



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP)** Altech Autopage Cellular

**Information Provider (IP)**  
(if any)

**Service Type** Unsolicited commercial sms

**Source of Complaints** C Van Heerden

**Complaint Number** 5333

**Date received** 3 December 2008

**Code of Conduct version** 6.2

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### Complaint

The complainant received the following commercial SMS message from the SP:

*You may qualify for a contract with a free Samsung F250 1GB Mp3 Camera phone \_  
100 off peak free minutes cash paid to you. Reply Yes.*

The complainant alleges that the message contravenes section 5.2 of the WASPA Code as there is no option to opt out.

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### SP's response

The SP has failed to respond to the complaint.

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**Sections of the Code considered**

2.8. A “**commercial message**” is 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.

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

**5. Commercial communications****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.

5.1.4. For SMS and MMS communications, a message recipient must be able to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). If replying ‘STOP’ as set out in 5.1.3 will result in a charge greater than the lowest tariffed rate available, then instructions for the lowest tariffed rate opt-out must be included in every message sent to the customer.

5.1.5. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

5.1.6. *Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the service provider must honour the opt-out request as if the word 'STOP' had been used.*

5.1.7. *Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.*

5.1.8. *Commercial communications may not be timed to be delivered between 20:00 and 06:00, unless explicitly agreed to by the recipient, or unless delivery during this period forms part of the up-front description of the service.*

## **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.*

5.2.2. *WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.*

## **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.*

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

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## **Decision**

The complainant has acknowledged that he is a current account holder with the SP, but states that he would not have opted to receive marketing messages from the SP. In the absence of contrary proof from the SP, I must accept the complainant's statement in this regard.

The commercial message sent by the SP falls within the definition of spam in terms of section 5.2.1.

The SP has failed to make the reply 'STOP' procedure clear to the complainant at the start of the messaging service, for example by including "reply STOP to opt out" in the first message sent.

The complaint is accordingly upheld.

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## **Sanction**

The SP is ordered to remove the complainant's number from its marketing database and to ensure that he is opted-out from receiving any further marketing messages from it.