



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch
Information Provider (IP) (if any)	n/a
Service Type	Commercial SMS
Source of Complaints	Competitor
Complaint Number	1695
Date received	12 July 2007
Code of Conduct version	5.2

Complaint

The Complaint alleges a breach of section 5.2.1 of the WASPA Code of Conduct. The original complaint read as follows:

"At 16:18:13 on Thursday 12-July-2007, I received a spam SMS from +278200350161. Even though it has an opt out option (whis is disguised to look like some kind of reference number)I am not prepared to spend money to opt out. The SMS reads as follows Fall Out Boy is COMING! SMS BOY to 36707 to stand a chance to win 4 tickets 4 u & ur friends!R5/SMS. Comp Closes 18/07 Only from NXT(2OptoutSMSStopto3105. I expect the company to compensate me for my wasted time at having to complain about this and for the invasion of my privacy. An amount of R20,000 will be acceptable."

The matter was initially handled under the informal procedure although the somewhat antagonistic relationship already established between the parties did not leave much room for amicable resolution.

SP Response

The SP filed the following formal response:

“The msisdn +277689xxxx in question, first interacted with NXT on 3 June 2007 @ 4:01pm and this was via requesting the Text service Angel. I confirm Content was received.

This would have been from a print ad. The print ads do stipulate that by interacting with the service you could receive future marketing messages and promotions.

An opt in send was done on 29 June 2007(Polo GTI competition), 5 July 2007(Polo GTI competition) and 12 July 2007(Fall Out Boy competition) Each message has got a clear opt out option in the message.

See example below:

(2optOUTsmsSTOPto36707)

The msisdn was opted out of all services on 18 July 2007.”

The SP provided a screenshot from its logs in support of the above.

Sections of the Code considered

The following sections of the WASPA Code of Conduct were raised and considered:

5.2. Identification of spam

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.

Decision

The Response from the SP is accepted. The Complainant has already had a number of similar claims regarding allegedly unsolicited commercial SMS messages dismissed and the fate of this one is no different.

While the R1 opt-out mechanism does attract criticism it remains, in the opinion of this Adjudicator, a constructive limitation. If the Complainant is unwilling to abide by this it is respectfully suggested that he refrain from utilising services of this nature.

The Complaint is dismissed.