



Appeal Panel's Report

Appeal Details

Complaints on appeal: 17872, 19043 (“the Complaints”)

Date appeal lodged: 20 August 2013

Applicable Code versions: 12.0

Appeal hearing venue: Johannesburg

Appeal hearing date: 28 October 2013

Complaints referenced in this report:

[Appeal report regarding complaints 16761, 10854

Parties

WASPA member and appellant: Cellfind (Pty) Ltd (SP) (“the Appellant”) as represented by Wikus du Plessis and Neil Barnard. Blue Label Data Solution (Pty) Ltd (IP) not appealing decisions and not present.

Complaint 17872

1. Background

1.1. The first appeal is by the SP in complaint 17872 and does not include the IP. In the original adjudication the adjudicator found the IP liable for breaching s5.3.1 of the WASPA Code of Conduct in that the IP sent unsolicited direct marketing messages and fined the IP R20 000.00.

1.2. In addition the adjudicator also fined the SP R20 000.00 in that the SP failed to stop the unsolicited direct marketing messages from being sent by the IP. Specifically the SP, “does not appear to have taken adequate steps to address issues raised in the previous adjudication reports...”.

2. Appeal

2.1. The SP appeals against the fine imposed on it in this matter but conceded that the IP

deserved to be fined for sending unsolicited direct marketing messages ("spam").

2.2. However the SP believed the following factors should be considered when deciding on whether the sanction against the SP should stand. In summary the SP's position was:

2.2.1. The IP is a WASPA member and was fined for the same conduct;

2.2.2. The action by the SP of ensuring that the IP is a WASPA member is, on its own, sufficient "reasonable steps" to prevent spam on the SP network;

2.2.3. The fact that the SP and the IP were subsidiaries of the same holding company was irrelevant and should not have been taken into consideration;

2.2.4. The SP is limited to stopping spam on receipt of an opt-out instruction. As a result the SP only has the technical ability to stop spam once an opt-out request is made (and in the absence of the National Opt-Out Registry which is still to be created in terms of the Consumer Protection Act). No other technical measures to stop spam are available to the SP.

2.2.5. It is inappropriate for the SP to intervene in a matter where the IP is a WASPA member and so, once the SP has identified the IP in the complaint, the SP is not required to take any further steps to protect itself or respond to a complaint.

2.2.6. It is unreasonable to find the SP liable for the actions of the IP, unless some degree of negligence can be laid at the door of the SP.

2.2.7. The SP was not a party to subsequent communications as it believed that - as the IP was a WASPA member - it could not be held liable for the actions of the IP. As a result the SP did not have an opportunity to defend itself before the sanction was imposed.

2.2.8. The SP was not involved in the previous cases mentioned in complaint 17872 and as a result could not be reasonably expected to take steps as a result of these complaints.

3. After hearing further submissions on the matter the panel decided as follows regarding each objection:

3.1.1. The IP is a WASPA member and was fined for the same conduct;

3.1.1.1. The panel found that the adjudicator did not seek to fine the SP for the same conduct as is complained about of the IP. The IP was fined for sending spam, the SP was fined for not taking reasonable measures to ensure the IP did not send spam.

3.1.2. The action by the SP of ensuring that the IP is a WASPA member is, on its own, sufficient "reasonable steps" to prevent spam on the SP network;

3.1.2.1. The panel finds that simply ensuring that the IP is a WASPA member may in

certain circumstances be sufficient steps to prevent spam, but there are circumstances – notably where the SP has actual knowledge that the IP had breached s5.3.1 of the WASPA Code of Conduct – where such action on its own would not amount to “reasonable steps”.

3.1.3. The fact that the SP and the IP were subsidiaries of the same holding company was irrelevant and should not have been taken into consideration;

3.1.3.1. The fact that the SP and the IP were owned by the same company could actually be deemed to be relevant in that if there was staff that was common to the various entities it would make a claim of a lack of knowledge of the IP’s past history of breaching s5.3.1 difficult to sustain.

3.1.4. The SP is limited to stopping spam on receipt of an opt-out instruction. As a result the SP only has the technical to stop spam once an opt-out request is made (and in the absence of the National Opt-Out Registry which is still to be created in terms of the Consumer Protection Act). No other technical measures to stop spam are available to the SP.

