



REPORT OF THE ADJUDICATOR

WASPA Member (SP) iTouch

Information Provider (IP) RCS
(if any)

Service Type Unsolicited commercial message

Source of Complaints Mr C Wolmarans

Complaint Number 4738

Date received 25 August 2008

Code of Conduct version 6.1

Complaint

The complainant received the following message from the IP:

*"Need Cash? Call RCS on 0861 729727 to apply NOW! Offer expires 22/09/08.
T&C on www.rcsgroup.co.za. To no longer receive further offers call 0861 729727"*

The complainant sent an e-mail request to the IP requesting that he be removed from the IP's database and that he no longer receive any unwanted marketing or promotional material from them. He also requested the full company and contact details of the third party who had provided his contact details to the IP, having previously been advised that they were obtained from a *'reputable company that I have previously dealt with in the past'*.

Unfortunately, the IP failed to respond and the current formal complaint was lodged by the complainant.

SP Response

After being notified of the complaint, the SP failed to respond timeously. After receiving a further reminder, the SP advised that it had not received the previous notification and asked for an extension of time. The request was granted and the SP was granted a further 5 days to respond. Once again the SP failed to respond despite a further reminder.

Sections of the Code considered

5. Commercial communications

5.1.7. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.

Decision

In the absence of a response from the SP, I must assume, in terms of section 13.3.5 of the WASPA code, that it does not wish to respond.

Section 5.1.7 of the Code carries through the obligation created by section 45(1) of the Electronic Communications and Transactions Act 25 of 2002. The complainant's request in terms of this section has not been answered adequately and the SP is therefore in breach of section 5.1.7.

Sanctions

There has been a previous ruling against the SP in respect of unsolicited sms's sent by this same service provider and this must be taken into account as an aggravating factor.

The fact that the SP has failed to provide any form of response is also viewed in an unfavourable light, especially since it had been granted an extension in this regard.

The SP is ordered to:

1. Provide the complainant with the full name and contact details of the third party from whom the IP received the complainant's contact number; and
2. Pay a fine in the sum of R2 000.