



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	HR Computek
Information Provider (IP):	Not applicable
Service Type:	SPAM / Subscription related
Complainant:	Public
Complaint Number:	10944
Code Version:	9.0 / 10.0
Advertising Rules Version:	N/A

Complaint

The Complaint relates to an unsubscription request. The Complainant requested an escalation to a formal complaint since he did not receive adequate information as to where the SP obtained his information, and also wanted some sort of undertaking that the SP reimburse all subscribers that were similarly charged.

Service provider's response

The SP did not furnish any formal response.

Sections of the Code considered

Both versions 9 and 10 were considered. Version 9 is applicable to the actual complaint, while requests by the WASPA Secretariat related thereto, are dealt with under version 10 of the Code.

Version 9

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

4.2.1. WASPA and its members must respect the constitutional right of consumers to personal privacy and privacy of communications.

4.2.2. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.

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.

5.2.1. 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.

5.3.1. 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.

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.

Version 10

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
 - (b) proof that all required reminder messages have been sent to that customer;
 - (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
 - (d) any record of successful or unsuccessful unsubscribe requests.
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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 refrain from providing a formal response.

From the facts and communication received, it has become clear that the SP in this matter has admitted that the subscription and / or possession of the Complainant's information, was erroneously achieved.

Whether such an error was committed in a malicious or negligent way, is not possible to ascertain and more correctly stated, not possible due to the SP's failure to respond.

Section 5.1.7 of the Code and section 11.10.2 of version 10 of the Code make it very clear that the SP, on request from the recipient (the Complainant in this matter) must identify the source from which the recipient's personal information was obtained, and on request from WASPA, must provide clear logs for any subscription service customer which include proof that the customer has opted in to a service or services.

After several request by both the Complainant and WASPA, neither of these requests were forthcoming.

The Adjudicator therefore finds the SP in breach of section 5.1.7 of the Code and section 11.10.2 of version 10 of the Code for not providing the requested information.

Since none of the logs were forthcoming and no alternative evidence or proof was provided by the SP:

- The Adjudicator finds the SP in breach of section 5.3.1 read together with section 5.2.1 for SPAM.
- The SP is further found to be in breach of section 11.2.1 for the automatic subscription of the Complainant without having received an opt-in from the Complainant.

These breaches would, without having the benefit of a formal response from the SP, imply that the SP also violated the privacy rights of the Complainant. The Adjudicator therefore finds the SP in breach of section 4.2.1 of the Code.

Although it could also imply a further breach of section 4.2.2, the Adjudicator would abstain from making a ruling thereon.

The Complaint is upheld.

Sanctions

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

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's subsequent failure to respond.

The SP is fined R50 000-00 for its collective breaches of section 5.3.1, 11.2.1 and 4.2.1.

The SP is further fined R100 000-00 for its collective breaches of sections 5.1.7 and 11.10.2, of which R80 000-00 is suspended for 6 months.

These fines must be paid to the WASPA Secretariat within five (5) working days after receiving notice hereof.

The SP is further instructed to refund the Complainant in full for the disputed subscription.

The SP is also instructed to provide the WASPA Secretariat a detailed report on how it managed to obtain the personal information of the Complainant in this matter, and also a detailed report on the number of subscribers to the said service, as well as to how it obtained those customers' or subscribers' details.

These reports must be issued within ten (10) working days after receiving notice hereof.