3.1.4.1. The panel was willing to accept that from a technical point of view the SP is correct in that this is all it can do. However from a procedural perspective the SP cannot be said to have taken reasonable steps to prevent spam if it were to be aware that the IP’s methodology relating to the collection mechanism of recipients was to obtain the information from public sources. The reason this should be immediately flagged by the SP as unacceptable is that s5.2.1 of the WASPA Code of Conduct is very explicit that a prior relationship must exist (for example the recipient has requested the message) before a recipient could be sent a direct marketing message. Thus, if the IP were to indicate to the SP that it sourced the recipients of its direct marketing messages from public sources then it should be immediately apparent to the SP that the IP will inevitably breach clause 5.3.1 of the WASPA Code of Conduct and so a failure by the SP to inform the SP of this would amount to “not taking reasonable measures to ensure that their facilities are not used by others for this purpose (spam)”.

3.1.5. It is inappropriate for the SP to intervene in a matter where the IP is a WASPA member and so, once the SP has identified the IP in the complaint, the SP is not required to take any further steps to protect itself or respond to a complaint.

3.1.5.1. The panel considered this and found that if the SP chooses not to participate in the resolution of the complaint once the IP has been identified then the SP does so at its own risk. The panel would recommend that SPs should always keep track of the progress of complaints with IPs in order to ensure that they are

aware of the IP's compliance with the WASPA Code of Conduct. As a result the panel does not agree that the SP need do nothing once the SP has identified that the IP in a complaint is a WASPA member.

3.1.6. It is unreasonable to find the SP liable for the actions of the IP, unless some degree of negligence can be laid at the door of the SP.

3.1.6.1. The panel agrees with this submission, but notes that in this matter the adjudicator was making a finding against the SP for not taking reasonable measures to prevent the SP's facilities from being used for spam, rather than for the sending of the spam in the first place.

3.1.7. The SP was not a party to subsequent communications as it believed that - as the IP was a WASPA member - it could not be held liable for the actions of the IP. As a result the SP did not have an opportunity to defend itself before the sanction was imposed.

3.1.7.1. The panel repeats that the SP delegates the responsibility in a complaint to the IP at its own risk. It is perfectly possible for both the IP and the SP to be fined in the same complaint, although not for the identical conduct.

3.1.8. The SP was not involved in the previous cases mentioned in complaint 17872 and as a result could not be reasonably expected to take steps as a result of these complaints.

3.1.8.1. The panel accepts this submission by the SP and has removed this as one of the considerations as to whether the IP did or did not take reasonable measures to prevent their facilities being used for spam.

4. This adjudication essentially turns on whether the SP in this matter had prior knowledge that the IP had a business practice of obtaining a list of its direct marketing recipients from public sources. If the SP did have knowledge of this prior to the instigation of this complaint then the panel believes that this is sufficient to find the SP guilty of not taking reasonable steps to ensure that the IP is aware of, and has committed to stop, obtaining recipient data from public sources without getting the additional consent as set out in s5.2.1 of the WASPA Code of Conduct.
5. It is clear from the IP's messages in complaint 17872 that it clearly did have the practice of obtaining recipient data from public sources as set out above. The only pertinent question that remains is when did the SP become aware of this?
6. The SP is correct in its contention that it was not involved in complaint 10854 where the IP indicated that it obtained its recipient records from "Public records and was updated via Bureaus". Equally the SP was also not involved in complaint 16761.

7. While the SP was at pains to distinguish between it and the IP for the purposes of constructive knowledge of the IP's practices, both the SP and the IP have the following in common:
 - 7.1. The address of both entities is identical,
 - 7.2. A holding company (Blue Label Telecoms) owns both the SP and the IP,
 - 7.3. Wikus Du Plessis appears to handle the legal complaints for both Blue Label Data Solutions and for Cellfind, (Wikus du Plessis indicates that he speaks on behalf of Blue Label Mobile even though his email address refers to Cellfind),
 - 7.4. It was possible for Wikus du Plessis to issue an instruction to all Blue Label Telecoms subsidiaries to exclude a particular person from being contacted by all Blue Label Telecoms companies.
8. As a result of this a denial of any knowledge of the approach of the IP in this matter rings false. After considering these factors the panel finds, on the balance of probabilities, that the SP in this matter did have knowledge that the IP was obtaining its recipient information without obtaining consent from the recipients are required by the WASPA Code of Conduct in terms of section 5.3.1 and read with clause 5.2 and as a result upholds the fine of the adjudicator of R20 000.00 against the SP.

