



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Smartcall Technologies
Information Provider (IP):	JPC
Service Type:	Subscription Service
Complainant:	Public
Complaint Number:	10701
Code Version:	10.0
Advertising Rules Version:	N/A

Complaint

Complaint 10701 is the escalation of unsubscribe request 433652 where Complainant requests further investigation.

The formal complaint was sent to the IP on 2010-10-05 and they responded on 2010-10-06. The SP was also notified of this complaint on 2010-10-05.

The Complainant refused resolution on 2010-10-07.

The SP responded on 2010-10-07 with proof of refund. The IP provided a further response on 2010-10-14.

The Complainant provided a further response on 2010-11-02 which was forwarded to the SP and IP with the request if they want to add any additional information to this complaint before proceeding to adjudication.

The SP responded on 2010-11-04. The Complainant provided a response on 2010-11-15 indicating that he is still not satisfied with the resolution.

The Complainant complained of the fact that he was subscribed to a service he never subscribed to and that furthermore he was receiving spam messages from the IP who he could not identify. Accordingly that the IP and SP had acted contrary to the WASPA Code of Conduct.

Information provider's response

The IP responded to state that a full refund had been paid to the Complainant. They also stated that the Complainant would have accessed and clicked on their banner

ad on 23 August 2010. They have provided logs for such registration. They also unsubscribed the Complainant and provided and paid a full refund.

Service provider's response

Confusingly, the SP states that the Complainant received the message he states is spam due to the fact that the initial message sent to the Complainant was as a result of the use of a database sent from another Company with the Affiliate's (the IP's) details.

Sections of the Code considered

The service complained of falls within the ambit of both the sending of unsolicited commercial messages and the subscription process. I have not gone into detail about all the sections but merely focus on the sections alleged by the Complainant, namely that he did not request any message to be sent to him and that he never subscribed.

5. Commercial communications

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.

5.2. Identification of spam

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

1. the recipient has requested the message;
2. the message recipient has a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
3. the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

11.2. Subscription process

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.3. Subscription initiated via web or WAP

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. I also reviewed the manner in which other adjudicator's dealt with the issue of an Affiliate member and an SP.

I will deal with the following issues raised by the Complainant:

1. The issue of spam and not being provided with the correct message origination information;
2. The issue of being subscribed to services not subscribed to.

I feel that the IP should be sanctioned for its contravention of section 5 of the Code of Conduct. Spam is an increasing annoyance to consumers and an increasing hindrance to validly operating WASPS.

The IP furthermore did not comply with the required subscription process for subscription services.

Claim upheld.

Sanctions.

In determining an appropriate sanction, the following factors were considered:

The prior record of the IP with regard to breaches of the relevant sections of the Code of Conduct; and the IP's subsequent responses.

1. Due to the fact that the IP does not appear to have any prior claims upheld against them and due to the fact that they resolved the response and provided a full refund I am exercising a level of leniency.
2. The IP must amend their Subscription Service processes to comply fully with the Code of Conduct.
3. The IP is required to ensure that all commercial messages sent by them comply with the Code of Conduct's requirements.
4. The IP is fined R10 000 for its breach of section 5.
5. The IP is fined R15 000 to be suspended pending their compliance with sanction 2 and 3 above within 30 (thirty) days of this report.

The SP is not sanctioned.