



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	INTEGRAT
Information Provider (IP):	PEACHMOBILE
Service Type:	SPAM
Complainants:	Anonymous
Complaint Number:	11006
Code Version:	10.0
Advertising Rules Version:	2.3

Complaint

The Complainant stated the following in the complaint:

“Received SPAM sms from +27820072152072 with: Top tip! Reveiew your cars value...SMS YES for cheaper quote! Stop to opt out. eeZy.co.za”

Service provider's response

In its response the SP requested that the Complaint be directed at the IP in this matter. It later added the following:

“We wish to respond on behalf of Peach Mobile. This is not a formal response but an attempt to resolve this informally.

The client immediately amended their website to note that standard rates apply - and also added other T&Cs. All SMSes will be amended to state STD rates apply. We were unfortunately not aware that this is a requirement when standard rates apply - it was pointed out at the last Code Com meeting and we are in the process of trying to notify all affected parties in time. We would like to apologise for any inconvenience caused by this SMS and would be more than will to offer the subscriber an airtime voucher to compensate him/her for this.”

Information provider's response

1. The terms and conditions on www.eezy.co.za have been updated as requested.
 2. "Std rates apply" has been added to SMS communications.
 3. The number was obtained from AW Consulting. (We have asked AW Consulting to contact the complainant directly to explain the sourcing of his details).
 4. Plum Solutions owns the domain: www.eezy.co.za and is the sole operator of this service.
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Sections of the Code considered

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 and IP's subsequent response.

The IP and the SP on its behalf admitted various breaches of the Code but alleged that such breaches were mere oversights. The IP further stated that these breaches were rectified and the relevant websites updated to reflect same. The Adjudicator therefore does not find it appropriate to rule on these in this matter.

The core allegation contained in the Complaint would however seem to be the allegation of SPAM.

Section 5.2.1 states that 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.

From the allegations purported, the conditions stipulated in paragraphs 1 and 2 seem to be obviously absent. What is however unclear is whether AW Consulting has obtained the Complainant's consent and in which case the pre-condition of paragraph 3 would have been fulfilled.

The Adjudicator cannot confirm this and the IP has not produced any evidence proving same.

In the absence thereof the Adjudicator would therefore have to assume that this is indeed a case of SPAM.

Section 5.3.1 states that 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.

Without the IP having any knowledge of whether the information obtained from AW Consulting carried with it the consent of the Complainant, it can be deduced that the IP in this matter did not take reasonable measures to prevent the sending of SPAM.

The IP is therefore found to be in breach of section 5.3.1.

The Complaint is partially upheld.

Sanctions

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

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

The IP is fined R 10 000-00 for its breach of section 5.3.1, payable to the WASPA Secretariat within five (5) working days after receiving notice hereof.

The IP 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.