



## REPORT OF THE ADJUDICATOR

**WASPA Member:** SMS Portal and Strike Media

**Service Type:** Provision of false information to customers

**Complaint Number:** 5103

**Adjudicator:** Kerron  
Edmunson  
Kerron Edmunson

**Code and Ad Rules:** v6.2 (14 August 2008) read with v1.6 of the Ad Rules

### Introduction

This complaint raises 3 issues – the first is the advertising of incorrect information, thereby defrauding the public, the second is the charging for access to services once they have been terminated, by virtue of having used a shared short code, and the third relates to the absence of proper pricing information. The second issue is pertinent as it highlights the difficulties associated with using shared short codes for multiple services.

Research indicates that short codes are often associated with automated services. An automated programme receives and assesses the response and typically requires the sender to start the message with a command word or prefix to enable it to respond to the command appropriately.

The service complained of apparently operated on a command word but used the same short code as that offered by the SP to other services, using other command words.

I have referred to the SP as SMS Portal, although the complaint was instigated against Strike Media and they provided information to WASPA, but SMS Portal is a Strike Media customer and accepts liability in this instance. To take account of all information placed before me I have referred to SMS Portal as SP1 and Strike Media as SP2.

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### Complaint

The complainant has dealt with only the first and third issues in his complaint, but by virtue of the passing of time, and the way in which his complaint was addressed by the SP, the second issue has become relevant.

On 3 November 2008 the complainant wrote to WASPA to advise:

1. Strike Media's customer (the IP) (Velasihlangane Trading Enterprise or Vee Enterprise) is fraudulently charging R10 (VAS rates without stating pricing information) for job applications (advertised in the Daily Dispatch). They are

advertising much higher than average salaries and fraudulently misleading gullible, ignorant unfortunates.

2. This is in contravention of 4.1.1 and 4.1.2 of the WASPA code of conduct; and they are conducting an apparently criminal fraudulent operation.

On 4 November 2008 the complainant again addressed WASPA to advise that he had been in contact with SP2 and would withdraw his complaint provided that the SP paid approximately R10,000 (constituting the revenue earned from the service) to a charity of the complainant's choice, and that WASPA did not take the matter forward as he would pursue the IP through other channels. SP2 had apparently confirmed to the complainant that the service had been terminated.

On 5 November the WASPA Media Monitor tested the service and found that her account was debited by R7,50 on each occasion on the short code that had apparently been terminated.

On the same day WASPA advised the complainant that it was not possible to enter into negotiated settlements with SPs nor provide 'amnesty', and asked if the complainant was intending to withdraw or pursue the complaint.

On 7 November, the complainant addressed WASPA to advise, in summary, that:

1. it would be in the best interests of the South African consumer to proceed;
2. he had just checked the short code and been debited a further R7,50 which was a clear indication that the SP continued to benefit from the 'fraudulent' service being advertised;
3. SPs should attempt to obtain additional short codes and these should be policed more strictly.

The complaint in relation to a contravention of sections 4.1.1 and 4.1.2 was therefore referred for adjudication.

The related issues regarding the pricing (VAS rates with no detail), and the SP's alleged inability to terminate a shared short code because of prejudice to other services, will also be considered.

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### **SP Response**

SP2 was contacted by the complainant directly.

In a "without prejudice" communication on 5 November 2008, SP2 advised that:

1. the only way to "kill" a short code is to terminate it at the mobile operator level;
  2. the SP had suspended the service advertised by the IP;
  3. termination of a short code by the SP "would not necessarily mean that the subscriber will not be billed, this will depend on how the networks "kill" the code, we have no control over this...";
  4. ..."there is a short code shortage in South Africa until new ranges are introduced... "killing the shortcode will mean that our stock of shortcodes will be depleted, we need the shortcode for other campaigns...";
  5. "there are other bona fide campaigns that operate on this shortcode. For example if you SMS "OBAMA" or "MCCAIN" to 37788 you will be included in a poll that is being run for another customer".
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## Consideration of the WASPA Code

To start with, **section 3.1.1** of the Code (professional and lawful conduct) states that “Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA”.

