



REPORT OF THE ADJUDICATOR

Complaint reference number:	14849
WASPA member(s):	Peach Mobile aka Plum Solutions (IP) (1068) / Integrat (SP) (0030)
Membership number(s):	IP (1068) / SP (0030)
Complainant:	Public
Type of complaint:	SPAM
Date complaint was lodged:	2011-09-14
Date of the alleged offence:	2011-09-14
Relevant version of the Code:	11.0
Clauses considered:	4.1.1, 4.2.1, 5.1.10, 5.2.1 & 5.3.1
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	N/A
Related cases considered:	14638

Complaint

The Complainant alleged that the IP in this matter SPAMMED him, notwithstanding a previous undertaking by the IP to remove him from their database. The Complainant further requested to know where his personal information was retained from.

Service and Information provider's response

The IP offered no response.

Sections of the Code considered

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.2.1. WASPA and its members must respect the constitutional right of consumers to personal privacy and privacy of communications.

5.1.10. Upon request of the recipient of a direct marketing message, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained, and provide proof that the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

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

- (a) the recipient has requested the message;
- (b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications:
 - (i) at the time when the information was collected; and
 - (ii) on the occasion of each communication with the recipient; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

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.

14.3.5. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint, including any mitigating factors that the member wishes the adjudicator to consider.

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.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

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 IP's subsequent failure to formally reply.

It also has to be stated, that the onus of proof to rebut the claims levelled by the Complainant, rests on the IP.

On the basis of the evidence presented, the Adjudicator will then decide whether there has been a breach of the Code as stipulated in section 14.3.14.

The IP failed to formally respond and the Adjudicator has therefore no alternative but to find the IP in breach of sections 4.2.1, 5.1.10, 5.2.2 and 5.2.3.

Notwithstanding the above breaches the Adjudicator is also of the opinion that the IP in this matter acted contrary to what it originally indicated to the Complainant in a previous communication relevant to the matter addressed in adjudication 14638.

In its direct communication with the Complainant, the IP assured the Complainant that it will refrain from sending it any unsolicited marketing and that it has removed the Complainant's details from its database among other measures to prevent the Complainant from receiving any further messages.

The sequence of events has clearly demonstrated that the IP has not acted honestly in its dealings with the Complainant in this matter and the Adjudicator therefore finds the IP in breach of section 4.1.2.

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.

The sanctions in adjudication 14638 refer.

The IP is further fined R 50 000-00 for its breach of section 4.1.2 which is considered as a very serious offence. The fine must be paid within 7 (seven) days after having received notice hereof.