPA Code of Conduct.
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Sanction

8. Section 6.5 was introduced into the Code of Conduct relatively recently, and there have been a few decisions on the point. Moreover, I suspect there is some confusion in the industry as to the interpretation of this provision. As a result, the following sanction is imposed.
9. The SP is fined an amount of R 10 000, wholly suspended for a period of six months from the date hereof, subject to the condition that the SP does not infringe Section 6.5.1 of the WASPA Code of Conduct during this period.

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