



REPORT OF THE ADJUDICATOR

Complaint reference number:	18971
WASPA member(s):	Cellfind (Pty) Ltd (SP) (0019)
Membership number(s):	Above
Complainant:	Competitor
Type of complaint:	Spam
Date complaint was lodged:	2012-10-23
Date of the alleged offence:	2012-09-12
Relevant version of the Code:	12.1
Clauses considered:	Clause 5.1.11, 5.2, 5.3, 14.3.5 and 14.3.6.
Relevant version of the Ad. Rules:	Not applicable
Related cases considered:	18757

Complaint

- Complaint 18971 is the formal complaint regarding unsolicited sms.
 - The formal complaint was sent to the WASP on 2012-11-26 and they responded on 2012-11-26.
 - The WASP was sent 5 day reminder email on the 2012-12-03.
 - The WASP did not reply to reminder email.
 - The WASP was sent email concerning handing over of complaint to adjudication 2013-02-26.
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Service provider's (SP's) response

The Service Provider failed to respond.

Sections of the Code considered

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.

5.1.12. Direct marketing messages may not be sent on Sundays, public holidays, on Saturdays before 09:00 or after 13:00, or on all other days between 20:00 and 08:00, unless expressly agreed to in writing by the recipient.

5.2. Identification of spam

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.

5.2.2. Any commercial message is considered unsolicited after a valid opt-out request.

5.2.3. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

5.3. Prevention of spam

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.

14.3.5. 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.

Decision

The formal adjudication process in the WASPA Code as set out at clause 14.3 requires at 14.3.5 that WASPA members respond to complaints within 5 (five) working days. In addition, clause 14.3.6 sets out that adjudicators can assume that if the member fails to respond within such time that they do not wish to respond. The SP failed to respond within 5 (five) working days and in fact at all. I accordingly assume that they did not wish to dispute the facts presented by the Complainant and find them in breach of section 14.3 of the Code.

Sanctions

I am going to fine the SP R5000.