HELD:

The appeal is dismissed and the adjudicator's fine is upheld. In addition the SP forfeits its appeal fee.

Complaint 19043

1. Complaint 19043 was lodged by a consumer who complained of having received unsolicited messages or spam. The consumer also complained that the SP had failed to provide the consumer with the identity of the person from whom the consumer's contact information had been obtained. The adjudicator, having considered the complaint, found that the SP had breached sections 5.1.11, 5.2 and 5.3 of Version 12.4 the Code.
2. The Adjudicator went further and also found that the SP had breached section 3.1.2 of the Code which requires members to be committed to lawful conduct at all times. The Adjudicator found that the SP had breached section 3.1.2 of the Code as the SP's conduct demonstrated non-compliance with section 11 of the Consumer Protection Act 68 of 2008 and section 45 of the Electronic Communications and Transactions Act 25 of 2002.

3. The above findings were challenged on appeal by the SP whose appeal is annexed to this report (Annexure A).
4. Insofar as the breach of section 3.1.2 is concerned, the appeal must succeed. It has previously been found by the Appeals Panel (see the appeal report in complaint 7103) that WASPA is not the arbiter of whether particular conduct may constitute a breach of any legislation or regulation. This function is reserved for the Courts and appropriate statutory authorities. Where such a finding has been made by a Court or statutory authority that may, in certain circumstances, constitute a breach of section 3.1.2.
5. Insofar as the breach of sections 5.1.11, 5.2 and 5.3 of Version 12.4 the Code is concerned, the SP sought to introduce new evidence on appeal to demonstrate that it was not the message originator. This raises the question of whether new evidence should be admitted and taken into account on appeal, when the information was not made available to the adjudicator at the time of adjudicating the initial complaint.
6. In complaint 15567, the Appeals Panel determined that new evidence may be admitted on appeal. It did so on the basis of expediency stating that “No purpose would have been served refusing [the appellant] permission to correct the record before us even though the adjudicator did not have an opportunity to do so due to [appellant’s] error. Referring the complaint back to the adjudicator would only have incurred unnecessary and additional costs and time.”
7. The circumstances under which new evidence may be admitted on appeal have not been exhaustively delineated by any appeal report.
8. Within South Africa, it is the practice of the Supreme Court of Appeal that new evidence will be admitted on appeal only where the circumstances are exceptional. There would need at least to be an acceptable explanation for why the evidence was not placed before the court below.
9. In the present matter, the SP explained that the identity of the sender of the message was not known to it at the time of the formal adjudication of the complaint. If the evidence sought to be presented by the SP is admitted (i.e. to the effect that the originator of the message was in fact Conversions Media who became a WASPA member on 21 August 2012, and not the SP) then it would follow that the SP would not be in breach of the prohibition in the Code against the sending SPAM. However, this same evidence may indicate that the SP had then not dealt expeditiously with the complaint, which in turn may constitute a breach of section 5.3.1 (which requires members to provide a mechanism for dealing expeditiously with complaints about spam) and/or section 3.1.1 (which requires members to conduct themselves in a professional manner in their dealings with WASPA, the public and other WASPs).
10. The SP was afforded an opportunity to answer on these points during the appeal hearing. It conceded that it had acted unprofessionally in the handling of the complaint and it understood and acknowledged that this may constitute a breach of section 3.1.1.

11. The Appeals Panel therefore finds that it would be in the interests of the administration of this matter to admit the new evidence on appeal along with the concession by the SP that such new evidence may result in a finding of breach of another section of the Code not considered in the original complaint and after giving the SP an opportunity to be heard on that possibility.
12. Accordingly, the Appeals Panel upholds the appeal with respect to the breach of sections 3.1.2 of the Code but substitutes the adjudicator's initial finding of a breach of section 5.1.11, 5.2 and 5.3 of the Code with a finding that the SP acted un-expeditiously and unprofessionally and in breach of section 3.1.1 of the Code.

HELD:

The fine of R20 000 remains to be paid and the appeals fee is forfeited.



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WAPSPA Complaint Reference 19043

WASPA Member (s): Cellfind (Pty) Ltd

Type of complaint: Breach of Code of Conduct

Date of alleged offence: 15 November 2012

Following the decision and subsequent sanction by the adjudicator in respect of the mentioned complaint, Cellfind (Pty) Ltd wish to provide the following submission for consideration pending the appeal hearing, to be heard on 24 October 2013.

