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## URGENT WASPA Advisory

on

### Unacceptable SMS Marketing Practices

19 March 2007

#### 1. Introduction

There have been a number of incidents over the past few weeks of SMS marketing that is totally outside the realms of acceptable behaviour in terms of the WASPA Code of Conduct and the WASPA Advertising Rules, and above all, to the major detriment to all industry participants.

The purpose of this advisory is twofold:

- To warn WASPA members who may be unaware of these incidents of their occurrence, so as to try avoid any repetition and further damage to the industry; **and**
- To avoid any WASPA members against whom a complaint may be brought, from arguing that they were unaware of the practices of their information providers or that these practices are errors or in any way unintentional.

It must be noted that many of the practices are, it seems, perpetrated by Information Providers, rather than WASPA members directly. In addition, many of these Information Providers appear to be based outside South Africa.

You are advised, if applicable, to immediately forward this Advisory to *all* your Information Providers and *also* obtain positive indication from them that they have **read, understood** and will **fully abide by** the contents of this Advisory.

Nevertheless, the WASPA Code of Conduct makes it clear that WASPA members can be held responsible for the actions of their Information Providers (Clause 3.9) and this has been confirmed in numerous decisions of WASPA Adjudicators.

In summary, the issues of concern are the following:

### **SMS Messages Promoting Adult Services**

- Do not send SMSs to persons who have previously only requested non-adult content. This is considered an extremely serious offence as it brings the industry into disrepute.
- Do not indicate or suggest in promotional SMSs or any other advertising material that the Adult content indicated as being available is of the XX or X18 type if this is not the case. All XX & X18 content distributed over mobile or the Internet has been deemed illegal by the Film & Publications Board (see previous WASPA advisory on Adult services).
- Do not send messages to a database indicating that someone is interested in the recipient for a romantic liaison or similar if this is not the case.

An Information Provider has been suspended because of the widespread abuse of this practice.

### **Formatting of Promotional SMS Messages**

- Do not place spaces and/or carriage returns between the body-text and the price indication. The user must not have scroll down to see pricing. This practise has been declared deceptive and an Information Provider has been suspended for doing so.

### **Active Number Harvesting**

- For example: Do not run competitions or similar to simply harvest numbers for non-competition use. Any messages sent via such harvesting are considered spam by Adjudicators.
- If a competition is held via radio, the announcement must indicate that users will be placed on a distribution list.
- Do not use a pre/post-paid mailbox for unsubscribe requests or any customer care issues. These mailboxes only store 10 messages on average. A live operator must be used.

### **Use of International Gateways for MTs**

- WASPs are allowing their Information Providers to send MTs to subscribers from "cheap" non-South African international gateways. IPs are placing wording in these SMSs that are in conflict with the WASPA Code Of Conduct and various network rules.

WASPs then become liable for any use of a shortcode in an errant SMS.

### **Long Code Use**

- The WASPA Code of Conduct Committee has instructed the WASPA Adjudicators to draw a negative inference regarding commercial SMS messages originating from Premium Rated long codes, if this has the effect or possible effect of exposing consumers to costly mistakes or unintentional spending.

This is a potentially deceptive practice and WASPA members found to be using this practice, or allowing their information providers to do so, will be subject to the institution of complaints.

*Please see further below for detailed explanations*

## 2. SMS Messages Promoting Adult Services

As members are well aware, following the previous WASPA Advisory on Adult services, this is becoming a very contentious issue and WASPs are receiving extremely bad publicity for sending adult-type SMSs to persons who have no interest in these services, or who are under-age.

Without entering the debate regarding the morality of adult services and the freedom of speech and freedom of expression right of adults to view these services, the marketing of adult services needs to be very carefully handled to avoid damage to the industry as a whole.

It is worth noting the following provisions of the WASPA Code of Conduct (from version 4.8):

2.1. An “adult service” is any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.

8.1.2. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.

This point obviously needs to be emphasised, WASPA members and their information providers are specifically prohibited from marketing adult services or adult content services, by way of SMS message or otherwise, to customers who have requested other content types, excluding adult services or adult content services.

The only customers to whom adult services or adult content services may be marketed are those customers who have previously specifically requested adult services or adult content services and ***have been verified as over the appropriate age, through an age verification process.***

This is extremely serious as there have been incidents of customers having requested ring tones and similar innocuous content, only to be followed by SMS messages marketing adult services.

This is both a breach of Clause 8.1.2 of the WASPA Code of Conduct, as well as Section 11.11 of the WASPA Advertising Rules (which itself is a breach of Clause 6.1.1 of the WASPA Code of Conduct).

WASPA members need to be aware of the sensitive nature of this issue and that any contravention will be viewed in a very serious light, both by WASPA and the networks.

It is also important to note the following from the WASPA Advertising Rules with regard to SMS Marketing (in Section 11):

### 11.1 SCOPE

Applies to all SMS and MMS's to the general public where Access Channels are displayed. While cognizant of the limited space in an SMS, senders must nonetheless abide by the General Terms.

**11.11 DISTRIBUTION LISTS:** Indicate If Consumer Automatically Placed On List. // No sexual or sexually suggestive Content in list if the list recipient does not request or expect it. // Provide reasonable opt-out procedure // Sender must have direct and recent association with recipient

- A sender to a distribution list may not send any Adult Content, nor send advertisements that link to Adult Content, nor send any advertisements that contain Adult themes, Age Restricted Content sexually suggestive Content and language to consumers that have not previously expressly requested such Content or would not reasonably expect to receive such Content.

