



REPORT OF THE ADJUDICATOR

Complaint reference number:	23786
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:	2014-03-3
Date of the alleged offence:	
Relevant version of the Code:	12.4
Clauses considered:	3.1.1, 3.1.2, 3.12.1, 4.1.3, 4.1.9, 4.2.1, 5.3.1 and 5.3.2.
Relevant version of the Ad. Rules:	N/A
Related cases considered:	23701 and 23666

Complaint summary:

- Complaint 23786 is the escalation of the informal complaint regarding unsolicited sms's and acquirement of complainant's cellular number by WASP.
- The informal complaint was sent to the WASP on 2014-04-04 and the SP responded on 2014-04-07 and the SP requested the informal complaint be handed over to IP.
- WASPA secretariat sent handover email on the 2014-04-07 to IP.
- WASPA secretariat enquired if complainant was contacted by IP, concerning informal complaint on the 2014-04-15.
- Complaint replied advising of no contact on the 2014-04-15.
- The informal complaint was escalated on the 2014-04-15 and sent to the IP on 2014-04-15 and they responded on 2014-04-15.
- Complainant responded querying the handover of the complaint from the SP to the IP on the 2014-04-16.
- The WASPA secretariat advised the complainant on the 2014-04-17 and the complainant replied on the same date.
- The IP responded on the 2014-04-17.

- The complainant refused resolution on 2014-04-17.
 - The WASPA secretariat advised complainant of complaint been assigned to an adjudication on the 2014-04-24.
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Complaint

With reference to unsolicited SMS.

This is fifth request in terms of the Promotion of Access to Information Act for Mira Networks Management to confirm source of my private details.

I DO NOT need Mira Networks to confirm that +27 82 498 8910 is registered for any service, that I know. I need to know where did Mira Networks get my number from that triggered the SMS message.

Please take this request with some level of importance.

I have tried to call but your phone number does not take any phone calls.

WASP Response

The SP responded to request that the matter was referred to the IP.

The Complainant's Further Response

3.1.1 - In that Mira Network do not answer calls and only allow callers to choose automated unsubscribe option

3.1.2 - In not complying with the Promotion of Access to Information Act

3.12.1 - In that Mira Networks Staff are not trained to respond to request from Members of Public

4.1.3 - not sufficient contact details

4.1.9 - No telephone support

4.2.1 - Mira Networks not respecting the constitutional right of consumers to personal privacy

5.3.1 - Mira Networks Members sending and promoting the sending of spam and do not take reasonable measures to ensure that their

5.3.2 - Mira Networks Members not dealing expeditiously with complaint about spam originating from their networks.

Unsolicited SMS when if I activated URL would have resulted in subscription to daily services. The SMS did not disclose all facts. While I was un-subscribed to a service which I have not I yet have to know where Mira Networks. I want to know where did they get my details from?

The IP's Further Response

As this number was never subscribed to our service we have only contacted our data base provider and he provided us MO records where this user left his mobile number to receive free broadcast messages (www.discovery.co.za, Sandbox Holdings). Optin can be checked directly with MIRANetworks and we are sending you attached.

Complainant's Further Response

The Complainant responded with a copy of a letter from Discovery Health stating that they did not share his details with Mira Networks or Interband LLC.

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.

- Breach found for IP but not SP. IP appears to have misled the consumer about the origin of the mobile number.

3.1.2 Members are committed to lawful conduct at all times.

- No breach found. Although the complainant states the IP and SP breached the Promotion of Access to Information Act, the complainant did not follow the request procedures set out in the Act for requesting information. Further, I do not feel that as a WASPA adjudicator I am able to rule on adherence to other laws not falling under the ambit of the Code of Conduct even though alluded to in the Code

3.12.1. Members must ensure that any relevant employees are made aware of this Code of Conduct and the requirements and procedures associated therewith.

- No breach for IP or SP as I have no evidence to indicate that there was a lack of awareness.

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.

- Breach found for IP but not SP. It was hard to find the website of the IP let alone the information required.

4.1.9 Telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

- No breach found for IP or SP. I could find no evidence in the information submitted of this allegation.

4.2.1. WASPA and its members must respect the constitutional right of consumers to personal privacy and privacy of communications.

- Breach found in respect of IP. They sent unsolicited messages in contravention with principles of privacy and the Code.

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.

- Although the SP in my view could have been in breach of this clause. At the time of adjudication and prior to this report being released, the SP confirmed that they were no longer allowing the IP to use their networks. Further, the SP had complied with the requirements to avoid liability for the IP's breaches by ensuring the IP itself was a WASPA member and accordingly bound by the Code directly and not only through the SP's policing.

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

- No breach found for the SP or IP who both dealt with the complaint.

Decision

I find the IP to be in breach of sections 3.1.1, 4.1.3 and 4.2.1.

Sanctions

The IP is fined R15 000.

The IP must correct their website. In addition, they must ensure they have accurate information relating to the origin of all details they utilise for marketing and that they do not send unsolicited messages.