



REPORT OF THE ADJUDICATOR

Complaint reference number	: 23939
WASPA member(s)	: Nexus Enterprises Limited - Mira Networks
Membership number(s)	: 142 / 0011
Complainant	: Ilonka Grey (Media Monitor)
Type of complaint	: Breach of Code of Conduct
Date complaint was lodged	: 5 May 2014
Date of the alleged offence	: 29 April 2013, 30 th April 2014 and 3 May 2014
Relevant version of the Code	: Version 12.4
Clauses considered	: 4.1, 5.1, 5.2, 11.11, 11.2 and 14.9

Complaint:

- Complaint 23939 was logged by the media monitor complaining that it had been automatically added to several SMS mailing campaigns in which she had been sent unsolicited mail or spam in contravention of clauses 5.1 and 5.2. Further that the said SMS communication was deceptive and amounted to unfair dealing in contravention of clause 4.1 and lastly that the rules pertaining to subscription services as contained in clauses 11.1. and 11.2 of the WASPA Code (hereafter referred to as "the code").

- Complaint 23939 was logged by the Media Monitor, with the name of Ilonka Grey with cellular number 0824607531 regarding breaches of the code by the IP and SP on 29 April 2013, 30th April 2014 and 3 May 2014 alleging that he had been sent unsolicited communication (SPAM) which stated that ,

" Somebody sent you a MMS Picture Message for 0824607531!
Open it on www.to4.me/g/w.php?m=824607531 and click CONFIRM. to4.me subs B "

- The complainant further states that,

- “1.How, where and when was the mobile number obtained for sending a commercial marketing message?
2. Can you provide the consent given by this mobile number to receive future marketing?
3. The format of the message is misleading and the fact that it is selling a subscription service is not clear. A revised message format is to be sent to the Monitoring team before further SMS marketing “

The complaint progressed as follows:

- The formal complaint was sent to the WASP in this case IP and SP on the 5th May 2013

- It appears from the record that a “HEADS up” under number HU257 was also previously sent to the IP and SP but it seems as if no response was received.

- On the 14th May 2014 a reminder was sent to the IP and SP that a response was due by close of business on same day.

- On the 14th May 2014 the IP, namely Nexus provided WASPA with a reply

- On the 15th May 2014 WASPA media monitor refused resolution of the matter and it was expedited for adjudication.

Defence of IP:

- IP states that the user of the mobile number 27824607531 is not subscribed to our service and as a result the user is not charged for any transactions as there were no reply and interaction on.

- It also acknowledged that the “User did received a free broadcast message from our side on 30.04.2014 “.

- IP went on further to state that “As per your request for providing authorization for receiving that message, after checking our marketing and data base provider this is to inform you that user's number is left under the campaign which was online during the March and April 2014 where potential users and our users could include their friends into the service and therefore receive additional features and points. “

- IP then also sought to clarify the above statement by sending WASPA secretariat a preview of the banners and landing pages as well as preview of the Google advertising it launched at that time. It also included a link in its reply which is as follows:
<http://www.nexusapps.mobi/campaign/201403/landing/index.html>

Decision:

- The issue here is whether on the complainant's version the WASPA Code was breached, in particular that it had been automatically added to several SMS mailing campaigns in which she had been sent unsolicited mail or spam in contravention of clauses 5.1 and 5.2 and further that the said SMS communication was deceptive and amounted to unfair dealing in contravention of clause 4.1.

-Lastly whether the rules pertaining to subscription services as contained in clauses 11.1 and 11.2 of the Code were breached.

- Based on the evidence before me I rule that the SMS's received by the complainant is a classic case of SPAM in contravention of clauses 5.1 and 5.2 in that:

- (a) The complainant had not requested same or any services from the IP/ SP
- (b) The IP/ SP and complainant seem to have no prior relationship and
- (c) The complainant has not consented thereto;
- (d) It does not allow the consumer to "opt out" or "STOP" subscription option;

- I further rule that the IP / SP knowingly disseminate information that is false or deceptive and that same was misleading to the public in that a subscription service was being disguised as consumer having received an MMS Picture Message.

This is type of soliciting business is highly deceptive and misleading and a clear message was be sent to the IP / SP for said conduct. Hence I rule that Clause 4.1 of the Code has also been breached.

- Lastly I rule that clauses 11.1 has been breached as the SP/IP failed to prominently and explicitly identify their service as a "subscription service " or any acceptable abbreviation thereof - the complaint is successful in this regard.

- Clause 11.2 of the Code was not breached and this part of the complaint is dismissed.

Sanction:

The initial sanction I had in mind was a fine of R 15 000.00 be imposed on the IP/ SP in the case of a single transgression of the relevant sections of the Code however because the IP/ SP had failed to heeds the advices of the HEADS UP that was sent to the IP/SP by the Media Monitor in the initial stages of the complaint and as a result there were further flagrant breaches of the Code and as a result I rule as follows:

1. A sanction of a fine of R 30000.00 is to be paid by the IP and SP together ;
2. That said fine be paid jointly and severally (the one absolving the other) within 60 days of this Ruling ;

3. The Media Monitor continue monitoring the activities for any further breaches of the code;
4. That in the event of any further transgression of Clause 4.1 the Adjudicator consider a sanction of Suspension of Membership should any deceptive or dishonest campaign be run by either the IP / SP in the future;