Turning to the first and third parts of the complaint:

1. **section 4.1.1** provides that “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”; and
2. **section 4.1.2** states “Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission”.

In considering the relationship between an SP and IP, and therefore the SP’s liability for the IP’s conduct (or SP2’s liability for SP1’s conduct), **section 3.9** requires an SP to “bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct”.

Finally and on the second part of the complaint, **section 3.8** deals with number re-use which in this instance applies also to the sharing of short codes. The section states that “A service must not be replaced on the same number by another service that might give offence to or might be inappropriate for customers reasonably expecting the same service”. Clearly in this instance, any use of the short code by customers after SP1’s service was apparently terminated nonetheless resulted in a charge against those customers, regardless of the service they were expecting to receive, or that they might (in the case of WASPA and the complainant) have expected not to have been charged since there was not supposed to have been any service connected to the command word associated with the service in question.

### **Decision**

On the first issue raised in the complaint, although it is not possible to make a proper assessment of the content of the advertisement complained of and therefore determine whether or not it was false or inappropriate or would tend to have taken advantage of certain members of the public, SP1 has conceded the point by offering a settlement. SP1 is therefore in breach of section 4.1.2.

On the third issue in relation to pricing, the finding must be the same for the same reasons, as it is not possible to assess the pricing but SP1 has admitted it was not appropriate by offering a settlement, and SP1 is therefore in breach of section 4.1.1.

On the remaining issue, whilst there may be a shortage of short codes, it is incumbent on the SPs as committed members of WASPA, to deal honestly and fairly with its customers whether these are IPs or customers for its IPs’ services. Offering to provide short codes for each service and implying that a particular service will be associated with its own particular short code suggests that an SP intends to allocate individual short codes to separate services. If it cannot do so then it should make this clear on its website and in communications with other customers.

In addition, even after having apparently “terminated” the service complained of, associated with the short code 37788, anyone using the command word for that service continued to be billed for access. It cannot be equitable or reasonable to charge customers for a service they cannot receive and then expect of them to require a refund or otherwise forfeit funds taken incorrectly. It is certainly not equitable or reasonable to indicate that services can be added to or taken away from a shared short code without consequence, when the SPs have admitted that they have no control over the short code, and appear to have little control over the routing of messages between command words.

The availability or otherwise of short codes is in fact not relevant to consideration of this complaint because the facts do not support SP2’s contention that this was the reason that it had (a) hosted an apparently ‘fraudulent’ service; and (b) continued to charge for the service even after termination; and (c) failed to display the proper pricing for the service.

In applying a sanction I will bear in mind the correspondence entered into by the parties and the perhaps unfortunate vacillation by the complainant in relation to his “settlement negotiations” with SP2, and both SPs’ good faith efforts to make things right.

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**Sanction**

1. For the breach of section 4.1.2, SP1 is directed to pay a fine of R7,500 to WASPA within 5 days of the date of publication of this decision.
2. For the breach of section 4.1.1, SP1 is directed to pay a fine of R7,500 to WASPA within 5 days of the date of publication of this decision.
3. For the breach of section 3.8 (read with section 3.1.1) SP1 is directed to pay an amount of R10,000 to WASPA within 5 days of the date of publication of this decision.
4. SP2 is directed to:
  - a. provide WASPA with a list of all short codes which it “shares” between its clients, and in relation to short code 37788, to advise what other services are currently hosted on that code; and
  - b. make it abundantly clear on its website, terms and conditions, and all advertisements including on services themselves, that (i) the code is shared between services, and (ii) that a command word must be used; and
  - c. put in place a mechanism for properly directing command words to relevant services, and identifying errors in routing and, where errors are made, effecting refunds; and
  - d. provide WASPA with proof of (b) and (c) above within 30 days of the date of publication of this decision.