REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Integrat
Information Provider (IP):	Netgen
Service Type:	SPAM
Complainant:	Competition
Complaint Number:	11651
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 she did not receive adequate information as to where the SP / IP obtained her information. She also indicated that she had no prior relationship with the product owner indicated in the message.

Service and Information providers' response

Both the SP and IP provided substantial responses which relate to internal agreements, client details and DMA opt-out provisions, but at no stage did the IP provide the Complainant with any information as to where it obtained its information, although the IP's client, indicated that it received its database from a database provider, accredited by the DMA.

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, the SP's formal response and the IP's response.

The Adjudicator has to commend the SP in its effort extracting relevant information from the IP and its subsequent effort in providing clarification in this matter.

Although the IP did provide a response, the response did not meet the issues related to the complaint.

Section 5.1.7 of the Code makes it very clear that, on request from the recipient (the Complainant in this matter) the message originator (IP) must

identify the source from which the recipient's personal information was obtained.

After detailed information was requested by the Complainant, the IP in this matter only provided an explanation of its processes. When its client was requested, it only provided information as to whom supplied their data, but at no instance did it comply with the provisions as illustrated in section 5.2.1 of the Code and stated above.

The Adjudicator therefore finds the IP 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 IP, the Adjudicator finds the IP in breach of section 5.3.1 read together with section 5.2.1 for SPAM.

These breaches would further imply that the IP also violated the privacy rights of the Complainant in terms of this Code. The Adjudicator therefore finds the IP 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 IP with regard to breaches of the relevant sections of the Code of Conduct; and
- The IP's subsequent response.

It is noted that the IP in this matter has not had any previous breaches of the Code.

The IP is fined R 30 000-00 for its collective breaches of sections 5.3.1 and 4.2.1 of which R 25 000-00 is suspended for 6 months.

The IP 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 IP 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.