



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Clickatell
Information Provider (IP) (if any)	Mr D Botes
Service Type	
Source of Complaints	User
Complaint Number	1008
Date received	8 February 2007
Code of Conduct version	4.8

Complaint

The complaint was submitted to WASPA via its website on 8 February 2007 and relates to an SMS received by the complainant on an unknown date which reads:

“Do u want the death penalty reinstated 4 convicted murderers murderers? Sms “yes” or “no” to 36100 and be part of the LARGEST survey ever. Please sms 2 as many as possible.”

The SMS did not disclose that the 36100 was a premium rated number with a cost of R5 per response being levied.

SP Response

An e-mail response was received by the Secretariat from the Service Provider on 22 February 2007 which enclosed a letter from the Information Provider’s attorneys and also stated the following:

“Our records show that the SMS which the complainant received was not sent via Clickatell’s gateway, and therefore not by our client. The SMS must have been sent

or forwarded to the complainant by another party/person. The text of the message seems to have been altered as it did not contain all information as per the original message created by our client, which did include the pricing information.”

A letter from the Information Provider’s attorneys also confirms that the original message sent by the Information Provider did contain the cost of a reply to the premium rated number used and that the wording of the message must have been altered by other persons in the distribution chain.

After the complaint had been submitted to me, the Service Provider was requested to furnish me with the actual wording of the original message which they duly did. The original message reads as follows:

“Do u want the death penalty reinstated 4 convicted killers? Sms 'yes' or 'no' to 36100 (R5) & be part of the largest survey ever! Please forward this sms to everyone u know.”

Sections of the Code considered

The code

6.2. Pricing of services

6.2.1. All advertised prices must include VAT.

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.

6.2.5. *The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.*

6.2.6. *Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.*

The advertising rules

11. SMS & MMS offers

11.1 Scope

Applies to all SMS and MMS's to the general public where Access Channels are displayed. While cognizant of the limited space in an SMS, senders must nonetheless abide by the General Terms.

11.3 Text Display

11.3.1 *Display Text with full pricing information must be displayed on the SMS/MMS.*

11.3.2 *The SMS must contain contact details of the sender, preferably a web site address.*

11.3.3 *If the recipient of the email requests to the sender that the sender provides details of how the sender obtained the recipients details, it is a legal requirement according to s42(b) of the ECT Act 2002 that this information be provided.*

Decision

The SMS in question was an invitation by the IP to recipients to join in a SMS campaign to gain support for the re-instatement of the death penalty in South Africa.

The success of the campaign was largely dependent on the number of times that it was forwarded by recipients to their own contacts.

Although the original message appears to be non-commercial or altruistic and not within the definition of a “commercial message” in the Code, there is scope for abuse in this kind of practice and I believe that SMS messages of this nature should still comply with certain requirements contained in the code. At the very least, the cost of a reply to the SMS must be disclosed along with the details of the original sender.

However, in the present case and based on the evidence presented, I am satisfied that the message received by the complainant was not the original message distributed by the Service Provider. It would also appear, on a balance of probabilities, that the wording of the message received by the complainant had been altered by someone else and sent to the complainant.

The complaint is accordingly not upheld.