



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Mira Networks
Information Provider (IP) (if any)	Dialogue
Service Type	Bulk messaging
Source of Complaints	Ms L Van Der Merwe
Complaint Number	1322
Date received	11 May 2007
Code of Conduct version	4.92

Complaint

The complainant lodged the complaint via the WASPA website on 11 May 2007. She stated that she was continually receiving SMS messages from shortcode 41201 promoting the sale of adult movies.

The actual wording of the SMS messages received by the complainant is not specified in the complainant; however it appears that to opt out, the consumer must pay R25.

The complainant called the SP's telephone helpline as well as e-mailing the SP on two separate occasions. The complainant refuses to pay the R25 cost for opting out. She has indicated that the SP has not resolved her complaint to her satisfaction.

SP Response

The SP launched an investigation into the complaint and confirmed that its client, Dialogue had sent MT messages to the complainant from an international link. The

SP requested proof of opt-in by the complainant from its client but the latter was unable to provide same.

The SP has reprimanded its client and agreed to refund the complainant for the cost of two Stop MO messages she send to the IP at a cost of R25.00 each (one message was forwarded to the incorrect shortcode) The SP has also made contact with the complainant and apologised on behalf of the IP and advised her of the refund due to her.

Sections of the Code considered

Section 5 of the Code was considered with particular reference to the following:

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. Where feasible, persons receiving commercial messages should be able to remove themselves from the database of a message originator using no more than two words, one of which must be 'STOP'.

5.1.4. Any mechanism for allowing a recipient to remove him or herself from a database must not cost more than one rand.

and

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 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.*

and

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

The SP has acknowledged that the messages sent by the IP to the complainant were unsolicited. I am satisfied that the SP has dealt expeditiously with the complaint and that the steps taken were sufficient.

However, what is of most concern is the charging of R25 to consumers to unsubscribe from receiving these messages. This is a blatant contravention of section 5.1.4 and the amount charged is excessive.

Sanction

The SP is ordered, with immediate effect, to suspend all services on behalf of this IP where the unsubscribe charge levied by the IP is greater than R1 (one rand).