



## REPORT OF THE ADJUDICATOR

<b>WASPA member</b>	iTouch   Buongiorno UK
<b>Brand</b>	Sexy Cherry, Club Movilisto, Fun Club
<b>Service type</b>	Subscription service
<b>Source of complaints</b>	WASPA Monitor
<b>Complaint number</b>	5641, 5654, 5655
<b>Date lodged</b>	27 January 2009
<b>Code of Conduct version</b>	6.2

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### Complaint

These complaints were lodged by the WASPA media monitor after testing revealed that the subscription services offered by the WASPA member under each brand did not provide the required reminder message.

The same procedure was followed in respect of each service. This is set out below using the Fun Club service as an example.

The following testing procedure was followed:

**Service provider:** Itouch-Funclub

**Short code:** 31194

**Test 1:** Expected reminder sms on 20 December 2008

**Cell phone number:** 0793203726

I joined the above subscription service on 20 November 2008. In accordance with the advertising rules of WASPA, this service provider was meant to send me a reminder sms communicating that I am a member of their club and communicating details on how to stop my subscription.

I received the following message on 19 December:

**Whoohoo! Click here 4 ur UNLIMITED Fun Club downloads. URL:**

**<http://wap.funfone.co.za/>**

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This is not a reminder message.

**Test 2: Expected reminder sms on 27 December 2008**

**Cell phone number: 0791018882**

A further test was conducted and I joined the above subscription service again on 27 November 2008. In accordance with the advertising rules of WASPA, this service provider was meant to send me a reminder sms communicating that I am a member of their club and communicating details on how to stop my subscription.

I received the following two messages on 27th December 2008

**Whoohoo! Click here 4 ur UNLIMITED Fun Club downloads. URL:**

**<http://wap.funfone.co.za/>**

**Information: FUN CLUB: Click now 4 tones, pics & more! URL: <http://wap.funfone.co.za/>**

These are not reminder messages.

**Breaches of code:**

Advertising rules subsection 12.

**Conclusion:**

The advertising rules clearly state the format and importance of a monthly reminder message. Service providers who do not make use of reminder messages, are appearing to use these tactics as a way to decrease members/ consumers from opting out from their services, and also by doing so are withholding the reminder that the consumers are members.

**Action requested:**

Immediate sending of correct format reminder to their entire base. There after monthly proof that they are sending to their entire base with the correct message.

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**Response**

The WASPA member advised that it had had two issues regarding reminder messages not being sent to subscribers. Using the Fun Club brand as an example:

“The reason for the reminder messages not going out on the fun club brand, was due to the invalid message length on the Vodacom network. Our message character length of under 160 characters was in fact correct but, the problem arose when we discovered that the Vodacom network does not recognize the square brackets as a single character count but, instead making it count as two (2), thus causing our character count of 160 character count message) not being sent to our recipients, as the message length would read as invalid on the Vodacom [network] because the character count when by then have reached over 160.

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This issue has been resolved accordingly, as we had since then altered our messages to accommodate the character count.

This has been corrected on our system. Reminder messages should now be going out as scheduled, as this problem was addressed.

This service is currently being monitored closely in this regard.”

The same response applied to the other brands. The member also provided screen shots showing error messages and which appear to support its version.

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

The following sections of the Code of Conduct and Advertising Rules were considered: following information:

#### Code of Conduct:

11.1.8. A monthly reminder SMS must be sent to all subscription service customers containing the

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

11.1.9. The monthly reminder SMS must adhere to the following format:

- (a) The monthly reminder must begin with either “Reminder: You are a member of NAME OF SERVICE” or “You are subscribed to NAME OF SERVICE”.
- (b) Any marketing for a new service must appear after the cost and frequency of the existing service and the service provider's telephone number.

11.1.11. The format of the both the initial notification message and the monthly reminder should comply with the relevant section of the WASPA Advertising Rules.

#### Advertising Rules:

### **12 Subscription Service Reminder Messages**

12.1 As is specified in the WASPA Code Of Conduct ([www.waspa.org.za](http://www.waspa.org.za)), a monthly reminder SMS must be sent to all subscription service customers. The reminder must contain the following information only:

- (a) The name of the subscription service.
- (b) The name of the service provider supplying the content or service to the subscriber
- (c) The inclusive cost of the subscription service and the frequency of the charges;
- (d) Explicit instructions on how the subscriber may stop their subscription to a service using an SMS MO.

