

WASPA Member (SP)	Integrat & SMS Cellular
Information Provider (IP)	N/A
Service Type	Unsolicited Messages
Source of Complaint	Terence Peacock
Complaint Number	#3146
Code of Conduct Version	5.7
Date of Adjudication	17/03/2008

Complaint

The Complainant in this matter has raised several allegations of unsolicited messages (SPAM) received. In total he received four messages of which two fall outside the jurisdiction of WASPA. The other two messages are alleged to be originating from Integrat and SMS Cellular. A formal complaint was therefore lodged against Integrat and SMS Cellular concerning the following messages:

- “Please call +27768353607 Win! R10 000 on 1 Feb and subscribe to the best Gospel ringtones. Sms Z5 to 32900 Praise the Lord R 4.99 daily. Peach.”
 - “Please call +27768353607 Gr8 news! U qualify for up to R130 000 funeral cover from Hollard. SMS yr name to 31529. We will call back.”
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SP Response

Responses were received from both Integrat and SMS Cellular which will be referred to as the 1st SP and 2nd SP respectively.

1st SP Response

“Please call +27768353607 Win! R10 000 on 1 Feb and subscribe to the best Gospel ringtones. Sms Z5 to 32900 Praise the Lord R 4.99 daily. Peach.”

The spam messages which the complainant is referring to (problem message listed above) did not originate from a network provider or an information provider, but from a member of the general public as a request to call the sender back.

The above mentioned *please call* service is provided by MTN. This service allows MTN users to send a message free of charge, to another person (mostly friends and family) requesting them to contact them by entering the numbers *121* followed by, the person who is requested to call the requester's, cell phone number (in this scenario the complainant) and #. Vodacom provides a similar service *please call me*.

Although the *please call* service are utilized for advertising purposes by the networks seeing that it is a service that is provided free of charge, a service provider and information provider has no control over the date, time or by whom to whom the service is used.

It should also be kept in mind that the primary use or function of a *please call* is just that a *please call*, the use of the *please call* as an advertising medium is a secondary function and is consistently displayed beneath the please call message in every message sent.

Therefore a service provider and information provider can not be held responsible or accountable if a consumer receives a *please call* message.

Subscribers may request that their network provider does not allow these message to be sent to them if they so wish.

It would be advisable that the user approach his network provider (Vodacom, MTN or CellC) and request that the *Please call* service be blocked. If this not possible for the network, he should request that his friends and family stop using the free *Please call* services to request him to call them back.

The content of the *please call* message that forms the basis of the complaint, that was utilized for the advertisement, in addition complies with the advertising guidelines for SMS's as provided for by WASPA.

As such the service provider and information provider has adhered to the advertising guidelines.

Based on the above we believe that this complaint should be dismissed

2nd SP Response

“Please call +27768353607 Gr8 news! U qualify for up to R130 000 funeral cover from Hollard. SMS yr name to 31529. We will call back.”

The 2nd SP in this matter stated that the message did not originate from its system and that it would further consult with Hollard. This was with regard to the above message. In its follow-up it received the following response from Hollard.

“As per our telephonic discussion, we do not send the ads directly from Hollard. Just to explain how this works; we buy advertising space through an intermediary who has allocated slots with Vodacom. When a “please call me” messages are sent by the end user our ad message will be part of the “please call me”. We do not send the messages directly from Hollard or service provider.”

I hope that explains, we will be getting Vodacom to deactivate Mr Terence Peacock from receiving any advertising from please call me.”

Sections of the Code considered

The following sections of version 5.7 of the Code of Conduct were considered:

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- (c) the organisation supplying the originator with the recipient’s contact information has the recipient’s explicit consent to do so.

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her.

The Adjudicator is of the opinion that both the responses dealt comprehensively with the complaint at hand. Due to the similarities between the two messages it is only worth mentioning some of the issues raised in the responses.

The 1st SP for instance stated that:

“Although the *please call* service are utilized for advertising purposes by the networks seeing that it is a service that is provided free of charge, a service provider and information provider has no control over the date, time or by whom to whom the service is used.

It should also be kept in mind that the primary use or function of a *please call* is just that a *please call*, the use of the *please call* as an advertising medium is a secondary function and is consistently displayed beneath the *please call* message in every message sent.

Therefore a service provider and information provider can not be held responsible or accountable if a consumer receives a *please call* message.

Subscribers may request that their network provider does not allow these messages to be sent to them if they so wish.”

The 2nd SP raised a similar explanation in its response.

Being familiar with the process the Adjudicator agrees that this is a good summary of what the current situation is with the so-called “*please call*” messages. Although this way of advertising might be construed as invasive, it should be seen as an issue to be raised with the network operators. WASPA is strictly an association that regulates the Wireless Application Service Providers and does not have jurisdiction over the network operators. A disgruntled user in such a situation should consult the Electronic Communication and Transaction Act and follow the procedures set forth therein with regards to unsolicited messages that fall outside the scope of WASPA.

The Adjudicator is of the opinion that there was no breach by the SPs in this matter.

The Adjudicator also took note of the two SP’s effort in resolving the matter by following up with the relevant parties.

Neither the 1st or 2nd SP has had any control over the messages being sent nor were their services displayed in contradiction with the WASPA advertising rules.

The complaint is therefore dismissed.
