

WASPA Member (SP)	eXactmobile
Information Provider (IP)	N/A
Service Type	Unsolicited SMS & Unlawful conduct
Source of Complaint	Brett Ward
Complaint Number	#4165
Code of Conduct Version	5.7
Date of Adjudication	02/07/2008

Complaint

The Complainant felt that it was unreasonable for him to be billed R 1-00 in order to unsubscribe to a service that he has not subscribed to and claimed that the standard industry rate seems to be R 0-50. He further alleged that due to the fact that he has not subscribed to the service, such messages amounted to the sending of an unsolicited SMS.

SP Response

The Response provided by the SP is reproduced in full:

“Exactmobile responded directly to this client as follows:

Your complaint has been forwarded to me. The WASPA code of conduct clearly states that in order to unsubscribe the WASP may not charge more than R1.00. The reason for this is that if the subscriber pays R1.00, then the cost of the return SMS to advise the user that he has been unsubscribed is covered by the SMS. As in general the normal cost of an SMS is R0.86, this was felt to be a fair price to charge.

However at a WASPA meeting held on Friday last week, it was decided to make the cost no more than 50c. This is mainly due to numerous subscribers complaining about the R1.00

I trust that this answers your question and resolves your complaint.

The client responded as follows:

“No it doesn't. I still do not know who gave you the right to spam me without my permission.

It is absolutely disgusting that I have to bear the cost of both unsubscribing, and a return SMS. I will continue with this complaint as I have not given Exactmobile permission to harass me.”

I wish to respond to WASPA in more detail on this complaint.

This user or the user of this Mobile number registered on the Exactmobile Web site. When this user registered on the Exactmobile web site, the user selected the option to receive Mobile Marketing from Exactmobile. This is an option which the user can select when he registers on the web site.

The WASPA rules state that the request to unsubscribe must cost no more than R1.00. Exactmobile complies with these rules. As the user registered on the Exactmobile web site and agreed to the advertising on the web site, the user could have unsubscribed from the web site as well. Therefore the user would not have to spend R1.00, but have could have done this for free on the web site, the same place where he registered to receive the messages.”

Sections of the Code considered

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

2.9. A “commercial message” is a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

2.16. A “message originator” is the entity sending a commercial message and can be any person with a commercial arrangement with a WASP to send commercial messages, or a WASP directly.

2.22. “Spam” means unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1.

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 provided to him/her.

In this matter the Complainant raised the fact that he paid too much (R1-00) in order to unsubscribe himself from an unsolicited SMS.

The Adjudicator therefore has to adjudicate whether the unsolicited sending of an SMS took place and whether unsubscribing to a service to the amount of R 1-00 was validated in this instance.

In carefully reviewing the complaint and the SP's subsequent response the Adjudicator is of the opinion that there was indeed no instance of an unsolicited commercial message.

This is due to the Complainant's registration on the SP's website and his subsequent request to receive marketing material.

It is therefore held that the Complainant as recipient has requested the message as is detailed in section 5.2.1 a) of the WASPA Code of Conduct, fulfilling the exception criteria to unsolicited commercial messages.

The Adjudicator therefore is further satisfied that the SP has complied with section 5.3.1 of the WASPA Code of Conduct.

With regards to the cost of unsubscribing, it is contended that R 1-00 during the period in which the alleged breach took place, was not exuberant and indeed industry standard although it has since been amended.

Also, since the subscription took place online over the Internet, it is also the opinion of the Adjudicator that the Complainant had more than ample recourse to

unsubscribe on the same medium on which he subscribed, without incurring any costs to unsubscribe.

The Complaint is dismissed in full.
