

<b>WASPA Member (SP)</b>	iTouch
<b>Information Provider (IP)</b>	N/A
<b>Service Type</b>	Unsolicited SMS
<b>Source of Complaint</b>	Marko Joubert
<b>Complaint Number</b>	#3350
<b>Code of Conduct Version</b>	5.7
<b>Date of Adjudication</b>	03/05/2008

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### **Complaint**

The Complainant raised a breach of the prohibition on the sending of unsolicited commercial SMSs as set out in the WASPA Code. The detailed description of the Complaint read as follows:

“After emailing iTouch I still receive very annoying spam sms's from a so-called Frank or Johan (011) 673 2631). What concerns me is, I've never given out my details so it would be interesting to see where they've got my details.. I am sure this is a breach of the communications act!

The sms's are sent from +2782007000266205 to 076 159 1016 and the last sms received was on 15/02/2008 - 16:20.

I have no idea what else I can do to stop this! Waspa is my last resort!”

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### **SP Response**

No response was received from the SP despite numerous attempts by the WASPA Secretariat to the last notified contact details of the SP.

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### **Sections of the Code considered**

The following sections of version 5.7 of the Code of Conduct were considered:

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.

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## Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. In this particular instance, the WASPA Secretariat has made no less than six attempts in its efforts to elicit a response from the SP at the contact details last provided by it.

The Adjudicator is therefore satisfied that the SP had more than enough time to file a response as is required by section 13.3.4 of the WASPA Code of Conduct. In the absence of the SP raising such a response, the Adjudicator has to assume that the SP, as is indicated in section 13.3.5 of the WASPA Code of Conduct, does not wish to respond to the claim. In light of these circumstances the Adjudicator has no alternative but to accept the uncontested version of the Complainant.

The Complainant stated that he has received an unsolicited message. This would imply that none of the exclusions provided for by section 5.2.1 were fulfilled.

It is therefore held that the SP **has breached** section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct.

In determining an appropriate sanction, the following factors were considered:

- The industry imperative to root out the sending of spam;
- The prior record of the SP with regard to breaches of section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct; and
- The failure of the SP to respond to the Complaint.

The SP is fined the sum of R5 000, 00 payable to the WASPA Secretariat within five (5) days of notification hereof.

The SP is further ordered to ensure that the Complainant is not made subject to any similar breaches of the WASPA Code of Conduct for which it (SP) is liable and is strongly advised to remove the Complainant from any mailing lists which might be construed as giving future rise to a similar Complaint.

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