



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	GRAPEVINE INTERACTIVE
Information Provider (IP):	Not applicable
Service Type:	SPAM
Complainants:	Paul Tomlin
Complaint Number:	10859
Code Version:	9.0
Advertising Rules Version:	N/A

Complaint

The Complainant wrote:

"I received an SMS on 2010-10-11 at 13:40 as below:

For financial peace of mind get HOSPITAL COVER from CLIENTELE LIFE from R100/m. Pays up to R3000/day in Hospital. sms COVER to 31767. To opt out reply STOP

You identify yourselves as \"WASPA Founding Member\" and therefore I assume you will abide by the Code of Conduct from that organisation.

§4.1.11. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

Your website includes the logo and attempts to make a link to the WASPA site, but the URL is not correct.

§5.1.7. 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.

Please furnish me with the details as per §5.1.7.

Additionally, please confirm which exemption of §5.2.1 your client asserts to negate identification of this message as unsolicited.

§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.

Please inform me what measures you have taken to fulfill this requirement and how these were circumvented by your client.”

The Complainant replied to the SP's initial response as follow:

“I would like to know which of these options Clientele Life are asserting. Basically, why do they consider the message to not be spam. Obviously I'd like to receive evidence their assertion is valid.”

The Complainant then reiterated that the SP did not resolve his complaint to his satisfaction.

Service provider's response

In its initial response the SP wrote:

“The client has advised that this number has been removed from their database.

We have checked our website, and indeed the link to WASPA is not operational. We have requested our site manager to fix this.

I have requested Clientele Life (who used our platform to send the message) to advise how they got a hold of the complainants' details. Once we have this info, we will send it through to the complainant. Otherwise we will send contact details for the person responsible for complaints at Clientele Life to the complainant.

Please advise clarification on this:

Your client asserts to negate identification of this message as unsolicited Not sure what this means?

Finally, all of Grapevines Clients have agreed to comply with the WASPA code of conduct.”

The SP responded further by stating the following:

“The client can purchase contact data from many, many list providers in the market. These list providers are even “regulated” by various codes such as the Direct Marketing Association of South Africa, who check the credentials of list providers making sure that their source data is legal and legitimate (not stolen). They purchase many lists from accredited suppliers as there is no such thing as “opting-in” to a database.

Client advises that they are perfectly within their legal right to make a "cold call" to prospective clients.

Should the complainant not be satisfied with this, please advise and I'll send his details on to the Client and they will contact him directly."

Sections of the Code considered

4.1.11. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

5.1.7. 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.

5.2. 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 (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.

5.2.2. 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.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent response.

The Adjudicator has no hesitation in finding the SP in breach of section 5.3.1. It is obvious that the SP's client fulfilled all the criteria of section 5.2 and that the message amounted to "SPAM". It is rather shocking that the SP's client is under the impression that cold calling is acceptable. There might be other codes that condone this type of marketing behavior, but the WASPA Code of Conduct couldn't be clearer on the subject.

In lieu of the above it is also the opinion of the Adjudicator that the SP's client did not provide sufficient response as to where it obtained the Complainant's personal information and therefore finds the SP in breach of section 5.1.7 of the Code.

The SP's client did confirm in its response that the link to WASPA is not operational. Whether this in itself is a breach of section 4.1.11 or a mere technical oversight is unclear from the facts received. However, it must be viewed in a serious light.

The Complaint is upheld.

Sanctions

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

- The prior record of the SPs with regard to breaches of the relevant sections of the Code of Conduct; and
- The SPs' subsequent response.

The SP is fined R20 000-00 for its breach of section 5.3.1, payable to the WASPA Secretariat within five (5) working days after receiving notice hereof, and formally reprimanded for its breaches of sections 4.1.11 and 5.1.7.

The SP is further instructed to provide the WASPA Secretariat a detailed report in how it managed to obtain the personal information of the Complainant in this matter within five (5) working days after receiving notice hereof.