Based on the circumstances and evidence that will be presented, Cellfind will request that the decision of the adjudicator be overturned and complaint be dismissed.

Introduction:

~~1)~~ Cellfind will submit evidence that it was not the message originator of the offending message in question and will disclose information relating to the source and circumstances involved.

- ~~2)~~ Cellfind will provide evidence that it was not in breach of the any provision of the WASPA Code of Conduct.
- ~~3)~~ Subject to section 14.4, Cellfind will provide evidence that the adjudicator failed to follow proper procedure and made a ruling regarding the lawful conduct of Cellfind without the required ruling from the relevant statutory or regulatory authority.
- ~~4)~~ Despite the late submission of the above evidence, mentioned above (1), with the available evidence at its disposal the adjudicator, due to the misinterpretation of the facts, reached the incorrect conclusions
- ~~5)~~ Cellfind will argue that the decision submitted by the adjudicator was not based on fact and its assumptions of Cellfind position was therefore inaccurate. Additional information will be provided as explanation. Cellfind will further introduce an official response issued to WASPA that may have been inadvertently excluded by the adjudicator.
- ~~6)~~ In it decision the adjudicator considered cases that was either dismissed or currently under appeal. These cases were used as evidence to establish a pattern of “serial repeat transgression”.

Cellfind is a proud member of the Executive



Directors: JD Barnard, Non-executive Directors: GD Harlow,

Blue Label Telecoms Group J Swanepoel A Roussos, DD Fraser

Using the introduction as reference, we hereby submit the following information for your consideration:

- ~~1)~~ Following an investigation by Cellfind, which was ongoing during the duration of the complaint, to determine the source of the offending SMS received by the complainant, the following:
 - ~~a)~~ The responsible party was identified as Conversations Media (Pty) Ltd. Conversations Media was related to WASPA member affiliated to Cellfind.
 - ~~b)~~ Conversations Media became a WASPA member on 21 August 2012;
 - ~~c)~~ The primary focus of the company is to provide marketing services to its clients which included the provision of a SMS service platform that would allow transmission of bulk SMS transmission of marketing information to its subscribers;

- ~~d)~~ Conversations Media (“the WASPA Member”) submitted a marketing campaign on behalf of its client, ThinkMoney.co.za (“the Client”) on 15 November, 2012,
 - ~~e)~~ Think Money.co.za is both a registered financial services provider and member of the Direct Marketing Association.
 - ~~f)~~ The complainant was a recipient of this communication transmitted as part of this campaign.
 - ~~g)~~ The major factor for the delay in response from Cellfind to WASPA in regards to this complaint was the determination of the source of the the complainants information in order to establish any commercial relationship existed with either the WASPA member or its client, as required by section 5.2 of the Code;
 - ~~h)~~ Cellfind could only recently independently verify with that the complainant was not a subscriber of ThinkMoney.co.za or any of its services.
 - ~~i)~~ The WASPA member could not prove that the information originated from the client and accepted full responsibility for the transmission of the communication to the complainant;
 - ~~j)~~ The WASPA member further acknowledge that in the absence any proof of a commercial relationship or the explicit consent of the subscriber to receive any marketing material, it would be in breach of section 5.2.1 and 5.3.1 of the Code.
 - ~~k)~~ In defense of the WASPA Member:
 - ~~k-i)~~ Based on the credentials of the client there would have been no reasonable indication to the member to suspect that the necessary consent did not exist. ii) In compliance section 5.1.1 the client is clearly identified as the source of the communication, which was incorrectly referred to Cellfind based on the originating number;
 - iii) In accordance with section 5.1.2, it provided required valid opt-out facility. According to 5.2.2., no valid opt-out request existed or was ever recorded before the transmission. A valid opt out request would have been automatically recorded by the Cellfind Global opt-out system, preventing a transmission from any affiliated members, information providers or its clients;
 - ~~l)~~ The above information was communicated to the relevant related WASP and notified of its rights and obligations under section 3.9 of the Code.
- ~~2)~~ According to the adjudicator Cellfind was in breach of a number sections of the code of conduct:
- ~~a)~~¹The adjudicator refer specifically to section 3.1.2 and in the absence of any proof of wrongdoing or evidence of any decision by any court, to the contrary, this claim is invalid and should be dismissed. (also refer to section 4 below)
 - ~~b)~~²With reference to section 1, the ‘originator’ of the message is clearly identified. It should also be noted:
 - ~~b-i)~~ that the definition of the ‘message originator’ according to the code “is the entity sending a commercial message and can be any person with a

¹ 3.1.2. Members are committed to lawful conduct at all times.

