



REPORT OF THE ADJUDICATOR

WASPA Member (Affiliate)	Blue Label Data Solutions
Information Provider (IP) (if any)	Bayport Cellular
Service Type	Distribution List
Source of Complaints	Competitor
Complaint Number	10854
Date lodged	18 October 2010
Code of Conduct version	10.0

Complaint

- Note: this complaint stems from the same unsolicited SMS forming the subject of complaint 11321 and the sanction imposed in this matter also applies to that complaint.*
- This is a competitor complaint stemming from the receipt of an unsolicited SMS reading as follows:

"Blacklisted but permanently employed for 6 months? Get a free Samsung or Nokia phone + 2 free phones + airtime on contract. SMS YIP to 41777 to apply to STOP to opt out"
- There was initially confusion as to the correct WASPA member to direct the complaint to, as the short code appeared to belong to Grapevine Interactive and the content service associated with the short code was apparently provided by Rhema Church. Grapevine advised, however, that they had not sent the SMS in question, indicating that they would investigate as to why a short code assigned to them was being used in this manner.
- Grapevine thereafter indicated that the service was provided by an entity called Bayport and that the responsible WASPA member was Cellfind (a full WASPA member which is owned by the Blue Label Telecoms Group). Cellfind also reported that they had not sent the offending SMS and referred the WASPA Secretariat to Blue Label Data Solutions (likewise a member of the Blue Label Telecoms Group and referred to from here onwards as "the WASPA member").

5. The WASPA member initially denied responsibility for the SMS received by the complainant on the basis that it had no relationship with the Rhema Church.
6. At this stage both Cellfind and the Secretariat initiated enquiries with the mobile network operators to determine the origins of the SMS. Cellfind expressed the view that the SMS originated from a foreign jurisdiction and that there might be cause for a criminal investigation.
7. On 10 November 2010 Vodacom advised in response to an enquiry from a different complainant in complaint 11321 (but relating to the same SMS albeit with a different keyword) that:
 - 7.1. The message had originated in Sweden;
 - 7.2. When recipients SMS "TAM" to 4177 they receive a call from Bayport Cellular which offers them mobile phone contracts as set out in the SMS; and
 - 7.3. The 41777 short code would be suspended.
8. The Secretariat confirmed that Bayport Cellular was a client of the WASPA member and requested a formal response to the complaint. The WASPA member duly filed the following:

"We as Blue Lable Data Solutions have access to all Public domain information. The information was obtained from Public Domain records and was updated via Bureaus.

Below is the information we have on file for this complainant. We have added the complainant to our Internal DNC (Do Not Contact) database.

Further we suggest that the complainant adds themselves to the National DNC database hosted by the Direct Marketing Association of South Africa, www.optout.co.za, to prevent further correspondence. As it stands the legislation is an Opt Out Regiment."
9. The member appended a great deal of personal information relating to the complainant which it had sourced from (the adjudicator assumes) a credit bureau.
10. The complainant saw no reason to regard the matter as having been resolved and it was referred to this independent adjudicator for determination.

Sections of the Code considered

The following sections of version 10.0 of the WASPA Code of Conduct were considered:

3.1.2. Members are committed to lawful conduct at all times.

2.23. “Spam” means unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1.

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 (within the last six months) 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.

5.3.1. 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.

Decision

11. There are two matters which appear from the facts presented: whether or not the SMS received by the complainant was unsolicited – which is relatively easily disposed of – and whether or not the service was a legal one.
12. As far as the adjudicator can determine the SMS forming the subject of the complaint was sent and received on 15 October 2010. Version 10.0 of the Code – which came into force on 13 October 2010 – has therefore been applied.
13. The member on its own version has contravened section 5.3.1 read with section 5.2.1 in that the SMS was commercial in nature and none of the grounds set out in section 5.2.1 (a)-(c) have been satisfied.
14. WASPA members bind themselves contractually to observe the provisions of the Code and Advertising Rules and the question as to whether the SMS was unsolicited or not is determined in terms of the Code and not in terms of the provisions of the Electronic Communications and Transactions Act of 2002.
15. Turning to the second issue: the adjudicator is not able to make a determination with regard to the use of the 41777 short code by the WASPA member when it is recorded as having been assigned to Grapevine Interactive, but believes that the matter requires further investigation.

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16. To the extent that an allegation of illegality has been raised the information related to the origination of the SMS message is known to Vodacom and the complainant and either can choose to pursue this aspect of the matter. The Code is clear that determinations of legality do not fall within the jurisdiction of WASPA.
17. The following sanction is imposed in respect of both this complaint and complaint 11231:
- 17.1. The member is required to provide the information set out in section 3.11 of the Code, viz. a list of all short codes, long codes and alphanumeric identifiers assigned for use with that member's services or the services of any of the member's information providers, to the WASPA Secretariat within five (5) days of receipt of notification of this adjudication.
- 17.2. The member is fined the sum of R20 000, payment of R15 000 of which is suspended for a period of six months subject to the member not being found to have contravened sections 5.3.1 and/or 5.2.1 of the Code during that period, the balance payable within five (5) days of date of notification of this adjudication.
- 17.3. The member is required to take steps to ensure that it and its employees and contractors understand the obligations of the member as a WASPA member and to ensure that it is compliant with all relevant provisions of the Code and the Advertising Rules. The member is specifically directed to take steps to verify that its distribution lists are cleansed so that they contain only MSISDNs obtained with the direct or indirect consent of the recipient as set out in section 5.2.1.
18. The WASPA Secretariat is requested to:
- 18.1. Ask the WASPA Media Monitor to monitor services provided by the member to ensure that these are compliant with the Code with particular reference to sections 5 and 9 thereof.
- 18.2. Bring this adjudication to the attention of Grapevine Interactive and Vodacom.
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