



## REPORT OF THE ADJUDICATOR

|                                           |                                                                                                                   |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| <b>Complaint reference number:</b>        | 23701                                                                                                             |
| <b>WASPA member(s):</b>                   | Interband Enterprises LLC (IP) (1315) / Mira Networks (Pty) Ltd (SP) (0011)                                       |
| <b>Membership number(s):</b>              | See above                                                                                                         |
| <b>Complainant:</b>                       | Monitor                                                                                                           |
| <b>Type of complaint:</b>                 | Spam                                                                                                              |
| <b>Date complaint was lodged:</b>         | 2014-03-25                                                                                                        |
| <b>Date of the alleged offence:</b>       |                                                                                                                   |
| <b>Relevant version of the Code:</b>      | 12.4                                                                                                              |
| <b>Clauses considered:</b>                | 3.1.1, 3.7.1, 4.1.1, 4.1.2, 5.1.11, 5.1.12, 5.1.2, 5.2.1, 6.2.2, 6.2.4, 6.3.3, 11.1.1, 11.2.1, 11.2.2 and 11.9.12 |
| <b>Relevant version of the Ad. Rules:</b> | N/A                                                                                                               |
| <b>Related cases considered:</b>          | N/A                                                                                                               |

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### Complaint summary:

- Complaint 23701 is the formal complaint concerning misleading unsolicited bulk sms campaign.
- The formal complaint was sent to the WASP on 2014-03-25 and the SP responded on 2014-03-27 (requesting handover to IP).
- WASPA secretariat emailed handover request on the 2014-03-27 and IP responded confirming receipt of complaint on the 2014-03-27.
- IP responded on the 2014-04-02.
- WASPA media monitor responded with an advisory email on the 2014-04-02 and on the 2014-04-03.
- IP responded on the 2014-04-09 and requested advise.
- WASPA media monitor and IP exchanged emails on the 2014-04-15.
- The WASPA media monitor requested that the complaint go to adjudication on the 2014-04-15.
- The IP provided additional information on the 2014-1-04-15.
- The WASPA media monitor responded with advise on the 2014-04-17.

- The IP provided additional information on 2014-04-17.
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## Complaint

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

### 3.7. Decency

3.7.1. Members will not provide any services or promotional material that:

(c) induces an unacceptable sense of fear or anxiety;

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential 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.

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 recipients 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.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originators direct marketing database, so as not to receive any further direct marketing messages from that message originator.

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 recipients contact information has the recipients explicit consent to do so.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.4. Pricing contained in an advertisement must not be misleading.

6.3.3. Promotional material must not be of a nature that unduly encourages unauthorised calls or use of services.

11.1. Promotion of subscription services

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

#### 11.2. Subscription process

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

11.9.12 If a user ports their number from one operator to another, that number must be removed from all subscription services.

### **WASP Response**

The IP responded stating that:

Thank you for your notification. We are going through this report as we speak and we will provide you our response on Monday at latest.

At this stage, we have already contacted our database provider for showing how the "customer's" details were received and where.

In order to contact the complainant directly, we would appreciate users (726078127) contact email.

### **The Complainant's Further Response**

It is suggested that you deal with Mira Network directly and ask for guidance on your message formats. The WASPA Secretariat and Monitoring team are not permitted to give advice on your marketing initiatives. However, in this case where a complaint has been filed, we are happy to review the formats of your new messages.

Therefore, liaise with Mira Networks please, format your new messages and then send to us for comment/review.

In the meantime we will check your link and await your revised messages.

### **The IP's Further Response**

The IP responded with a suggested amended message. The content of such message is in the final complaint response below.

### **Complainant's Further Response**

The provider has not responded to the following:

Jenita Cremer has not received any mails from Interband explaining how they received her information.

The provider has failed to provide further information (both the origin of obtaining her information and not supplying us with an explanation as to why so many reminders were sent).

In addition, the Provider has sent a revised SMS commercial message copy that is still in breach of the WASPA Code. I did give them the opportunity to discuss and get guidance from Mira Networks.

This is the revised message we received:

You have received a Private Photo invite for 0[NO]! Click to open /link of the landing page/ /service web site/ subs@R7/day /optout?txt stop

Breaches of the new SMS message is as follows:

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

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.

General provisions:

6.3.3. Promotional material must not be of a nature that unduly encourages unauthorised calls or use of services.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

Ad rules: Subscription, not sub/subs.

### **Further Response of IP**

The IP responded stating that:

We have informed user from where we got her number over email. The user obtained for the service Fun Mobi and therefore left his mobile number. Our database provider informed us that user has been using the service FunMobi where he has left his number 27726078127 when subscribing and therefore receiving FREE messages related to that service.

