



REPORT OF THE ADJUDICATOR

WASPA Member (SP) iTouch

Information Provider (IP)
(if any)

Service Type Commercial SMS

Source of Complaints Competitor

Complaint Number 2409

Date received 8 October 2007

Code of Conduct version 5.3

Complaint

The Complaint relates to an SMS message received by the Complainant during October 2007:

"<quote>UNLIMITED UNCENSORED VID DOWNLOADS!4 this great video offer join the Sexy Straight Club now!get vids & tons more.Sms FILM to 39999 (R10/5daysSubscriptionService)</quote>

The Complainant highlighted the lack of a STOP unsubscribe facility and queried where his number had been obtained from as he did not "recall having previous relationship with these people".

SP Response

No response was received despite proper notification by the Secretariat.

Sections of the Code considered

The following sections of version 5.3 of the WASPA Code of Conduct were considered:

5.1.3. Any mechanism for allowing a recipient to remove him or herself from a database must not cost more than one rand.

5.1.4. Notwithstanding 5.1.3, for SMS and MMS communications:

(a) A recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply 'STOP' procedure must be included at the start of any messaging service, for example: "reply STOP to opt out".

(b) Recipients of premium rate or non-replyable messages must have the option to opt out at a cost of R1 or less. This opt-out instruction must be included in every commercial premium rate or non-replyable message, for example. "sms STOP to 32xxx to opt out".

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.

5.3. 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.

Decision

Unfortunately for the SP its failure to file a Response in this matter militates towards acceptance by the Adjudicator of the version advanced by the Complainant, even

where elements of the Complaint are couched in vague language, e.g. the Complainant could not “recall having [a] previous relationship with these people”.

The SP is accordingly found to have breached section 5.3.1 read with section 5.2.1 of the WASPA Code of Conduct.

As regards the alleged breach of section 5.1.4 of the Code an examination of the text presented by the Complainant indicates a *prima facie* breach. The SP, having failed to avail itself of the opportunity to answer this, is found to have also breached this section of the Code.

Sanction

The SP is fined the sum of R3 000 in respect of the breach of section 5.3.1 read with section 5.2.1 of the Code.

As regards the breach of section 5.1.4 the Adjudicator noted that the SP had already been found to have breached this section since version 5.3 of the Code of Conduct came into force on 20 July 2007. In the Adjudication in respect of Complaint 1767, dated 16 September 2007, the Adjudicator imposed the following sanction:

“5.1.4

The Adjudicator took into account the recent compliance deadline for this section but noted that sufficient notice had been given to the SP to ensure compliance at this time.

The SP is issued with a formal reprimand and a fine of R3 500. The SP is further instructed to review its procedures against the revised section 5.1.4.”

The Adjudicator regards the existence of this precedent as an aggravating factor in the breach of section 5.1.4 and the SP is fined the sum of R7 000 in respect of such breach.

The SP is further issued with a formal reprimand in respect of its failure to file a Response in this matter.