



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	12556
<b>WASPA member(s):</b>	Venista
<b>Membership number(s):</b>	1008
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Subscription Service and Spam
<b>Date complaint was lodged:</b>	2011-05-04
<b>Date of the alleged offence:</b>	Not ascertainable
<b>Relevant version of the Code:</b>	10.0
<b>Clauses considered:</b>	Clause 5.2, 5.3 and 11.3.
<b>Relevant version of the Ad. Rules:</b>	Not applicable

### Related cases considered:

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#### Complaint

Complaint 12556 appears to be about spam and a subscription service. The complainant alleges that he received an unsolicited WAP push message from Venista and was subscribed to a service he didn't request. He also makes certain complaints levelled at WASPA and the WASP industry as a whole but I will for the sake of this adjudication not respond to these, same not being relevant to the SP in question. The complainant requested that the SP desist from sending him further communications and that his number be removed from their lists. He also requested a full refund for the service to which he alleges he was subscribed.

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#### Service provider's response

The SP explained that they have a subscription process in place that was approved by WASPA for any subscription of a consumer to a subscription service (which includes customer initiation so as to ensure no unsolicited communications are sent) and is thus certain that they have not breached the WASPA Code of Conduct. They furthermore clarify certain facts, namely that the complainant was never subscribed to any service and that no charges were deducted from his account or in fact levied.

With regard to the complainant's complaint they state:

"1. His request that his number be removed from our database was complied with immediately we received notification (12th April 2011 at 06:37:54).  
2. As the complainant did not subscribe to our service he has not been billed by us, and therefore a refund is not appropriate.  
3. We have complied with the stated wish of the complainant that we do not contact him personally."

Furthermore, on request by the adjudicator they provided details of where and how they obtained the complainant's details as well as proof of his consent to receiving information.

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## **Sections of the Code considered**

### **5.1. Sending of commercial communications**

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word "STOP". If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply "STOP" procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

5.1.4. For SMS and MMS communications, a message recipient must be able to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). If replying "STOP" as set out in 5.1.3 will result in a charge greater than the lowest tariffed rate available, then instructions for the lowest tariffed rate opt-out must be included in every message sent to the customer.

5.1.5. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

5.1.6. Where the words "END", "CANCEL", "UNSUBSCRIBE" or "QUIT" are used in place of "STOP" in an opt-out request, the service provider must honour the opt-out request as if the word "STOP" had been used.

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.

5.1.8. Commercial communications may not be timed to be delivered between 20:00 and 06:00, unless explicitly agreed to by the recipient, or unless delivery during this period forms part of the up-front description of the service.

## **5.2. Identification of spam**

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- the recipient has requested the message;
- 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
- 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.

## **11.3. Subscription initiated via web or WAP**

11.3.1. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- contain a PIN which is then confirmed or validated on the web page, or
- contain a URL with a unique identifier, which, when clicked, validates the handset number.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:

- The name of the service and an indication that it is a subscription service
- The price and frequency of billing
- A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:

[Application name] has requested that your mobile number be made available.

11.3.5. The information listed 11.3.3 and 11.3.4 must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

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## **Decision**

The SP has removed the complainant's number from their list. They have not offered a refund due to the fact that the complainant was never subscribed to a service nor were any charges levied and deducted from him. The issue of a refund is thus a moot point.

Although they provided a copy of their subscription process flow document to demonstrate compliance with the Code of Conduct, due to the fact that no subscription occurred I am not going to delve any further into that aspect of the case.

As to whether or not the SP breached the Code of Conduct, I feel that they did not.

Case dismissed.

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## **Sanctions**

None.