(e) The service provider's telephone number. If VAS rates are applicable, this must be indicated next to that telephone number.

(f) The information in (a) - (e) above must be presented in the reminder message in the order of first (a), then (b), then (c), then (d), then last (e), inclusively.

(g) No other characters other than those prescribed in this section may be inserted before the information contained in (a) and after (e).

12.2 The information specified in s12.1 must, without exception, take the following design and have the following content, capitalisation, and spacing and must be provided exclusively in ENGLISH only:

You'r<space>subscribed<space>to<space><SERVICE NAME><space><inclusive cost of service & the frequency of billing><space>from<name of content provider><period>To<space>stop<space>service,sms<space>STOP<space><insert service name><space> to<space><insert number><space><open bracket><cost of MO><close bracket><period>Help?Call <space>0xy1234567<open bracket>VAS<close bracket>

- where <period> indicates the full stop character, "."
- where <open bracket> indicates the "(" character
- where <close bracket> indicates the ")" character
- where the word "VAS" is inserted only if required by the type of helpline number being utilised

12.3 The reminder message may not take the form, or be designed in such a way that a reasonable reader may construe the message to be an advertisement for the service or any other service.

#### 12.4 Example 1:

"You'r subscribed to TONES XXX (R30/5days+R1/tone) from WASPABCXYZ.To stop service,SMS STOP TONES to 31xxx (R1).Help?Call 08x1234567(VAS)"

#### Example 2:

"You'r subscribed to the ACME service. Cost is R5/week. To stop subscription, SMS STOP to 31xxx (R1). Help? Call 082 123 4567 (VAS Rates)."

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### Decision

The WASPA member has admitted to a breach of section 11.2.8 of the Code of Conduct, read with section 12.1 of the Advertising Rules. This is confirmed.

The version advanced in mitigation by the member to the effect that it had taken the necessary steps to comply with the reminder message requirements but was frustrated by technical / human errors from doing so is accepted.

In considering the sanction in this matter Adjudicator has considered:

- the recent introduction (1 November 2008) of the provisions in respect of which the breach lies (although this must be balanced against the period given for preparation)
- the fact that the member appears to have made an effort to comply
- the consideration that it would be reasonable to have expected the member to test the reminder messages before attempting to send them to their subscribers
- the consideration that, when introducing a new requirement of the Code of Conduct and Advertising Rules, a member would reasonably be expected to monitor such introduction to ensure that it was functioning as required
- the consideration that all services provided by the member and which were tested by the Monitor were found to be non-compliant
- steps taken to remedy the issue once notified of it by WASPA
- the need to ensure that consumers are properly and adequately protected in respect of subscription services and that they are given an informed choice with regard to services they wish to receive or continue to receive
- the recent record of the WASPA member.

In the circumstances the following order is made:

- The complaint is upheld and the WASPA member is found to have breached section 11.2.8 of the Code of Conduct, read with section 12.1 of the Advertising Rules.
- The member is ordered to ensure, at its own cost, that all subscribers to its subscription services are sent a reminder message in the correct format and in the prescribed manner as soon as possible after the member is notified of this Adjudication. This is to be confirmed with the Secretariat.
- The member is placed on notice that its services will be monitored by the WASPA media monitor on an ongoing basis and that any failure to comply with the provisions breached as per this Adjudication in the future will be severely dealt with.
- The member is fined an amount of R120 000, of which R50 000 is payable within five days of date of notification of this Adjudication. Payment of the balance is suspended for a period of one year on condition that the member is not found to be in breach of section 11.2.8 of the Code of Conduct or section 12 of the Advertising Rules during that period.
- For the avoidance of doubt this sanction lies in respect of all of the complaints listed in the header of this Adjudication.

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NOTE TO THE MEMBER:

Although the full text of the reminder message that was intended to be sent to the media monitor is not reproduced in the logs provided, the portion that is available strongly indicates that such message would not be compliant with the requirements set out in this Adjudication.