

REPORT OF THE ADJUDICATOR

WASPA Member: Viamedia (Pty) Ltd (0043)

Service Type: Subscription

Complainant: Public

Complaint Number: 26132

Code Version: 13.6

Complaint

The complainant received an SMS saying, "Someone sent you a Photo MMS Message for [redacted]. Open it on. . . and Click SUBSCRIBE. (FREE MSG) boxza.me to optout smsStop".

In essence, the complainant submitted that this is an attempt to induce one to enter a subscription service and has no mention of the cost thereof.

Service provider's response

In essence, the SP submitted that it had a contract with the IP C4M in respect of the short code. However, it would appear that IP Tristar was responsible for the material. The SP denied liability on this basis. It explained its contractual relationship with C4M.

The SP also submitted that as soon as it became aware of the unacceptable behaviour, it contacted C4M and followed the correct WASPA protocol for a situation of this type.

This was confirmed by the media monitor.

Sections of the Code considered

The complainant identified the following clauses of the Code as relevant:

- 8.2 For a subscription service, the "pricing information" consists of the word "subscription" and the cost to the customer and frequency of the billing service.
- 15.4 A member must not require that a customer join a subscription service or notification service in order to claim as existing reward, to be able to redeem existing loyalty points or claim a similar benefit.

Decision

In most cases where an SP carries material for an IP and that material is in breach of the Code, the liability for the breaches lies on both or either the SP and the IP.

However, clause 3.4 of Version 13.6 of the Code specifically states that "A member is not liable for any breaches of this Code of Conduct resulting from services offered by a customer, if that customer is also a member of WASPA, provided that the member can also demonstrate that they have taken reasonable steps to ensure that the customer provides services in a manner consistent with the requirements of this Code of Conduct".

C4M and Tristar are WASPA affiliate members. Subsequent to receiving the file, I asked C4M to comment and ViaMedia to reply. While there are some disputes as to the contractual arrangements and "who knew what", no party has addressed me on the merits of the material.

That being said, based on what is before me, I am satisfied that the SP, both through its contract and behaviour, has satisfied the requirement of Clause 3.4 to "take reasonable steps to ensure that the customer" is consistent with the Code.

Given this, the SP is not liable for any potential breaches of the Code.

I am therefore referring this complaint back to WASPA to be lodged against C4M and Tristar, both of whom should be made aware that a response on the merits of the material is necessary.