



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Stouf Communications (Pty) Ltd
Information Provider (IP) (if any)	Unknown
Service Type	None
Source of Complaints	Roger Hislop
Complaint Number	1755
Date received	7 August 2007
Code of Conduct version	5.3

Complaint

The complainant lodged a complaint via e-mail to WASPA on 7 August 2007. The complainant had received an unsolicited e-mail inviting him to respond to 2 questions regarding current social / moral issues as follows:

*"MAKE YOUR VOICE HEARD.
THE CHILD RIGHTS HAVE GIVEN CHILDREN AS YOUNG AS 12 THE RIGHT TO
GET AIDS DRUGS, CONTRACEPTIVES etc WITHOUT THE KNOWLEDGE OF
THEIR PARENTS. DO YOU AGREE WITH THIS LAW?"*

*IF YES SMS \\"YES\\" TO 37799
IF NO SMS \\"NO\\" TO 37799
Results will be emaild to you on the 30th aug 07.
sms cost R7"*

and

*"WITH CRIME AT HIGHT RATES IN SOUTH AFRICA THERE HAVE BEEN CALLS
FOR THE DEATH PERNALTY TO BE BROUGHT BACK.*

*DO YOU AGREE THAT THE DEATH PERNALTY BE BROGHT BACK?
IF YES SMS \\"YES\\" TO 37799
IF NO SMS \\"NO\\" TO 37799"*

The complainant alleges that the e-mail falls foul of the WASPA Code of Conduct in the following respects:

1. The e-mail is unprofessional and contravenes section 3.1.1.

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2. The e-mail is unlawful. (The complainant believes the e-mail is part of a “scam”) and contravenes section 3.1.2.
 3. The e-mail invites the complainant to answer 2 questions via one SMS with Yes or No answers. However there is no way to differentiate between the answers given in one SMS to the same short code.
 4. The e-mail was unsolicited and contravenes section 5.2.
 5. There is no unsubscribe mechanism on the e-mail and this is in contravention of section 5.3.
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SP Response

The SP has confirmed that it has suspended the services of the IP and issued a strong reprimand. However the SP states that it will consider re-instating services for this IP if it undertakes to adhere to the provisions of the WASPA Code.

Sections of the Code considered

Sections 3.1.1, 3.1.2, 4.1.2, 5.2 and 5.3.

Decision

The IP is sending an unsolicited e-mail inviting the recipient to answer YES or NO via SMS to 2 human interest type questions. The e-mail appears on the face of it to be part of a non-commercial survey, where the results of the survey will be e-mailed to the recipient on 30 August 2007.

The e-mail in question does not fall within the ambit of the definition of “commercial message” in the code in that it is not designed to promote the sale or demand of goods or services. I therefore do not believe that the e-mail sent to the complainant constitutes SPAM within the provisions of section 5.2 of the Code.

In terms of section 4.1.2 of the Code, “*members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission*”. The e-mail sent to the complainant and the survey in question is false and/or deceptive. I agree with the complainant’s summation that the IP cannot seriously be intending to validly collect information as it is impossible to attribute one answer to two questions.

The IP cannot provide interested parties with valid and accurate results to its survey. The e-mail sent to the complainant therefore contravenes section 3.3.1.

The service is also fraudulent and deceptive and contravenes section 3.1.2 of the code.

Sanction

I do not believe that a temporary suspension and strong reprimand is sufficient sanction against the intentional actions of the IP in this matter. The SP is ordered to permanently suspend the IP.