² 5.1.11. 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

commercial arrangement with a WASP to send commercial messages, or a WASP directly.

- ~~b.ii)~~ It could be argued that the broader definition according to the Electronic Communication Act, 2002 would be more appropriate since clear provision is made for 'intermediaries' which in this case include a network (Cell C), a WASP (Cellfind), and two additional WASPA member acting independently from each other.
- ~~b.iii)~~ In this case Cellfind facilitated the transmission of the message without any knowledge of the subscribers identity; if any relationship exist with the sender or if any consent/request existed.
- ~~b.iv)~~ Cellfind is reliant on commercial agreements with its partners to ensure compliance to section 3.9. In addition, a WASPA membership was required before the members were allowed access the network provided by Cellfind.

It would therefore be reasonable for Cellfind to expect that its member will be compliant with section 5.1.11.

- ~~e)~~³ Identification of SPAM: As with section 5.1.11, it is impossible for Cellfind to analyse any message while in transmission on its network to measure its compliance. Cellfind is reliant on its partners, as WASPA members to adhere to this provision and ensure compliance at all time.

For the purpose of this appeal, it has already established that Cellfind did not collect the complainants confidential information or originate any unsolicited communication as a result of such collection. The adjudicator decision that Cellfind was in breach of section 5.1.11 is therefore incorrect and should be dismissed.

- ~~d)~~⁴ Provision of SPAM: Cellfind did neither send nor promote the sending of SPAM from its network. Cellfind is in compliance with section 3.9. In addition Cellfind only provide its services to qualifying WASPA members who will be bound by the provisions of the code of conduct and liable for any breach. Cellfind has got the necessary mechanism in place that will allow any subscriber to lodge a request that will prevent the transmission of messages from any source within the Cellfind network. Any Opt-out request that may be received from a subscriber relating to any individual service will be registered and no additional transmission will be allowed to the subscriber via the Cellfind network regardless of the source.
- ~~e)~~ The adjudicator conclusion that Cellfind was in breach in of section 5.3.1 and 5.3.2 was incorrect and should therefore be dismissed.

In conclusion, Cellfind has provided sufficient evidence to prove that it did not breach any provision of the WASPA Code of Conduct and it would therefore request that the adjudicators decision be disregarded.

- ~~g)~~ Referring to ⁵section 14.4, only if and when the relevant statutory or regulatory authority has made a ruling it terms of any contravention, may the adjudicator find that a breach took place in terms of ⁶section 3.1.2.

*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. 5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks

*14.4.1. An adjudicator finding prima facie evidence that any member may have breached clause 3.1.2 of the Code of Conduct must request that WASPA refer the breach to the relevant statutory or regulatory authority, unless that authority has already made a ruling on that particular case. If the relevant authority has already made a ruling on that particular case, then the adjudicator may find a breach of clause 3.1.2.

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3.1.2. Members are committed to lawful conduct at all times

- ~~a) It must therefore be noted that that in the absence of any such ruling by any statutory or regulatory authority it is considered as improper and highly irregular for the adjudicator to consider such evidence in its sanction against Cellfind.~~
 - ~~b) The adjudicator further failed to refer any alleged breach of section 3.1.2 to WASPA to peruse in accordance with the procedures of the code of conduct.~~
 - ~~e) The adjudicator made its own ruling regarding the lawful conduct of Cellfind, in the absence of prima facie evidence and proceeded to present this 'ruling' as fact and as an aggravating factor.~~
 - ~~e) The adjudicator's ruling in this regard was published in the public domain and widely reported on in the press.~~
- ~~4) As referred to by the adjudicator in its adjudication, under the heading "WASPA response" we wish to provide more information that may assist in clarifying the adjudicator's misunderstanding and incorrect assumption:~~
- ~~a) The electronic notification Cellfind received from WASPA, issue instructions to 'unsubscribe' a requested subscriber. It will further request that a confirmation unsubscribe SMS be sent to the subscriber and finally to provide proof of subscription.~~
 - ~~b) Although this WASPA procedure is used for both SMS and subscription services there is one critical difference: For SMS, the subscriber will be added to our internal Do Not Call (DNC)/Cellfind Global Opt Out System, regardless if the subscriber received the SMS from our network or not.~~
 - ~~e) The subscriber is added to an exclusion list, which will prevent the SP or IP to transmit any SMS to this subscriber from our network. *Please note a subscriber is added to the list and not removed.* Since NO deregistration/unsub transaction take place, no confirmation to the contrary will be sent out.~~
 - ~~e) In the event where no record is found of any subscriptions, the request for source or proof of subscription is ignored.~~

