



REPORT OF THE ADJUDICATOR

Complaint reference number:	25519
WASPA member(s):	iBurst (Pty) Limited
Membership number(s):	0150
Complainant:	Public
Type of complaint:	Unsolicited sms's
Date complaint was lodged:	2015-01-21
Date of the alleged offence:	Unknown
Relevant version of the Code:	13.1
Clauses considered:	16.9, 16.10, 16.11 and 16.12
Related cases considered:	n/a

Complaint

The complainant alleges that they received the following unsolicited direct marketing SMS message from the SP:

Keller Williams does it better. Thinking of selling your property? For a free evaluation, reply YES and we'll call you. Optout: STOP.

The complainant alleges that the direct marketing message sent contravenes clauses 16.9, 16.10, 16.11 and 16.12 of the WASPA Code of Conduct.

Service provider's response

The SP responded by confirming that the complainant's number has been added to its blacklist which would ensure that this problem does not occur again.

Sections of the Code considered

16. Direct marketing messages

Definitions

16.1. "Consent" means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information.

16.2. "Direct marketing" means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or (b) requesting the person to make a donation of any kind for any reason.

16.3. "Electronic communication" means communication by means of electronic transmission, including by telephone, fax, SMS, wireless computer access, automated calling machine, email or any similar technology or device.

Right to restrict unwanted direct marketing

Rights of consumers regarding direct marketing

16.9. A member may engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing, to a person who has given his or her consent.

16.10. A member may engage in direct marketing, or permit their facilities to be used for the purpose of direct marketing, to a person who:

(a) has provided the party responsible for sending the direct marketing communication with his or her contact details in the context of the sale of a product or services, and the responsible party's own similar products or services are being marketed, and

(b) has been given a reasonable opportunity to object, free of charge, and in a manner free of unnecessary formality, to such use of his or her details at the time when the information was collected and on the occasion of each subsequent direct marketing communication sent to that person.

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.

16.12. Any communication for the purpose of direct marketing must contain the details of the identity of the sender or the person on whose behalf the communication

has been sent and an address or other contact details to which the recipient may send a request that such communications cease.

Decision

The message sent by the SP to the complainant fall within the definition of direct marketing in terms of section 16.2 of the WASPA Code.

The SP has contravened section 16.11 in that it has engaged in or permitted the use of its facilities for the purpose of direct marketing, to the complainant without their consent being given, or without the complainant previously having provided their contact details to the SP in the context of the sale of the same or similar products or services as those being marketed by way of the relevant direct marketing message.

Although reference is made to Keller Williams in the body of the message, the details of the identity of the sender or the person on whose behalf the communication has been sent and an address or other contact details to which the recipient may send a request that such communications cease has not been directly stated.

The SP has therefore contravened section 16.12 of the Code in this regard.

The complaint is accordingly upheld.

Sanctions

I have taken into account that the SP has removed the complainant's number from its database in response to this complaint.

There do not appear to be any other complaints lodged against the SP for the same or similar contravention.

The SP is ordered to pay a fine of R2 500.00.