



REPORT OF THE ADJUDICATOR

WASPA Affiliate Member	Blue Label Data Solutions
Service Provider (SP)	Cellfind
Service Type	Distribution list
Source of Complaints	WASPA Secretariat
Complaint Number	11231
Date lodged	26 November 2010
Code of Conduct version	10.0

Complaint

- Note: this complaint stems from the same unsolicited SMS forming the subject of complaint 10854 and the sanction imposed in this matter also applies to that complaint.*
- The complainant – a member of the WASPA Secretariat – lodged this complaint after receiving an unsolicited SMS sent by the WASPA member. The member did not provide any details as to how the mobile number of the complainant had been obtained when requested to do so.

“Blacklisted but permanently employed for 6 months? Get a free Samsung or Nokia phone + 2 free phones + airtime on contract. SMS TAM to 41777 to apply to STOP to opt out”
- The complainant also requested the member to remove her number from its distribution list but she thereafter received a further two unsolicited SMSs sent by the member.
- In response to an enquiry from the complainant, Vodacom – the relevant mobile network operator - confirmed that:
 - The message had originated in Sweden;
 - 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
 - The 41777 short code used in the SMS would be suspended.

5. The second and third SMSs received by the complainant read as follows:

“No Grade 12 required. Study from home & improve your career opportunities with IQ Academy. If Interested Reply Yes. Reply stop to opt out. Standard Rates Apply.”

“WIN AMATHUBA GOLD! SIMPLY REPLY GOLD to stand a chance to win Gold Bars worth R40 000 We invite you onto the Golden Path of Financial Freedom. Stop to opt out.”

6. The complainant denied having provided her consent to receive either of these SMSs.

7. The member did not file any response to this complaint.

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.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

Decision

1. In the absence of any response from the WASPA member the version as advanced by the complainant – which appears credible – is accepted.

2. The WASPA member is accordingly found to have breached section 5.3.1 read with section 5.2.1 of the Code on three separate occasions in that all of the SMSs received by the complainant were commercial in nature and all were unsolicited within the meaning set out in section 5.2.1.
3. Although not directly the subject matter of this complaint the Adjudicator is concerned at the lack of compliance with the Code evident from the third SMS message. This is a competition service which does not specify the cost to enter and is generally in breach of section 9.1 of the Code.
4. This and the breaches detailed above lead the adjudicator to the conclusion that the member has not - notwithstanding the commitment it made when joining WASPA - taken the time to ensure that its processes and services are compliant with the Code.
5. In assessing an appropriate sanction for the breach of section 5.3.1 read with section 5.2.1 the Adjudicator is mindful of the fact that the member joined WASPA on 1 September 2010, some one and a half months before complaint 10854 was lodged. A corrective sanction as opposed to a punitive sanction is accordingly appropriate although this should not be construed as in any sense excusing the failure of the member to be compliant.
6. The following sanction is imposed in respect of both this complaint and complaint 10854:
 - 6.1. 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.
 - 6.2. 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.
 - 6.3. 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.
7. The WASPA Secretariat is requested to 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.