



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Markatel (Pty) Limited
Information Provider (IP) (if any)	SABC
Service Type	Bulk Messaging
Source of Complaints	Competitor
Complaint Number	0976
Date received	29 January 2007
Code of Conduct version	4.8

Complaint

The complaint, which was submitted to WASPA via its website on 29 January 2007, refers to the following unsolicited SMS which was sent to the complainant:

"Fwd: If you think crime is out of control in this country please sms \"yes\" to 33588 - a survey for the Tim Modise TV Show. Please forward this to as many people as possible and prove Mbeki wrong! Stand up to crime!"

The complainant states in his complaint that the WASPA Code of Conduct has been breached because no premium rate cost stated in the message.

SP Response

The Service Provider initially responded to the complaint on the same day as follows:

As per our telephonic conversation today, Marketel would like to place the following on the record:

- The Short Code 33588 is a R1.50 number exclusively assigned to the Tim Modise Show TV show Lekgotleng le Modise which is aired on Monday evenings at 20:00 (We do not know if it is rebroadcast).*
- Marketel and it's employees in no way initiated, recommended, suggested or approved this SMS campaign, either through a Bulk SMS campaign or any other manner.*
- Marketel had no knowledge of this campaign until Saturday 27 January. It appears that it is a purely viral campaign that was started at some time around 8:30 am on Friday 26 January "by person or persons unkown".*
- We are currently working to establish whether any broadcast on Friday could have initiated this.*

Please feel free to contact us should you have any queries relating to the above.

This response was followed by a more comprehensive response from the Service Provider on 19 February 2007 as follows:

The SMS received below was NOT sent out by Marketel, its client or any representatives thereof.

This matter (of the SMS) has been widely documented with representatives of Marketel having been guests on 18 national and regional radio shows and the matter being covered by over 4 national (including the front page of Beeld) and 6 regional newspapers. Further, the story was interactively covered by IOL.com, News24.com and i-Week amongst others. Further the national broadcaster SABC, aired the initial show, the promo of the show and the actual show on the 15th, 26th and 29nd of January respectively on prime time SABC2 (20h00), but for the benefit of both the complainant, who may not have been exposed to this exposure, and the Secretariat, herewith some detail;

Marketel has been and is the official supplier to Legkotleng Le Modise (The Tim Modise Show) of Wireless Application solutions, one of these being providing, for every show, a short code SMS number to which viewers respond to the content of the show. Viewers are asked whether they agree/approve of the content - essentially an "opinion poll". The question varies from show

to show, and is mostly driven to ascertain viewers feed-back on show content and to gauge interactivity to some degree. The short code is a R1.50 number, which is advertised on screen as the number is advertised.

The show and its "opinion poll" generate an adequate number of response on a regular basis. On the 15th Legkotleng Le Modise broke new ground in having President Mbeki as live guest. During the show, the host asked President Mbeki, "whether crime was out of control in South Africa". The responses for the opinion poll escalated somewhat, but it did however spark a media frenzy when the President categorically stated "No". Over the next week, at least in Gauteng, the media was full of crime related stories and with definite referral to the President's categorically negative response. Due to the overwhelming demand over the next week, the shows producers decided to do a follow up program on the 29th, where the issue would be dealt with again, inviting viewer interactive participation, and on the 26th a promo was run by the SABC advertising the show of the 29th.

In the promo, the number was displayed (with SMS costs). At this point it is important to express, that at no time prior, during or after, did the SABC, Lekgotleng Le Modise or Marketel initiate a call-to-action of any kind (i.e. bulk SMS campaign) for this programme or issue. In fact our servers are open to inspection by WASPA, if required. On Saturday 20th we noticed high volumes of responses flowing through our systems, volumes which sustained themselves through to Monday (29th) nights airing of the show on SABC2.

The rest, as mentioned earlier, is well documented, and includes an email sent by our Hayden Schwartz, to WASPA (Att : Jacqui) on the 29th of January at 11:16 am (attached), in pre-emption of any such complaints.

We are of the opinion that one, perhaps more people saw the promo, were driven by the impact of its content and choose to forward it to their "personal" address book. This then created a "viral" impact beyond our control. At no time, even during the media exposure period which the issue received, did Marketel, SABC or the show incentivate, suggest or sanction the sending in of these SMSs. At this point, as Marketel was unable to control the inclusion of an SMS rate on person to person SMS deliveries, we

used every opportunity of media presence to inform people of a) the cost of the SMS and b) the availability of WASPA for remedy should they feel infringed upon.

Mr. Hutchinson's SMS was not received from a delivery account/platform and should he proceed with further inspection, he will be able to verify that the message he may/has received is from a personal contact of his and certainly not from a bulk delivery account/platform. The complainant received the message from one of his personal contacts.

I trust the above meets with your approval and provides the complainant with clarity on the issue.

Sections of the Code considered

Section 6.2 of the Code was considered.

Decision

There has been no evidence presented by the complainant as to the origin of the unsolicited message and, in particular that it originated from an information provider using the services of the Service Provider.

I accept the Service Provider's explanation that the message was sent pursuant to a viral campaign not initiated by the Service Provider or any of its clients.

The complaint is accordingly not upheld.
