



**REPORT OF THE ADJUDICATOR**

**WASPA Member (SP):** Cointel

**Service Type:** Subscription Service

**Source of Complaints:** Consumer

**Complaint Number:** 0164

**Complaint**

A consumer complained that she had received unsolicited messages containing adult content from an unknown sender. She complained that the sender did not give her any contact details so that she could stop the messages. She contacted her network operator who advised her that she was paying for the messages and who referred her to WASPA to investigate. WASPA identified the SP and the complaint was forwarded to the SP for a response.

**SP Response**

The SP responded in writing that the complainant had a prior commercial relationship with it and that the consumer *“did not follow the correct process to de-register that was available therefore the complainant kept receiving messages sent to her due to the tag words received by our system.”*

The Adjudicator thereafter requested that the SP provide *“message log records and details of all messages either received from or sent to the recipient”*.

The SP thereafter provided the following information:

3041484	19702707	27835556378	27839206138	Dante1252	12/04/2006 12:30	1
3041471	19702673	27835556378	27839206138	Dante1243	12/04/2006 12:29	1
3062629	19697887	27835556378	27839206138	Dante1238	12/04/2006 10:34	1
27345396	16399316	27835556378	36116	□ □ □ □ If you ever dare sent that message to me again,you will have more hell on this earth than you can imagine. I pray that God gives each one of you a sicken	06/02/2006 10:39	
27345397	16399318	27835556378	36116	□ □ □ □ ss that will make you scream of pain every moment!	06/02/2006 10:39	1
27344040	16399274	27835556378	27839200132	□ □ □ □ ss that will make you scream of pain every moment!	06/02/2006 10:38	1
27344039	16399272	27835556378	27839200132	□ □ □ □ If you ever dare sent that message to me again,you will have more hell on this earth than you can imagine. I pray that God gives each one of you a sicken	06/02/2006 10:38	
6324483	6332482	27835556378	36116	SHE	10:34.0	1
6310323	6332450	27835556378	34924	SHE	09:00.0	1

When providing the message details, the SP also re-iterated its earlier response by stating further that “[the consumer] initiated the sms and the response to unsubscribe was not as it should be.”

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### **Adjudicator’s Decision**

While it is clear that there is some dispute as to whether the consumer had subscribed to the service or not, the Adjudicator has, for the purposes of this adjudication, accepted the SP’s version (as amplified by the message details provided) that the consumer did in fact activate a subscription to the service.

The response put forwarded by the SP to the complaint was that the consumer did not correctly unsubscribe and thus continued to receive messages from the SP has also been accepted as being correct. It is clear from the message details provided that the requests to unsubscribe would not have succeeded as they do not contain the keywords required to be automatically unsubscribed from a subscription service. While the requests to unsubscribe were obviously written in frustration, the language used and sentiments expressed therein cannot be condoned.

It is clear, however, that on the evidence provided by the SP, no notification was given to the consumer of how to unsubscribe from the service.

Section 11.1.7 of the WASPA Code of Conduct reads as follows:

“11.1.7        Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:  
                  (a) the cost of the subscription service and the frequency of the charges;  
                  (b) clear and concise instructions for unsubscribing from the service;  
                  (c) the member’s contact information.”

The SP was requested to provide message log records and details of all messages sent to the recipient. It has not produced any evidence of sending a message containing the information required by section 11.1.7 of the WASPA Code of Conduct. The consumer’s version that the sender did not give her any contact details so that she could stop the messages has therefore been accepted.

The SP is accordingly held to have breached section 11.1.7 of the WASPA Code.

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### **Sanctions**

The SP is directed to pay a fine of R3 000 to WASPA within 5 working days of notification of this adjudication for breach of the provisions of section 11.1.7 of the WASPA Code of Conduct.

In matters such as these, it is sometimes appropriate to direct the SP to make payment of some measure of compensation to the complainant, however, in light of the highly inappropriate nature of the comments contained in the messages sent by

the consumer to the SP, and the relatively small sums involved, direct compensation by the SP to the consumer is not deemed fitting in this case. The messages sent by the consumer on 6 February 2006 are clearly intimidatory in nature and her own conduct cannot be condoned.

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