



REPORT OF THE ADJUDICATOR

Complaint reference number:	24245
WASPA member(s):	Mobile Internet Gateway (Pty) Ltd (0033) (SP)
Membership number(s):	See above
Complainant:	Public
Type of complaint:	Spam
Date complaint was lodged:	2014-08-19
Date of the alleged offence:	
Relevant version of the Code:	12.4
Clauses considered:	5.1.2, 5.1.3, 5.2.1.
Relevant version of the Ad. Rules:	N/A
Related cases considered:	N/A

Complaint summary:

- Complaint 24245 is the formal complaint concerning unsolicited sms.
 - The formal complaint was sent to the WASP on 2014-08-19 and they responded on 2014-08-19.
 - The complainant refused resolution on 2014-08-19.
 - The WASP provided additional information on 2014-08-19.
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Complaint

Unsolicited marketing message from MELTZ/HUB - I never opted in for this list.
My number is on the National Opt-Out list, and despite this number there, I am still receiving unsolicited marketing messages from Meltz/Hub.
Not clear instructions on how to opt out.

Received following message 13:16 on 9 July 2014:

"Dont miss out on the MELTZ/HUB up to 50% off SALE from 10th July on selected fashion & home ware. SMS to opt out."

WASP Response

Our Client "Meltz" advise as follows:-

1. This Consumer got onto their base when he applied for a Customer Incentive Card. One of the options on the application form, was to opt out of receiving marketing information either by email or sms.
- He opted out of email communication BUT not out of SMS Communication.
2. He has only ever received ONE sms from Meltz. Which was the one listed below.
3. All Meltz's SMS's ALWAYS have a provisio at the end which says "SMS to Opt out"
4. This customer has NOT yet asked or sent in an SMS to be opted out.
5. Every one of Meltz's Customers in the last few years that wanted to opt out of SMS communication have always replied with either "Stop" or "Opt Out" or words similar to this. Meltz IMMEDIATELY remove them from their base.
7. There is NO National Opt Out Database! The Direct Marketing Association has one, but only for their members.
8. Meltz has removed him from their database and he will not get any communication from them anymore.

The Complainant's Further Response

The Complainant refused resolution.

The WASP's Further Response

Additional info required :-

1. My Client "MELTZ" does not under any circumstances send SMS's to Clients that have not opted in to receive such.
2. "Meltz" does not under any circumstances use bases that are not on their systems to people that have not opted in.
3. EVERY Message that they have sent out over the last few years also has an OPT OUT message at the end of the SMS to allow people to opt out from receiving further communication from them.
4. This Client had opened an account at Meltz and had opted in.
5. This Client only ever received ONE sms from them.
6. This Client NEVER bothered to try and answer the SMS by saying .. "Stop" or "OUT" or anything else.
7. When he contacted Meltz, you, us and the rest of the world , he was immediately removed from their base.
8. He has never got another sms from Meltz again.
9. I informed WASPA about this on 10th July 2014 and have never heard back on this case. I therefore assumed that it is resolved and closed.
10. I really don't understand what he is getting all upset about that he got an SMS a month ago.. He has never got another one since... What is his problem ??
11. He is obviously a very difficult person with a major chip on his shoulders , as can be seen from his email below.

Sections of the Code considered

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.

- No breach facility provided

5.1.3. For commercial messages, 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 should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

- No breach instructions to sms to opt out at end of message.

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.

- No breach. Consent obtained when he applied for a Customer Incentive Card with Meltz.

Decision

No breach found.

Sanctions

No Sanctions.