



## REPORT OF THE ADJUDICATOR

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| <b>WASPA Member (SP)</b>         | iTouch  |
| <b>Information provider (IP)</b> | AME   |
| <b>Service Type</b>              | Unsolicited SMS messages promoting adult services |
| <b>Source of Complaints</b>      | Public  |
| <b>Complaint Number</b>          | #0073   |

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### Complaint

A complaint was received from a parent regarding unsolicited SMS messages promoting adult services received on the mobile phone account of both the parent and her son. In particular she states “the same disgusting SMS's sent to my cell, are also sent to his [ a reference to her teenage son]”.

The complainant is understandably upset about this issue and submitted her complaint as well as a record of correspondence with her network operator, in which she was referred to WASPA.

The complainant provided the originating number for the unsolicited SMS messages (082 003 7012) however she was understandably unwilling to provide either her own mobile telephone number or that of her son. The complainant also did not provide copies, extracts or an outline of the specific SMS messages received.

The complainant did not raise any specific potential breach of the WASPA Code of Conduct, however and for the reasons more fully set out below, the following potential breaches of the WASPA Code of Conduct were considered:

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.

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 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.

5.3.1. 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.

## **8. Adult services**

### **8.1. Required practices**

8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.

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.

8.1.3. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult service.

### **8.2. Prohibited practices**

8.2.1. Adult services must not contain references that suggest or imply the involvement of children.

8.2.2. Promotions for adult services must not appear in publications or other media specifically targeted at children.

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## **Investigation**

The Secretariat received a response from the IP as follows:

- The number indicated (0820037012) does originate from AME, hence any adult oriented promotional SMS's received from this number would be from AME.
- We certainly understand the complainants anger in this regard, as our content is of an adult nature and not appropriate for minors. We would like to point out, however, that we certainly do not target minors, nor do they form part of our target audience in any respect and we most certainly do not want them using our services.
- We would also point out that we do not buy databases to market to, nor do we use any database other than our own. Our database is generated SOLELY through downloads that people make from our services.
- Furthermore we have our own Adult Verification System in place which clearly informs first time customers that they need to be over 18 to access our content, and asks them to actively respond indicating that they are in fact over 18. The system, admittedly, is not so robust that it can actually determine if someone is over 18 or not, however by asking the person to confirm that they are over 18 it does clearly imply that the content is for adults only. It's a measure we have deployed because we take seriously the problem that minors can currently access our content.
- With respect to the promotional messages the complainant[']s child has received, these would ONLY be possible if the child had accessed one of our services, thus entering into our database. In all forms of our advertising we do inform the customer that updates will be sent, but also that they can be cancelled at will. Every promotional message we send contains a clear and

simple instruction on how to immediately stop future promotional messages (i.e. send the word STOP to 31519).

- If the complainant wishes to see the history of her child[']s usage of our services, we would require the mobile number in question be submitted to us, and we could then provide that information.
- For the complainant's reference, children can be effectively prevented from accessing our content by making use of our blocking service. By submitting the mobile numbers of minors either to our call centre (082 232 7600) or via the mobisafe website ([www.mobisafe.co.za](http://www.mobisafe.co.za) <<http://www.mobisafe.co.za/>> ) minors will - with immediate effect - be rendered unable access our services. This is something we will shortly be publicizing so that concerned parents are made aware that options are available to them to prevent their children from accessing adult oriented mobile content.

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### Decision

The Adjudicator found that he was unable to make a finding in this matter, in the absence of additional information from the complainant. Nevertheless, the Adjudicator was not willing to dismiss this complaint out of hand as it raises a number of concerning issues, as:

- The question of unsolicited SSM messages promoting an adult service is of great concern to WASPA and directly contravenes the WASPA Code of Conduct.
- The SP has indicated an appropriate policy regarding promotional material, however its adherence to this stated policy (as well as that of its IP) can only be assessed in the context of objective evidence.
- The complainant alleges that both she and her son have received such messages.

It is far too easy to dismiss this complaint on the basis of adolescent curiosity and the Adjudicator is unwilling to do so.

As such, the complaint is pending for a period of 30 (thirty) days of this report and the Secretariat is requested to contact the complainant and to request:

- Details of both numbers on which the unsolicited messages were received;
- If still available, copies of the unsolicited SMS messages are to be forwarded to the Secretariat. If such messages have since been deleted, any detail of the service being promoted in such messages will be useful.

Should the complainant remain unwilling to provide such details, the complaint will of necessity be dismissed due to lack of evidence. Should the complainant be willing to provide the information requested, the Secretariat is to forward a copy thereof to the SP for a response.