

REPORT OF THE ADJUDICATOR

WASPA Member (SP) iTouch

Information Provider (IP)

RCS

(if any)

Service Type Unsolicited SMS

Source of Complaints M Chavda

Complaint Number 2402

Date received 10 October 2007

Code of Conduct version 5.3

Complaint

The complainant submitted this complaint via the WASPA website on 10 October 2007. The complainant alleges that an unsolicited SMS message was sent to his cellphone number on 9 October 2007 which reads as follows:

Need Cash? Call RCS on 0860 729727 NOW to apply! Offer expires 12/11/07. T&Cs on www.rcsgroup.co.za. To no longer receive further offers call 0860 729727.

The complaint was initially regarded as an informal complaint but after it had not been resolved to the complainant's satisfaction, it was escalated to a formal complaint.

SP Response

The SP responded to the informal complaint by advising its client, RCS, to remove the complainant's number from its database.

The complainant was not satisfied with this and requested confirmation from either the SP or IP that his number had indeed been removed. Such confirmation has not been received from either of these parties.

Sections of the Code considered

5. Commercial communications

5.1. Sending of commercial communications

- 5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.
- 5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.
- 5.1.3. Where feasible, persons receiving commercial messages should be able to remove themselves from the database of a message originator using no more than two words, one of which must be 'STOP'.
- 5.1.4. Any mechanism for allowing a recipient to remove him or herself from a database must not cost more than one rand.
- 5.1.5. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.
- 5.1.6. Commercial communications may not be timed to be delivered between 20:00 and 06:00, unless explicitly agreed to by the recipient, or unless delivery during this period forms part of the up-front description of the service.

5.2. Identification of spam

- 5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:
 - (a) the recipient has requested the message;
 - (b) the message recipient has a direct and recent prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
 - (c) the organisation supplying the originator with the recipient's contact information

has the recipient's explicit consent to do so.

5.2.2. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

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.

Report of the Adjudicator

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

Decision

The unsolicited commercial message received by the complainant is spam and the SP is obliged to take reasonable measures to ensure that its facilities are not used for the purpose of sending or promoting the sending of spam. In addition, the SP is obliged to provide a mechanism for dealing expeditiously with complaints about spam originating from its networks.

While the SP has responded expeditiously to the complaint, I do not believe that it is sufficient for the SP to simply send a request to its client to remove the complainant from its database. The SP must take further steps to ensure that its request has been actioned and the complainant is entitled to request confirmation that his name has been removed.

Sanction

The SP is ordered to provide written confirmation from its client that the complainant's number has been removed from its client's database to the Secretariat within 7 (seven) days of being notified of this decision.