- ~~4) Any response to the WASPA unsubscribe system does not constitute evidence that the subscriber is/was subscribed to any Cellfind service or that he/she received any SMS via our networks.~~
- ~~4) The adjudicator interpretation of this process is completely incorrect since our response to the WASPA System was considered as admission that Cellfind sent the offending SMS to the complainant and was therefore withholding information relating to the source of the subscribers personal information.~~
- ~~5) Following the complaint notification via e-mail from WASPA, Cellfind confirmed that the SMS in question was NOT sent by Cellfind via its internal network (sent directly by Cellfind) and it was in the process of investigating the source. WASPA was informed accordingly and the e-mail is on record. This response was excluded and not considered by the adjudicator;~~
- ~~a) The response to the WASPA unsub system, as discussed above, was submitted incorrectly to the subscriber as an official response from Cellfinds official.~~
 - ~~b) The subscriber did not accept this response and exercised her right to request that the complaint be escalated immediately to a formal complaint. It must be understood that the subscriber wrongly accepted that Cellfind was the responsible part.~~
 - ~~c) Cellfind notified WASPA that it had no records exist of any transmission to the complainant and that we would extent our search to all external networks.~~
 - ~~d) Cellfind must concede that some confusion existed during this process since it was under the impression that the complainant withdrew the complaint.~~
 - ~~e) On confirmation that the complaint was not withdrawn and that the case file was already handed to the adjudication, Cellfind elected not make any additional submissions since would not be possible to redirect the complaint at such a late stage.~~
- ~~6) Finally, it must be noted that the complainant attempted to withdraw this complaint on two occasions, which was neither mentioned nor considered by the adjudicator.~~

Conclusion

- ~~1) Cellfind strongly object to the decision of the adjudicator due to a clear lack of evidence. Cellfind was incorrectly identified as source of the offending message based on a valid originating number used on its network used by multiple WASPA members.~~
- By implication, Cellfind became the respondent of this complaint.
- ~~2) The adjudicator failed to recognise that, in terms of the Code, the name and/or identifier of that source was clearly identified in the commercial communication. With the identity of the message originator known by to the adjudicator, it failed to present any evidence to prove that any commercial relationship existed between Cellfind and the message originator. By ignoring the identity of the message originator, the adjudicator failed to correctly identify the responsible WASPA member or found that Cellfind was not.~~
- ~~3) The identification of Cellfind as source or originator of the offending message is therefore incorrect.~~
- ~~4) Notwithstanding the provision or facilitation of the transmission of messages via its network infrastructure, the relevant WASPA members take full responsibility for compliance to the Code.~~

- 5) Cellfind presented that it is impossible for it to analyse any message while in transmission on its network to measure its compliance. Cellfind is reliant on its partners, as WASPA members to adhere to this provision and ensure compliance at all time.
- 6) Despite the fact that Cellfind was not the message originator, Cellfind challenged the adjudicators finding with relation to the transgression of the Code of Conduct.
- 7) In the light of the evidence presented, it is questionable for the adjudicator to publish that the contravention of any law took place without any ruling from the relevant statutory or regulatory authority and further using it as aggravating evidence.
- 8) Referring either to cases that were dismissed or under appeal, the adjudicator found Cellfind to be a repeat offender of breaches of the code. As with 7), above the adjudicator refer to the repeat contraventions of ECT and CPA without evidence or consideration of any ruling by any statutory or regulatory authority.
- 9) In reviewing, the decisions of the 32 most recent WASPA formal complaints it is unclear how the adjudicator reached his decision to suggest that a member be suspended in addition to a fine. Despite a 9 (nine) year record of accomplishment as a WASPA member it, is concerning that such a sanction could be considered, especially in the circumstances where little or no evidence exist. For interest sake, the relevant guideline was requested from WASPA with no response.

In conclusion, Cellfind was not in breach of any provisions of the Code of Conduct and no ruling exist that it was found to be in contravention of any law.

We would therefore request that both the decision and sanction be dismissed.

Cellfind (Pty) Ltd, 20 August 3013