



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Intermobile Communications (Pty) Ltd
Information Provider (IP): SARS
Service Type: Bulk messaging
Source of Complaints: Consumer
Complaint Number: 0162

Complaint

A complaint was received from a member of the public alleging that he received a message from SARS via SMS without his consenting thereto. The complainant stated that he classified the message as “spam”. The text of the message read as follows:

“A reminder from SARS. If you have relocated since your last return was submitted, contact 0860121218 or visit your nearest SARS office. Thank You.”

SP Response

A response was submitted by the SP in which it stated that the complainant was a registered taxpayer and, as such, was viewed as a “customer” of SARS who had been contacted by SARS in the normal course of business. Furthermore, the SP alleged that the complainant had voluntarily provided his cellular number to SARS. The SP also alleged that the message was informational in nature and in no way attempted to solicit business nor entice him/her into any commercial activities as defined in section 2.7 of the WASPA Code of Conduct. The SP claimed that, according to its records, the SMS message in question was delivered to the complainant’s handset at 14:51 on the 6th of February 2006 (i.e. during business hours on a Monday) in accordance with section 5.1.6. of the WASPA Code and that the SP had not received any replies to the SMS message from the complainant, neither requesting the SP to “Stop” the SMS communications, nor replies of any other nature. The SP stated that the complainant was welcome to contact his nearest SARS office and request that his contact information including his cellular phone number be removed from the SARS databases, although the SP could not guarantee that this request would be fulfilled.

Decision

The sections of the WASPA Code of Conduct relevant to this adjudication are sections 5.3.1; 2.19; and 2.7.

Section 5.3.1 states as follows:

“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.”

“Spam” is defined in section 2.19 to mean “unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1.

It is clear from the definition of “spam” that it has two parts, i.e. that it must be a “commercial” communication or message and that it must be “unsolicited”.

Section 2.7 defines a “commercial message” to be “a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.” The term “commercial communication” can be construed to mean the same.

The message sent by the SP cannot be regarded as one that was designed to “promote the sale or demand of goods or services” and therefore cannot be regarded as “spam” as defined in the WASPA Code of Conduct.

The complaint is accordingly dismissed.