The service: <http://www.mobile.funmobi.com/>

Advertiser: Moboo Digital Marketing

Related to:

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.

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

If and when user clicks on the link within the broadcast message he is NOT subscribed therefore it is not automatic subscription. He is landing to our landing page where all information are visible to them again (Subscription service, price).

Link within the broadcast message is separated for all other information within the message (with the space, comma).

This service is not competition nor quiz.

Related to:

Ad rules:

Subscription, not sub/subs

Can you please specify where is this rule mentioned as we have acknowledged this is allowed as other competiros are doing the same. Of course, in the landing page, web

site Subscription service is pointed out.

I again confirm we have stopped marketing 44879.

### **Further Response of Complainant**

In addition, Jenitte Cremer has never interacted with the FunMobi service. And finally, Jenitte Cremer received an email from Interband today (15 April 2014) due to a reminder from the Monitoring team. This should have happened on 3 April when the customer details were given to Interband.

### **Further Response of IP**

It is correct, communication was with the user today as today we found out that user is not satisfied with the answer (after your email). As user is not subscribed we could only provide him answer when we got it from our database provider.

Can you please say where we have said that we are not agreed with you? We asked you to clarify your statements, from where is that 'AD RULE', that is all. Furthermore, as we are appreciating your opinion we stopped our all broadcast marketing.

Based on what you are claiming this user was not in FunMobi service? We have asked MIRA Networks additionally for sending us details related to that service and that number and you can find it attached.

### **Further Response by Complainant**

It is important that when a complaint is received, that ALL breaches are responded to.

We thank you for stopping your campaign, however there are further issues that you have failed to respond to, and for this reason we are proceeding to adjudication.

You provided us with logs from 2009. The sim used by Jenitte Cremer, was RICA'd last year only.

Plus Jenitte Cremer has a contract with Cell C (using a previously prepaid Vodacom SIM card).

Breach:

11.9.12. If a user ports their number from one operator to another, that number must be removed from all subscription services.

You have not given any answer on the 4 harassing reminders. You have not sent us any revised formats for your messages.

### **IP Final Response**

How should we know if the number is ported from one network to another? This is something that is operated by the networks and we are not receiving those information from them nor from aggregator.

Regarding 4 reminders – they are only 2nd step messages, free of charge, as user did land on our landing page.

We have sent revised format of the message and as it is still not approved from your side – and we have not done anything in the terms of further marketing focusing on other marketing channels. Why do we need to send additional messages to review if we do not plan to do that marketing again?

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### Sections of the Code considered

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

#### 3.7. Decency

3.7.1. Members will not provide any services or promotional material that:  
(c) induces an unacceptable sense of fear or anxiety;

- No breach found.

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

- No breach found

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

- Breach found due to misleading nature and content of message.

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.

- Breach found due to misleading nature and content of message.

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 recipients 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.

- Breach found. Information provided did not relate to the recipient.

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.

- Breach found. Messages sent outside of times without express permission.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originators direct marketing database, so as not to receive any further direct marketing messages from that message originator.

- Breach found. No opt out facility.

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 recipients contact information has the recipients explicit consent to do so.

- Breach found. Items a-c above were not complied with or the circumstances were not present.

6.2.2. All advertisements for services must include the full retail price of that service.

- Breach found.

6.2.4. Pricing contained in an advertisement must not be misleading.

- Breach found as the service appeared to be free of charge or subscription.

6.3.3. Promotional material must not be of a nature that unduly encourages unauthorised calls or use of services.

- No breach found. Although the service encouraged unintended subscription, I do not feel once subscribed it unduly would encourage use.

11.1. Promotion of subscription services

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

- Breach found as the service message did not set this out.

11.2. Subscription process



11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

- No breach found. No subscription occurred.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

- No breach found. Breach occurred with regard to promotion of the service and not actual subscription.

11.9.12 If a user ports their number from one operator to another, that number must be removed from all subscription services.

- Breach occurred.
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## **Decision**

I find the IP to be in breach of sections 4.1.1, 4.1.2, 5.1.11, 5.1.12, 5.1.2, 5.2.1, 6.2.2, 6.2.4, 11.1.1 and 11.9.12.

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## **Sanctions**

The IP is fined R15 000.

The IP must correct all their promotional material and messages related to the service and provide proof of same to WASPA. As noted by the WASPA monitor, WASPA cannot and does not provide a service to vet messages for compliance with the Code and the IP must obtain their own counsel in this regard.

Finally, the IP must ensure that all subscribed numbers are checked for current validity due to porting of numbers from cellular network operators.