



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Marketel
Information Provider (IP):	N/A
Service Type:	SPAM
Complainant:	Competitor
Complaint Number:	12015
Code Version:	10.0
Advertising Rules Version:	N/A

Complaint

Complaint was logged by a competitor on 2011-02-17 regarding unsolicited sms containing no cost.

Service and Providers' response

The SP provided an initial response, asking for an extension which was subsequently granted by the Secretariat. The SP however failed to meet the deadline and after various failed attempts by the Secretariat to elicit a response from the SP, a formal complaint was lodged.

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.

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.5. Where a subscription service is initiated by a user replying to a message from a service provider where that message contains instructions for activating a service and/or where that message contains an activation code that when inputted by the user activates a subscription service, then that message, along with the subscription initiation instructions and/or activation code, must also include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

14.3.6. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

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 formal response.

Since the Adjudicator was not furnished with any response forthcoming from the SP in this matter, he/she can only assume, with reference to section 14.3.6 of the Code that the SP does not want to respond.

The Adjudicator is also of the opinion that the SP was granted more than enough time taking into consideration that the Secretariat also offered an extension.

The Adjudicator therefore has no alternative to find in favor of the Complainant and it is subsequently ruled that the SP breached sections 5.3.1, 5.3.2 and 11.2.5.

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;
- The SPs' subsequent response.

The SP is fined R 50 000 – 00 for its various breaches of which R 40 000 – 00 is suspended for 6 months.