



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exactmobile
Information Provider (IP) (if any)	N/A
Service Type	Unsolicited commercial messages, complaints procedure
Source of Complaints	Public
Complaint Number	#0150

Complaint

The Complaint, submitted on 26 January 2006, alleged that the Complainant had received unsolicited messages without the option to unsubscribe, and that when attempting to unsubscribe she was charged R30.00 per message.

The detailed Complaint reads as follows:

“[O]n the 06 Oct, I continued to receive Unsolicited Competition SMS messages with no ability to unsubscribe, I responded NO, remove, and numerous other "no" messages, each was responded to with another competition detail. I was charged R30.00 nine times. I contacted Exact Mobile on 14 Nov and spoke to Susan who asked for a fax copy which was sent the same day. To date I have had no response to my complaint or refund in this regard.”

SP Response

The SP provided the following response:

“Exactmobile has investigated this complaint in depth. The subscriber received an SMS from an unknown source. Neither Exactmobile nor any of it's partners have any record of sending the SMS.

The subscriber responded with the following messages:

[Whereafter follows a list of the messages received and the attendant cost to the Complainant]

The number 27820045020 was used about 2 years ago for a retail product. It is currently not tied to any services. It is therefore unknown how the user got to SMS to this number.

The only possibility we have for this initial SMS to 42220, was for a campaign which was run mid 2005. The last few transactions were received in October. Therefore this service has not been running since October 2005.

Exactmobile will refund the user the R301.00 that was spent on the service. As the messages that were sent were invalid keywords no revenue will have been paid to external parties. Although Exactmobile does not receive the full revenue from the networks, Exactmobile will refund the client in full. “

Sections of the Code considered

The following sections of version 3.2 of the WASPA Code of Conduct were considered:

“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.”

Decision

The SP's Response is accepted. The SP is requested to provide the WASPA Secretariat with proof of payment to the Complainant of the R301.00 that was spent on the service.

The Complaint is, subject to receipt of such proof of payment, not upheld insofar as it relates to the communications being unsolicited or there being no available unsubscribe facility.

The Response does not, however, address the fact that the Complainant first approached the SP on 14 November 2005 and sent the fax copy of the relevant account as requested by the SP's representative on that day, but thereafter received no communication from the SP until such time as this Complaint was submitted.

Even if it is accepted that the Complaint required "in depth" investigation, as stated by the SP, it is clear that there was an object failure to follow the matter up at the instance of the Complainant. Further, given the length of time taken to respond to submission of the Complaint to the SP by the WASPA Secretariat, it seems reasonable to conclude that the investigation was only undertaken subsequent to such submission.

While I can accept that this was a difficult matter to resolve, the lack of any effort to communicate progress (or a lack thereof) to the Complainant constitutes a breach of section 4.1.5 of the Code. The delay in providing a proper response to the Complainant was in no sense reasonable.

The Complaint is accordingly upheld insofar as it relates to the SP's failure to acknowledge receipt of the Complaint expeditiously and/or to respond to the Complaint within a reasonable period of time.

In considering possible sanctions I am mindful of the efforts made by WASPA members towards resolution of complaints and of the difficulties of consistently meeting standards across staff and over time, particularly when a complaint is of an unusual or particularly difficult nature.

The following sanction is imposed:

- The SP is formally reprimanded for its failure to comply with the WASPA Code of Conduct; and
- The SP is ordered to pay a fine of R2 500 in respect of its breach of clause 4.1.5 of the WASPA Code of Conduct. It is further determined that the fine be suspended for a period of twelve (12) months from date of this Report; provided that no further breaches of the Code of Conduct in the specific respects detailed in this Report are identified in such twelve (12) month period.