



REPORT OF THE ADJUDICATOR

Complaint reference number:	23666
WASPA member(s):	Interband Enterprises LLC (IP) (1315) / Mira Networks (Pty) Ltd (SP) (0011)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Spam
Date complaint was lodged:	2014-03-19
Date of the alleged offence:	
Relevant version of the Code:	12.4
Clauses considered:	4.1.2, 4.1.3, 5.1.1, 5.2.1
Relevant version of the Ad. Rules:	N/A
Related cases considered:	N/A

Complaint summary:

- Complaint 23666 is the escalation of informal complaint concerning unsolicited marketing messages.
 - The informal complaint was sent to the WASP on 2014-03-20 and they responded on 2014-03-20.
 - The complainant responded on the 2014-03-20 and on the 2014-03-25.
 - The formal complaint was sent to the WASP on 2014-03-26.
 - WASPA secretariat advises WASP of no response and complaint been assigned to adjudication on the 2014-05-05.
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Complaint

My wife recently received an SMS stating:

\`Somebody sent you a pic! Open it on www.mms4.me/1/b.php?m=&a=JHBfBc and click CONFIRM. mms4.me/subscription@R7/day/optout?txtstop\`

On a mobile device, the http link opens up a subscription site that redirects me to another site (<http://lpr.m4me.mobi/>) that wants my cell phone nr (because I'm connected via WiFi, otherwise this may have subscribed me).

Another one was sent immediately after reading: 'Reminder: Ur MMS Picture will expire within the next 24 hours. Click now <http://mte.me/aah>'

I'd like to highlight the WASPA code of conduct rules broken:

- 4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

It is highly unlikely that anyone sent a picture message of any sorts to my wife. If that is the case can the information provider please furnish me information proving otherwise.

- 4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

The domain that the mms4me.me domain redirects to (<http://www.pinme.info/>) identifies this service provider as Interband, but this site does not disclose the members' physical address.

- 5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

The second SMS makes no mention in any way, the name or identifier of the originator.

- 5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless the recipient has requested the message.

Can the information provider please tell me when my wife requested or consented for the first message as well as the second one?

WASP Response

The IP responded stating that number you are referring to was not subscribed to our service. There was attempt to subscribe but did not go through both steps and therefore was not in our service. The number has been removed accordingly as requested.

The Complainant's Further Response

The Complainant reiterated that their complaint was not in respect of an unsubscribe request and stated again that they wanted to know:

- Who is this somebody that sent a pic?
- What is your physical address? And
- Where did you get the number from to send us marketing material?

The IP's Further Response

Thank you very much. This user (although two numbers are displayed but we checked them both) haven't subscribed to our service.

The message he received was free of charge and in order to answer users inquiry about the source of his MSISDN, we contacted our database provider and they will assist us further.

This service contains several services that provides to the user offers about APPs sites to download / upload pictures and videos, sending mms etc. Our clients are paying a fixed daily fee (R7/day), in return for which they receive the right to have the account and the promotions updated, in this case, top pictures and videos we uploaded to your account, which can be checked by using your unique username and password we have sent you in the message (if you are subscribed). Additional features are also available, such as rating photos and video (1 - 5 stars), sharing photos, videos over social networks or personal email. According to users feedback, our next aim is to include additional points for rating each content. Besides that, User is allowed to participate in the service as active customer. For example, the most common way, according to our experience, is to send us requested content (photo, video) and put it online for them. During this procedure, users are informed that promotional photos, harassing or bullying content, advertising texts, content that incites hatred or promotes violence against individuals or groups based on race or ethnic origin, disability, religion, gender, age, or sexual orientation/gender identity, any kind of illegal message content are not allowed and there are well controlled from service support. We contacted our database provider and they will assist us further in order to provide you information regarding your consent. We apologise once again and we repeat that we haven't said you were 'unsubscribed' yet you were 'removed', meaning you were blacklisted from getting any kind of free promotional message from our side.

Complainant's Final Response

After a telephonic conversation with the representative of the member, the complaints could not be resolved:

- 1) They cannot furnish me with the details of the 'somebody' that allegedly sent my wife a pic. The representative advised me that I should subscribe to the service if I wanted to see the content of the picture. Neither me or my wife has any desire to subscribe to this service to get this information so no-one seems to be able to verify the veracity of this information. My wife never requested the message even if some random unknown person sent it to her.
- 2) The member also cannot provide any proof of consent given by my wife to receive promotional material from the service provider, other than the allegation that 'somebody' must've sent her a picture after they ran a flyer campaign. So this violation still stands:
5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless: the recipient has requested the message;

My main complaint still stands in that Interband was trying to deceive my wife into subscribing to their service by clicking 'Confirm' on their confirmation page.

My complaint is still in essence the misleading nature of the marketing SMS wording: 'Somebody sent you a pic! Open it on www.mms4.me/1/b.php?m=&a=JHBfBc and click CONFIRM. '

The SMS wording is understood as to saying, to open this alleged pic sent the user needs only to click on the hyperlink and then on 'Confirm'.

However upon clicking the link, a website pretending to be a MMS 'viewer' opens up that initiates a subscription sequence - it does not open a pic.

Because this link was tested on a WiFi connection, thus hiding my MSISDN, it wanted me to enter my MSISDN.

I am under the impression had I connected with a GPRS connection thus revealing my MSISDN, a confirm button would have been presented, upon being clicked, would subscribe a user.

Also, the representative told me that I can still view the MMS picture if my wife would subscribe to the service. So that would imply that the follow-up message that she received is also misleading:

'Reminder: Ur MMS Picture will expire within the next 24 hours. Click now <http://mte.me/aah>'

The message does not expire. So the following clause is still being violated:

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

The member also does not advertise their physical address anywhere on their website.

Whatever their actual website is, thus contravening:

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

Sections of the Code considered

4. Customer relations

4.1. Provision of information to customers

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

5. Commercial and bulk messages

5.1. Sending of commercial messages

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

5.2. Identification of spam

5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless:

the recipient has requested the message;
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;
at the time when the information was collected; and
on the occasion of each communication with the recipient; or
the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

Decision

I find the IP to be in breach of sections 4.1.2, 4.1.3; 5.1.1 and 5.2.1.

Sanctions

The IP is fined R15 000. R5000 of the above fine is to be held in abeyance pending the IP correcting their messages as required by 4.1.2 and 5.1.1 and their website as required by 4.1.3 and providing proof of same to WASPA.