



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	HR Computek
Information Provider (IP):	Not applicable
Service Type:	SPAM
Complainant:	Public
Complaint Number:	11288
Code Version:	10.0
Advertising Rules Version:	N/A

Complaint

The Complaint relates to an unsolicited message. The Complainant requested an escalation to a formal complaint since he did not receive adequate information as to where the SP obtained his information. He also indicated that he had no prior relationship with the SP or the product owner indicated in the message.

Service provider's response

The SP did not furnish any formal response.

Sections of the Code considered

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.

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.

Section 5.1.7 of the Code makes 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.

After detailed information was requested by the Complainant, the SP in this matter only provided an explanation as to why it omitted the SMS reply price, and not as to how it obtained the Complainant's information.

It did however concede that it omitted the price and stated that it was done in error. This is however irrelevant to the complaint in this case.

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

Since 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.

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.

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 R 30 000-00 for its collective breaches of section 5.3.1 and 4.2.1.

The SP is further fined R 50 000-00 for its breach of section 5.1.7 of which R 40 000-00 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 any charges levied in connection with the unsolicited message, providing proof thereof to the WASPA Secretariat, within five (5) working days after receiving notice hereof.