

Report of the Adjudicator



Wireless Application Service Providers' Association

Complaint number	24456
Cited WASPA members	SMSPortal (Pty) Ltd (0139) (SP)
Notifiable WASPA members	n/a
Source of the complaint	Competitor
Complaint short description	Failure to provide source of details timeously.
Date complaint lodged	19 June 2015
Date of alleged breach	
Applicable version of the Code	13.9
Clauses of the Code cited	16.13.
Related complaints considered	25510
Fines imposed	
Is this report notable?	Not notable
Summary of notability	

Initial complaint

This complaint is an additional citation to complaint 25510. The adjudicator in that matter felt that the cause of the complainant's frustration was the delay in the SP in providing the originating source of the complainants contact details acquired and used by the SP.

Member's response

The SP responded as follows: (I have paraphrased)

Both IPs in this matter are full members of WASPA and as such clause 3.7 of the Code applies. Given the nature of the complaint the SP (SMS Portal) correctly referred WASPA to the appropriate IP's which were responsible for the origination of the SMS messages forming the subject-matter of the complaint. There was no delay in referring the complaint to the IP's in question and there was no delay in responding to WASPA which may have "frustrated" the complainant.

The information required to be provided under clause 16.13 of the WASPA Code was not within SMS Portal's knowledge as it was not the originator of the SMS's complained about. It could therefore not respond to WASPA with this information but could only refer WASPA to the WASPA members that did have such knowledge. A complaint of a breach of clause 16.13 could never have been validly raised against SMS Portal in this context.

The IP's did in fact possess such knowledge and duly communicated it to WASPA whereafter the complaints against the IP's were dismissed.

There is no evidence in the documentation relating to the complaint that the complainant ever requested the information required to be provided under clause 16.13 from SMS Portal directly. In the circumstances it is our client's view that entertaining this complaint further would constitute a wasteful use of its own and WASPA's resources. We request that WASPA apply its mind to the informal resolution of this dispute and advise us accordingly.

Sections of the Code considered

16.13. Disclosure of source of contact details

Upon request of the recipient of a direct marketing message, the member must, within a reasonable period of time, identify the source from which the recipient's contact details were obtained. The member must also provide proof that the recipient has given consent to receive that message, or alternatively provide proof that the recipient has provided his or her contact details in the context of the sale of a product or service the same as that being marketed.

Decision

After reviewing the adjudicator's report in case 25510, as well as the case files associated therewith I agree with the argument presented by the SP's lawyer on behalf of the SP in this matter. The complaint was received by the SP on 27 November 2014 and they responded to refer WASPA to one of the IPs on the same date and to the other on 28 November 2015. This is in my view a timeous referral as required by the Code (which merely requires that the source be provided within a reasonable period of time). Due to the fact that the SP was not the message originator and that the IP's are full members of WASPA themselves, this was the correct procedure for the SP to follow.

Sanctions

No sanction.