



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	Markatel (Pty) Limited
<b>Information Provider (IP)</b> (if any)	Unknown
<b>Service Type</b>	Subscription
<b>Source of Complaints</b>	Mr G Sacks
<b>Complaint Number</b>	6577
<b>Date received</b>	26 May 2009
<b>Code of Conduct version</b>	7.0

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### Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 18 May 2009, but the SP did not respond to this request. The WASPA Secretariat then escalated this query to a formal complaint.

The complainant alleges that the following advert is a scam:

*“MUSICIANS/ARTISTS/PERFORMERS/COMEDIANS/DANCERS NEEDED  
(JHB): Do you have what it takes to earn big money and work with the best in entertainment both local and abroad? Centre stage auditions will be hosted for the next 3 months nationally, seeking entertainers in all fields and for only the best. This could be your chance to showcase your talent. To find out when and where auditions will take place near you and for more info then sms the word "PLAY" to 39763 and we will send you confirmation sms with more details.”*

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When sending an SMS to the given short code number, the complainant received the response that he had opted into an adult messaging service where each SMS costs R15.00.

The complainant also states that there was no mechanism provided for opting out of the service.

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### **SP's response**

The SP has failed to respond to this complaint despite a reminder from the WASPA Secretariat on 4 June 2009.

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

3.1.1. 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.

3.1.2. Members are committed to lawful conduct at all times.

3.3.1. Members will not offer or promise services that they are unable to provide.

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.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent.

5.1.4. For SMS and MMS communications, a message recipient must be able to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). If replying 'STOP' as set out in 5.1.3 will result in a charge greater than the lowest tariffed rate available, then instructions for the lowest tariffed rate opt-out must be included in every message sent to the customer.

5.1.5. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

5.1.6. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

5.1.7. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

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8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”. This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item.

11.1.5. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.8. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message must be a clear notification of the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider’s telephone number.

11.5.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.5.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be ‘STOP’. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.5.3. The ‘STOP’ request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.5.5. Members must ensure that the termination mechanism is functional and accessible at all times.

11.5.8. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

11.6.1. Members must register all subscription services with WASPA, by providing the following information:

- (a) the name of the service;
  - (b) the shortcode or access method (e.g. WAP) the service uses;
  - (c) the price and frequency of billing for that service;
  - (d) the customer support number associated with the service; and
  - (e) unsubscribe instructions for the service.
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## **Decision**

It is noted that the SP has failed to respond to the initial unsubscribe request logged by the complainant and to this complaint.

From the outset, the SP has not honoured its commitment to deal in an honest and fair manner with the public, including the complainant. In particular, the advert is false and deceptive and is clearly intended to mislead members of the public. The SP has therefore contravened sections 4.1.1 and 4.1.2 of the WASPA Code of Conduct.

The contravention of the Code is aggravated by the fact that people are being misled into subscribing to an adult service. The risk to children receiving this advert is obvious as many young people dream of being successful entertainers. The advert also contravenes section 8.1.1 of the Code by failing to clearly indicate that an adult service is being offered.

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Similarly, section 11.1.1 of the Code has been contravened by the advert not prominently and explicitly identifying the services offered as being subscription services.

The complainant did not intend, when responding to the advert, to join the adult subscription service. The SP has also contravened section 11.1.2 and 11.1.5 of the Code in this regard.

The message received by the complainant after responding to the advert does not comply with the requirements of section 11.1.8 and is thus a contravention of this section.

Sections 11.5.1, 11.5.2 and 11.5.5 of the Code have been contravened due to the lack of instructions for the termination of the subscription service and/or any unsubscribe mechanism at all.

Finally, the SP has contravened section 11.5.8 by failing to honour the unsubscribe request logged by the complainant within two working days.

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## **Sanction**

The contraventions of the WASPA Code of Conduct are multiple and very serious. The issues are aggravated by the fact that the SP has failed to respond both to the initial unsubscribe request and to this complaint.

The method of advertising the subscription service is blatantly false, deceptive and intended to mislead.

The service itself is of an adult nature.

In light of the foregoing, the following sanctions are given:

1. The SP is fined the sum of R250 000.00;

2. The SP is required, within 7 (seven) days of being notified of this decision, to identify and disclose the details of the IP offering this adult subscription service to the WASPA Secretariat;
3. The SP is required to immediately terminate the services offered using the short code 39763 and to provide the WASPA Secretariat with written confirmation that it has done so within 7 (seven) days of receipt of notification of this decision; and
4. The SP is ordered to refund all amounts charged to the complainant within 7 (seven) days of receipt of notification of this decision.

The aforesaid sanctions are not to be suspended pending an appeal by the SP.