*In a related vein, SMS advertisements sent to recipients and implying that a user of the service is interested in the recipient for a romantic or sexual relationship, could be regarded as an advertisement for an Adult service. Even if this is not the case, this is marketing for a contact and dating service and needs to comply with the requirements in the WASPA Code of Conduct and the WASPA Advertising Rules regarding contact and dating services. As such, it may contravene the Code of Conduct requirements by not honouring their commitment:*

- *to honest and fair dealings with their customers; and*
- *not to knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.*

*In addition, the WASPA Advertising Rules indicates that:*

*A sender to a distribution list may not send any Adult Content, nor send advertisements that link to Adult Content, nor send any advertisements that contain Adult themes, Age Restricted Content sexually suggestive Content and language to consumers that have not previously expressly requested such Content or would not reasonably expect to receive such Content.*

*Such conduct should likewise be avoided by WASPA members.*

Thus, do not indicate or suggest in promotional SMSs that the Adult content available is XX or X18 if this is not the case. All XX & X18 content distributed over mobile or the Internet has been deemed illegal by the Film & Publications Board (see previous WASPA advisory).

In addition, do not send messages to a database indicating that someone is interested in the recipient for a romantic liaison or similar if this is not the case. An Information Provider has been suspended because the widespread abuse of this practice.

### **3. Formatting of Promotional SMS Messages**

A number of promotional SMS messages have been brought to WASPA's attention, where the price is included in the message, however is placed after several carriage returns.

This has the effect, on the vast majority of mobile phone screens, of making the price invisible without scrolling down several times.

In assessing these SMS messages the following Clauses of the WASPA Code of Conduct were considered:

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

In addition, the following provisions of the WASPA Advertising Rules were considered:

#### **11.3 TEXT DISPLAY**

11.3.1 Display Text with full pricing information must be displayed on the SMS/MMS

**11.15 PRICING:** Show component, bearer and total cost // Cannot use term Standard Rate when no free/discounted SMS/Minutes cannot be utilised

#### Overview:

The display text must show the full or potential cost of access for fully obtaining the advertised Content and/or service.

This practice is dishonest and negatively affects the reputation of all WASPAs. It is, inter alia, a contravention of Clause 4.1.1 of the WASPA Code of Conduct in that it amounts to a failure to clearly and accurately convey pricing information to customers and potential customers. A contravention of Clause 6.2.5 of the WASPA Code of Conduct is also clear, while a finding of deception in terms of Clause 4.1.2 of the WASPA Code of Conduct has also been made.

While not directly covered in the WASPA Advertising Rules, the requirement for showing or displaying pricing information **on** the SMS and as part of the display text, makes it clear that hiding the pricing by using superfluous and intentionally inserted carriage returns, is a contravention of the WASPA Advertising Rules.

WASPA members are to be vigilant regarding superfluous carriage returns, as following this advisory, it is unlikely that any Adjudicator will accept a response based on unintentional errors or third party errors.

As indicated above, WASPA Adjudicators have held this to be a deceptive practice and the WASPA Adjudicators have been requested to be particularly strict with regards this practice and a complaint of this type of behaviour could result in a fine, a suspension of service, or both a fine and suspension, being imposed on a WASPA member.

#### 4. Active Number Harvesting

There have been incidents of active number harvesting, *inter alia* with information providers running general competitions to harvest active numbers.

The information provider then uses the harvested numbers to send unsolicited SMS messages (spam for the purposes of the WASPA Code of Conduct) for unrelated services.

In addition, it is made almost impossible for recipients to remove themselves from the distribution lists, in one case due to the fact that a prepaid voice mailbox was provided as the removal mechanism.

As the mailbox only stores a limited number of messages, it is constantly full.

WASPA Adjudicators have found this harvesting and subsequent spamming mechanism to be in contravention of the WASPA Code of Conduct. The lack of a functioning list removal mechanism is possibly another infraction.

Furthermore, Clause 4.1.5 of the WASPA Code of Conduct requires:

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

Obviously, a full mailbox will not qualify as a complaints procedure as contemplated in the Code.

Do not use a pre/post-paid mailbox for unsubscribe requests. These only store 10 messages on average.

A live operator must be used.

## **5. Use of International Gateways for MTs**

Many WASPA member's are getting into trouble because their information providers are sending MTs through alternative and cheaper non-South African gateways, rather than through the WASPA member, as is required by the networks.

This has resulted in WASPA members not seeing the MTs until there is a complaint. Nevertheless the WASPA members have been held liable for the actions of their information providers and have been sanctioned, in some cases very severely with suspensions and fines amounting to tens and even hundreds of thousands of Rand.

WASPA members need to enforce their own internal business rules, as well as network rules, that any MTs using a particular WASPA member's short code can only be sent through that WASPA member's gateway.

Failure to do so is likely to result in liability for MTs sent by information providers, even though not sent through the WASPA member's gateway!



## **6. Long Code Use**

The WASPA Code of Conduct Committee, by way of this Advisory, instructs the WASPA Adjudicators to draw a negative inference regarding commercial SMS messages originating from Premium Rated long codes, if this has the effect or possible effect of exposing consumers to costly mistakes or unintentional spending.

This is a potentially deceptive practice and WASPA members found to be using this practice, or allowing their information providers to do so, will be subject to the institution of complaints.