



REPORT OF THE ADJUDICATOR

WASPA Member:	W2M GmbH
Service Type:	Subscription service
Source of Complaints:	Public
Complaint Number:	25901
Code Version (CoC):	Code of Conduct 13.6
Advertising Rules (AR):	
Date of Adjudication:	14 April 2015
Other Adjudications referred to:	#23666

Complaint

1. On the 9 March 2015 the complainant lodged a complaint against Interband, providing the mobile number to which the unsolicited SMS was sent, as well as the link on the SMS, which redirected the complainant to a website on the URL of:

http://za.lpr.m4me.mobi/render/custompage?page=15272&ussd_string=*141*5*736

2. The complainant alleged that the following sections of the WASPA Code of Conduct (CoC) had been breached:

2.1. Section 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."

2.2. Section 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."

3. The complainant alleged that he had never given consent to any direct marketing, and that the website to which he had been directed, contained no details of the sender.

4. The complainant alleged that a similar complaint had been successfully lodged previously, and had been dealt with in complaint #23666.

5. The WASPA Media Monitor escalated this complaint into a formal complaint against W2 Mobile (the SP), when it was established that the website involved belonged to W2 Mobile and not Interband. The complainant declared that he was not satisfied when W2 Mobile, "removed his number from the database" (although the complainant had not opted out from the service) and also "blacklisted his number to ensure he can not receive any message from our company in the future".

SP's Responses

ALLEGED BREACH OF SECTION 16.9 and 16.12 OF THE COC

6. The WASP responded that their company "has no affiliation whatsoever with the company Interband", but admitted that the complainant's "MSISDN was contained in a database purchased by us in 2010 from a data broker, who is a member of DMASA and whose data is legitimate according to WASPA standards. The promotional SMS he received from their company read: "No power? Enjoy: [http://click-link.mobi /app/s/glrn6jc/wf8sg_000_000/?fid=\\$UNIQ\\$ /optout:sms-stop-30823/W2M](http://click-link.mobi/app/s/glrn6jc/wf8sg_000_000/?fid=$UNIQ$/optout:sms-stop-30823/W2M) subscription R4/day".

7. Despite being given this information by the WASP, the complainant insisted that his complaint was against Interband, which had been the respondent in complaint #23666, which had been successfully lodged by the complainant.

8. On being informed that this was a formal complaint against the service that they were providing, the WASP responded with an email attaching

8.1. Their formal response

8.2. A log showing the complainant's mobile number.

9. In response to the alleged breach of clause 16.9, the WASP alleges that the complainant's MSISDN had been known to them since 14th November 2009, when the user took advantage of their free Mobile Tube promotion. As can be seen from the events log the user opted in, using a Nokia E90 handset and IP address 41.121.55.128 (MTN assigned). By doing so, the user accepted the WASP's Terms and Conditions, in which clause 4 states: "4. *You agree to receive promotional messages in the future.*" His number was also contained within a database purchased by the WASP in 2010 from a data broker, who is alleged to be a member of DMASA and whose data - the WASP alleges - is legitimate according to WASPA standards.

10. Since his opt in of November 2009 the complainant has received several promotional messages from the WASP. He has not complained to the WASP, or at any other body, nor has he used any method available to opt out of receiving promotional messages from the WASP.

11. In response to the alleged breach of clause 16.12, the WASP alleges that:

11.1.1. The message supplied by the complainant does contain identity details of the sender; their company name (W2M) and service shortcode (30823) as well as marketing opt out directions. Clicking on the link, as the complainant states he did, takes the user to the landing page, with the service title, provider name, helpline number, email address, postal address and Terms and Conditions. The page also contains a link to a marketing opt-out facility (Stop promotion) whereby simply clicking on the 'NO' button will result in the user's number being automatically removed at no cost.

11.1.2. The page also contains a Contact link, which provides the company name and full postal address, as well as repeating the email address and helpline phone number.

11.1.3. It also contains a Help link, which fully describes the service and, again, repeats their name and contact details.

12. The log shows that the complainant has been receiving messages from the 14th of November 2009 up to the 5th of February 2015.

Decision

13. Complaint 23666 is a complaint against Interband concerning unsolicited SMSes. The adjudicator upheld the complaint and ruled Interband to be in breach of sections 4.1.2, 4.1.3, 5.1.1 and 5.2.1. However, the URL link that the complainant cites does not belong to Interband but rather W2 Mobile. As a result of the lack of a connection between the two companies, no cognisance is taken of complaint 23666 and it is irrelevant for the purposes of this adjudication.

14. The WASP member, W2 Mobile, states that the complainant opted in, using a Nokia E90 handset and IP address 41.121.55.128 (MTN assigned), in November 2009, and thereby accepted their Terms and Conditions, one of which is: 4. *You agree to receive promotional messages in the future.* This was proved by producing the call log. On the balance of probabilities it is accepted that this is likely to be accurate. The complainant has not alleged that marketing messages were sent after a request to cease sending the marketing messages. The complainant has incorrectly cited section 16.9 as the relevant clause preventing spam instead of section 16.11 which makes the sending of direct marketing messages aside from those messages allowed by clauses 16.9 and 16.10 a breach of the WASPA Code of Conduct. Nonetheless, based on the evidence in this complaint, there is insufficient evidence to prove a breach of clause 16.11 of the WASPA Code of Conduct.

15. The text of the link provided to the complainant does contain a shortened version of the company name (W2M) and service shortcode (30823) as well as instructions on how to opt out of receiving marketing SMSes. This URL has not been accessible by the adjudicator so the further statements regarding the sender information and opt out mechanisms alleged in 11 above, could not be tested. (It should be noted that some URLs are not designed to work on computers but rather only work when the request comes from a cell phone, so this is not necessarily conclusive proof that the URL does not work, nor did not work at the time of sending the SMS). However there is no allegation that the complainant did, in fact, send the word 'STOP' to the shortcode provided, nor that doing so would not have successfully unsubscribed the complainant had he done so.

16. The only remaining issue is whether the identity of the WASP when described as 'W2M' is sufficiently descriptive to allow the customer to know the identity of the sender. The full company name of the sender is W2M GmbH as can be found on the WASPA membership web site. As such 'W2M' even if very short and not very descriptive, is an accurate description of the company name (as 'GmbH' denotes that this is a company with limited liability in Germany). However the web site address of W2 Mobile is much easier to identify as being the identity of the sender and, bearing in mind that the message had approximately 30 other unused characters, there seems to be no reason why the WASP could not have described itself as 'W2 Mobile' rather than "W2M". As a result I find that while the WASP has complied with the literal meaning of section 16.12 it is understandable that the normal consumer would not know whether 'W2M' was the identity of the sender or some odd acronym used in SMSes. In the circumstances the WASP may wish to describe itself as 'W2 Mobile' rather than W2M in order to assist its customers to know the identity of the sender.

17. I find the WASP has not breached either section 16.9 (read with sections 16.10 and 16.11) or 16.12. The complaint is dismissed.

Sanction Imposed

18. No sanctions are imposed.
