



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Vodacom Service Provider
Information Provider (IP):	Not disclosed
Service Type:	Unsolicited SMS
Source of Complaints:	Not disclosed
Complaint Number:	#10989
Code of Conduct version:	10.0
Advertising Rules version:	2.3

Complaint

Complaint #10989 reads as follows:

Received unsolicited SMS on the 1st November 2010 from +2882007005910920 - Now R100 000 vehicle insured from just R280 pm. Affordable comprehensive covers theft, ... , Reply YES for full details.

Code Breached: Unsolicited SPAM SMS, No company or contact details, reply sms required but no price

SP Response

The Service Provider did not provide a response, despite multiple proper notifications by the Secretariat to it.

Decision

The following clauses of the WASPA Code of Conduct (v10.0), applicable as from 13 October 2010, were considered:

4.1 Provision of information to customers

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

...

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.

...

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. ... The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. ...

...

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.

...

5.3. 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.

The following clauses of the WASPA Advertising Rules (v2.3), applicable as from 1 October 2008, were considered.

11 SMS & MMS offers

11.1 SCOPE

Applies to all SMS and MMS's to the general public where Access Channels are displayed.

11.2 OBLIGATORY COMPONENTS:

11.2.1 Text clearly Showing Access Cost and T&C for each service or Content type offered.

11.2.2 A facility for opting out of receiving any further SMS, which must be the lowest possible cost if using SMS as the Access Channel for the unsubscribe method, or may not be more than 120 seconds if using IVR as the Access Channel for the unsubscribe method.

...

11.2.5 Contact details of the sender are obligatory. The contact details must not use any premium rated fax, PSMS, USSD, WAP, or IVR lines. A web site address is the preferred method.

11.3 TEXT DISPLAY

11.3.1 Display Text with full pricing information must be displayed on the

SMS/MMS.

...

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

...

11.3.5 All subscription services must have an unsubscribe facility ...

The adjudicator has carefully reviewed the complaint; the failure of the Service Provider to respond to the complaint; the WASPA Code of Conduct and other material relevant to the complaint as supplied by WASPA; and, on the basis of the evidence presented, reports the following findings:

1. Though the Complainant does not list clauses of the Code of Conduct alleged to have been breached, the Adjudicator notes previous decisions in which Adjudicators have identified specific clauses of the Code of Conduct for consideration, on the basis of the direct applicability of the clauses to the conduct complained of.
2. By its failure to submit a response to the Complainant, the Service Provider is deemed not to wish to respond to the complaint in accordance with the provision of clause 14.3.6 of the Code of Conduct.
3. The message is a 'Commercial Message' within the contemplation of Definitions clause 2.8 of the Code of Conduct.
4. In the absence of the Service Provider's evidence to the contrary, the message is deemed to be an 'Unsolicited' Commercial Message, within the contemplation of clause 5.3 of the Code of Conduct.

Based on the above findings, the Adjudicator finds that the Service Provider has breached the following clauses of the Code of Conduct:

1. 4.1.1: The Service Provider has failed in its obligation to ensure honest and fair dealings with its customers, in particular, by failing to clearly and accurately convey pricing information for the advertised services, including potential carrier costs in accessing the services;
2. 4.1.2: The Service Provider has failed in its obligation not to knowingly disseminate information that is likely to mislead by omission;
3. 5.1.1: The Service Provider has failed in its obligation to ensure that this commercial message must contain a valid originating number and/or the name or identifier of the message originator;
4. 5.1.3: The Service Provider has failed in its obligation to ensure that, for this SMS communication, the recipient is able to stop receiving further messages from it by replying with the word 'STOP'; and
5. 5.3.1: The Service Provider has failed in its obligation to ensure that it does not send, nor promote, the sending of spam, or that it will take reasonable measures to ensure that its facilities are not used by others for this purpose.

The Adjudicator also finds that the Service Provider has breached the following clauses of the Advertising Rules:

1. 11.2.1: The Service Provider has failed in its obligation to clearly show access cost and Terms & Conditions for the services offered;
2. 11.2.2: The Service Provider has failed in its obligation to ensure that it provides an opt-out facility in the Commercial Message;

3. 11.2.5: The Service Provider has failed in its obligation to stipulate the contact details of the Commercial Message sender in the text display;
4. 11.3.1: The Service Provider has failed in its obligation to ensure that the display text includes full pricing information; and
5. 11.3.3: The Service Provider has failed in its obligation to ensure that the SMS contains contact details of the sender.

Sanction

In determining appropriate sanctions, and with regard to factors in mitigation of sanctions, the Adjudicator has had regard to:

1. The industry imperative to root out the sending of unsolicited commercial messages;
2. The fact that the Service Provider has not previously been sanctioned for a breach of section 5.3.1;
3. Provisions of the Code of Conduct which speak to the same concepts as provisions of the Advertising Rules; and
4. The failure of the SP to respond to the Complaint.

Sanctions:

1. The Service Provider is formally reprimanded for its breaches of the WASPA Code of Conduct.
2. The Service Provider is ordered to disclose the identify of the Information Provider (if any) on whose behalf it provided the SMS messaging service to the WASPA Secretariat, within five (5) days of receipt by it of this Report.
3. The Service Provider is ordered to suspend the provision of its services to the Information Provider for a period of two (2) calendar months from the date of its receipt of this Report.
4. The WASPA Secretariat is instructed to notify all other WASPA members of the terms of suspension of the Information Provider as above, and that the provision of services to that Information Provider during such period may constitute a breach of the Code of Conduct, and may render a member liable to sanctions itself.
5. The Service Provider is fined the sum of R30,000.00, payable to the WASPA Secretariat within five (5) days of notification hereof, for having sent, alternatively for having allowed its services to be used to send, Unsolicited Commercial Messages.
6. The payment of an amount of R20,000,00 of the total sanction ordered in (5) above is suspended for a period of twelve (12) months, subject to the Service Provider not being found to have breached section 5.3.1 during that time.
7. The Service Provider is fined the sum of R15,000, payable to the WASPA Secretariat within five (5) days of notification hereof, for having sent, alternatively for having allowed its services to be used to send, Commercial Messages which do not display the minimum information and unsubscribe requirements described in clause 4.1 of the Code of Conduct.
8. The payment of an amount of R10,000,00 of the total sanction ordered in (7) above is suspended for a period of twelve (12) months, subject to the Service

Provider not being found to have breached section 4.1 during that time.

The WASPA Secretariat is requested to review the failure of the Service Provider to comply with the provision of clause 3.10 of the Code of Conduct (Nominated Representatives), and should the Service Provider still be in breach of those provisions within five (5) days of its subsequent notification to the Service Provider to remedy the breach, to consider lodging a complaint against the Service Provider based on that breach.