



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP):</b>	iTouch
<b>Information Provider (IP):</b>	Not applicable
<b>Service Type:</b>	Unsolicited subscription
<b>Complainants:</b>	Theon Williams
<b>Complaint Number:</b>	6057
<b>Code Version:</b>	6.2
<b>Advertising Rules Version:</b>	N/A

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### Complaint

The Complainant lodged the following complaint:

“For some reason my number was subscribed to an adult site whereby they deduct R30 per week and according to iTouch I subscribed in December but they only started deducting in March and a R50 was deducted. I phoned iTouch and explained my complaint and none of the operators including one of the team leaders could not help me. I had no idea about this subscription and explained this but they said if it was not me maybe someone else uses my phone but when I asked why money was only deducted in March they could not answer me. The team leader told me she would get my statement from their IT guys and would phone me back. I have been waiting for more than a week for her call. During all this time I have been getting sms's for adult content even after I sent an sms to stop the subscription. I spoke to iTouch a few times and every time I call I have to explain my situation but I get no results. They have given me the worst customer service ever and I am very frustrated because I'm getting nowhere with this and I'm running up my phone bill. I am seeking legal advice and will be taking this case further because they are wasting my time and money because I have to call them back when they do not call me after they said they would get back to me. This all started on the 2nd of March and I have been phoning them ever since. The girls I spoke to was Inocentia, Yandiswa and Tasnemm. I phoned again today and I was told they would phone me again tomorrow.”

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### Service provider's response

The SP did not respond neither to the official complaint nor to the reminder sent after 8 days.

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### **Sections of the Code 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.

4.1.5. 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.

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 (within the last six months) 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.

5.2.2. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

### **5.3. Prevention of spam**

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.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

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

13.3.5. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond.

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### **Decision**

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the complaint.

The Adjudicator finds it regrettable that the SP has not made any effort to respond, and in the absence of such a response, according to section 13.3.5 of the Code, it will be assumed that the SP does not wish to respond to the allegations laid by the Complainant.

The Adjudicator has therefore no alternative but to find in favour of the Complainant.

The SP is found to be in breach of sections 4.1.1, 4.1.5, 5.3.1, 5.3.2 and 8.1.3 of the Code.

The Complaint is upheld.

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### **Sanctions**

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

- The failure on behalf of the SP to provide any response; and
- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct.

1. The SP is fined R 20 000,00 for its breaches of section 4.1.1 of the Code of Conduct.

2. The SP is fined R 10 000,00 for its breaches of section 4.1.5 of the Code of Conduct.

3. The SP is fined R 20 000,00 for its breaches of section 5.3.1 of the Code of Conduct.

4. The SP is fined R 10 000,00 for its breaches of section 5.3.2 of the Code of Conduct.

5. The SP is fined R 30 000,00 for its breaches of section 8.1.3 of the Code of Conduct.

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