



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Service Type	Unsolicited SMS Message
Source of Complaints	Public – Employee of WASPA Member
Complaint Number	#0302

Complaint

A complaint was received from a member of the public concerning an alleged unsolicited commercial SMS message. The complaint reads:

Push Message received from long code +27839200059 at 15:16 on 09/05/2006, sent to MSISDN 27833995215.

Message text reads:

*Send REG to 32353 to save your cell phonebook photos and sms with EasyVault. Recover when needed**FREE TRAIL** www.easyvault.co.za call 086122587 Reply to stop.*

The contact number provided is incorrect.

There is no cost of the return message, nor does it indicate that I will be charged on replying to this message.

This is unsolicited SPAM - as I have not signed or agreed to receive any promotional information from any company/institution/organisation.

I have spoken to the service provider, who has indicated that they are using Integrat as the aggregator. The service provider has not at any time been made aware that WASPA exists nor of the various guidelines that govern the industry with regards to spam or advertising."

The complainant referred to the following sections of the WASPA Code of Conduct:

5.1. Sending of commercial communications

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

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. Where feasible, customers should be able to unsubscribe from any subscription service using no more than two words, one of which must be 'STOP'.

5.1.4. Any mechanism for allowing a recipient to remove his or herself from a database may not be premium rated.

5.1.5. 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.

5.1.6. Commercial communications may not be timed to be delivered between 20:00 and 06:00, unless explicitly agreed to by the recipient, or unless delivery during this period forms part of the upfront description of the service.

5.2. Identification of spam

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 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.

SP Response

The SP provided two responses. The first indicates:

The number the SMS message initiated from is not Integrat's number. This user needs to lodge a complaint against the correct company. The fact that our Short Code 32353 appears in the SMS, does not mean the SMS was originated from our gateways. This number 32353 is one of our customers numbers, but the message was not sent from the number.

The message was sent from the number 27839200059 to this users phone, which is not a Integrat number.

So as a summary, this is a advertising messages which as part of the ad, contains a number 32353 allocated to one of our customers, but the SMS messages came form the other WASP who owns the long code 27839200059.

So the complaint needs to be lodged against this WASP.

The SP's second response indicates:

Please see the response from our customer WRT the above complaint.

From: Scott Harvey [mailto:scott@ewtech.co.za]
Sent: 11 May 2006 11:53 AM
To: 'Leonard Cremer'
Cc: 'Mark'; david@ewtech.co.za
Subject: RE: WASPA Code of Conduct complaint #0302: Long Code
+27839200059/Short Code 32353

Dear Leonard,

Electrowave Technologies response to the below complaint is as follows:

1. Electrowave Technologies has recently launched Easy Vault, a mobile value added product which provides cell phone data backup and security services to users.
2. As the Easy Vault product is cell phone related we believe SMS marketing to be an appropriate and legitimate avenue.
3. Electrowave Technologies makes use of 3rd party data base companies to obtain cell numbers for SMS marketing purposes.
4. These numbers are not sourced by Electrowave Technologies but are provided by the abovementioned 3rd parties from their respective data base.
5. In sending the SMS messages Electrowave Technologies makes use of a third party bulk SMSing company that delivers their SMS thru an ordinary PC modem.
6. All opt-out responses are passed back to the data companies in order that they may remove the individuals from their respective data base, thereby ensuring that no further marketing SMS are sent to the individual.
7. The marketing message used for Easy Vault generally reads as follows "Phonebook photo & sms backup for cellphones now available-recover when needed For EasyVault FREE TRIAL send REG to 32353 Call 0861222587 Reply to stop. SMS @ R1".
8. Regrettably there was one batch of messages which went out this week in which the call center number was incorrect and the R1 cost was omitted. As there has been some experimentation with the message, this was an unfortunate error which was immediately rectified.
9. Although Electrowave Technologies is not a member of WASPA every effort has and will continue to be made to comply with all guidelines and codes of conduct, which we believe to be best practice.
10. Integrat has NO involvement with, nor knowledge of Electrowave Technologies use of SMS marketing. Electrowave Technologies and Integrat are individually registered companies and have no responsibility for nor relationship with each other except for the use of the Integrat payment aggregator service by Electrowave Technologies for the Easy Vault product.

Electrowave Technologies can certainly understand the complainants concern for her privacy and, whilst we cannot comment as to how her details

came to be in a data base, we have ensured that the respective data company has been advised and that her details have been deleted.

Decision

While the SP has a commercial relationship with the message originator, it does not act as a service provider to the message originator in respect of bulk SMS messaging. The WASPA Code of Conduct (at 3.9) indicates that a member is only liable for the conduct of its information providers in respect of those services it actually provides to the information provider.

The Adjudicator accepted the SP's submission that it does not provide bulk SMS facilities to the message originator, but only mobile payment services.

The complaint against the SP is accordingly dismissed.

The Secretariat is instructed to contact the SP, alternatively the message originator, whose contact details are furnished by the SP, in order to attempt to identify the alleged "third party bulk SMSing company that delivers their SMS thru an ordinary PC modem". If such party can be identified, the complaint is to be reinstated against the correct WASPA member.