



REPORT OF THE ADJUDICATOR

Complaint reference number	: 20416
WASPA member(s)	: Interactive Telephony (Pty) Ltd
Membership number(s)	: 1281
Complainant	: WASPA employee
Type of complaint	: Breach of Code of Conduct
Date complaint was lodged	: 29 April 2013
Date of the alleged offence	: 29 April 2013
Relevant version of the Code	: Version 12.4
Clauses considered	: 5.2

Complaint:

- Complaint 20416 was logged by a consumer in his personal capacity who is employed by a competing WASP claiming that it had been automatically added to a mailing list and been sent unsolicited mail or spam in contravention of clauses 5.2.1

- Complaint 20416 was logged by a consumer, with the name of Peet Grobler a WASPA employee regarding breaches of Section 5.2 of the WASPA code as on the 29 April 2013 alleging that he had been sent unsolicited communication (SPAM)which stated that ,

“Free installation of a Chubb alarm system Linked to armed response from only R389.00pm - Limited offer! Reply YES for more info or STOP to opt out”

- The complainant further states that ,

“As far as I know there is no prior relationship, except for me NOT having a prior relationship with Chubb. I am unable to determine who the service provider is “

The complaint progressed as follows:

- The formal complaint was sent to the WASP on 10 June 2013.

- The SP replied 28 May 2013 to the complainant and WASPA stating that it had acquired the complainant details from the Direct Marketing Association (DMA) and it applied their “Best Practice” and that the said message was from its Chubb Promotion but would remove him from the bulk mailing list.

- The Complainant replied on the 29 May 2013 stating ,

“I hereby request proof that the organisation supplying you with my contact information has my *explicit* consent to do so. I am not interested at all about the DMA's "best practice" guidelines. This complaint is lodged with WASPA regarding your breach of their Code of Conduct. “

- the SP on the 5th June 2014 replied that ,

“We are unable to provide the required proof. All we can do in this situation is to attempt to contact Mr Grobler directly, apologise (as we have done in writing and attempted to do telephonically) and ensure that he never receives communication from us again. We have done everything we possibly can to try and resolve the matter amicably and in good faith, but Mr Grobler has no interest in doing so.”

-On the 5th June 2013 the complainant replied stating that ,

“I appreciate the fact that the WASP attempted to resolve this complaint amicably and in good faith, but that is not a sufficient response for sending me SPAM, and thus breaching the WASPA Code of Conduct. Due to the absence of evidence to the contrary, this is a valid complaint, and I request the WASPA complaints team to escalate this complaint to a formal complaint.”

- On the 27 June 2013 WASPA expedited the matter for adjudication.

Decision:

- The issue here is whether on the complainant's version the WASPA Code was breached, in particular clause 5.2 of the WASPA Code. I am of the view that the DMA "Best Practice" has nothing to do with this complaint as suggested by the SP.

- Based on the evidence before me I rule that the SmS received by the complainant is a classic case of SPAM in contravention of clauses 5.2 in that :

(a) the complainant had not requested same from the SP ,

(b) the SP and complainant seem to have no prior relationship and

(c) the complainant has not consented thereto.

Sanction :

The sanction of R 10 000.00 fine is imposed on the SP however because the SP has shown remorse and contrition such fine is suspended for 6 months .