



REPORT OF THE ADJUDICATOR

Complaint reference number:	25510
WASPA member(s):	Celerity Systems (Pty) Ltd (IP) / Grapevine Interactive (Pty) Ltd (IP) / SMSPortal (Pty) Ltd (SP)
Membership number(s):	0003, 0008, 0139
Complainant:	Competitor
Type of complaint:	Unsolicited SMS
Date complaint was lodged:	2014-11-24
Date of the alleged offence:	Various dates
Relevant version of the Code:	13.1
Clauses considered:	16.4, 16.5, 16.11, 16.13
Relevant version of the Ad. Rules:	N/A
Clauses considered:	N/A
Related cases considered:	N/A

Complaint

The Complainant in this matter received alleged unsolicited marketing material via text message and stated that the SP in this matter has shown total disrespect towards him and the rules and regulations of the industry.

Service provider's response

The SP in this matter indicated that the complaint originated from two IPs and subsequently asked that the complaint be transferred to the relevant IPs as indicated above.

1st Service provider's response

The first IP in this matter (Grapevine) did not respond directly to the various sections of the code alleged by the complainant to have been breached, but merely indicated how, when and where the complainant's details were obtained by its customer. It further indicated its willingness to respond to any further queries.

2nd Service provider's response

The second IP (Celerity) in this matter provided a detailed response and responded to every section alleged by the complainant to have been breached.

Sections of the Code considered

16.4. Any member authorising, directing or conducting any direct marketing must implement appropriate procedures to facilitate the receipt of a demand from a person who has been approached for the purposes of direct marketing to desist from initiating any further communication (an "opt-out request").

16.5. Any member authorising, directing or conducting any direct marketing must not direct or permit any person associated with that activity to direct or deliver any communication for the purpose of direct marketing to: (a) a person who has submitted an opt-out request to that member, (b) a person who has registered a pre-emptive block with a registry established by the National Consumer Commission, or (c) a person who has registered a pre-emptive block with a registry established by WASPA.

16.11. A member may not engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing other than as provided for above;

16.13. 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

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP and IPs' subsequent reply.

The Adjudicator understands the dissatisfaction of the complainant insofar it relates to messages that might come across as unsolicited. This dissatisfaction is further aggravated when a member of the public is of the opinion that a similar complaint against the same SP has not been dealt with appropriately and he / she then becomes victim to yet another incident involving the same SP.

The Adjudicator is of the opinion that this complaint has its roots in the SP's failure to address the original request of the complainant, quoted here for reference:

"I received a sms from long code 27820072295 on the 21 Oct 2014. Lodged a complaint with WASPA and was advised that I was unsubscribed. I requested proof of opt in whereby I consented to receive marketing messages but to date nothing has been provided."

The Adjudicator therefore concurs with the 2nd IP's statement as referenced here:

"We would also like to submit a query on the complaint's procedure as to whether the complaint specific to the message received by the complainant from Auto Pedigree, via the originating number 2782007229288014, which was routed via the Celerity Systems platform, should not have been separated from the formal complaint #25510 lodged initially with WASPA against SMSPortal, so that the complaint pertaining to the Auto Pedigree message would then follow the informal complaints process before a consideration of escalating the complaint to a formal complaint?"

The various responses given by the IPs, whether direct or indirect insofar it relates to the alleged breaches, are the only evidence the Adjudicator has and, based on its face value, does not meet the criteria for being indicative of breaches as indicated in the complaint.

The Adjudicator's opinion in reaching this conclusion is based on the fact that provisions for opt-out were given, that the complainant did not utilise this option and that the various IPs in this matter did supply evidence of having obtained opt-in from the complainant.

Without having any subsequent reply by the complainant rebutting the responses provided by the IPs, the Adjudicator is of the opinion that none of the alleged breaches occurred.

However, the Adjudicator is of the opinion that the SP in this matter has failed to address the original query, and therefore breached section 16.13 of the code, which in the opinion of the Adjudicator, contributed to the frustration of the complainant and subsequently gave rise to this complaint.

The Adjudicator is therefore of the opinion that a formal complaint be lodged against the SP for a possible breach of section 16.13.

The complaint against the two IPs is dismissed.