

WASPA Member (SP)	eXactmoblie
Information Provider (IP)	N/A
Service Type	Unsolicited Messages
Source of Complaint	Anthony Waddell
Complaint Number	#4741
Code of Conduct Version	6.1
Date of Adjudication	20/09/2008

Complaint

In this matter an unsubscribe request has been escalated to a formal complaint as it has not been satisfactorily resolved by the SP.

The Complainant who escalated the request has provided the following reason for escalation:

- 1) They must stop sending me such SMS
- 2) They must explain who provided my number
- 3) Explain how they can force OPT-out as an expensive R1
- 4) Commit to never do this again

In the original complaint the Complainant stated the following:

“I’ve just received an unsolicited sms from eXactmobile. I have never given them permission to send me sms's. They provide a STOP sms number, for which I have pay R1.”

SP Response

In its response the SP provided the following explanation:

“The user who escalated this request has provided the following reason for escalation: Complainant requested the following:

- 1) They must stop sending me such SMS**

Exactmobile has blacklisted this Mobile number on it's system. Therefore no marketing Messages from Exactmobile will be sent to this number ever again.

2) They must explain who provided my number

Exactmobile runs services for many Information providers. This person was sent a message from one of our information providers. When a list of numbers was extracted of users that had interacted with Exactmobile some numbers of users of our information providers were extracted in error. This error has now been fixed. We advise our IP's that their numbers will not be used and are kept confidential. We enforce this policy. We have made system changes to ensure that this does not happen again.

3) Explain how they can force OPT-out as a expensive R1

The current WASPA rules advise us that by the 1st October the unsubscribe must be changed to the lowest rate available. We have just received 50c numbers from the networks for this purpose and these are currently being implemented as the unsubscribe. Until the 1st October the use of R1.00 numbers is allowed.

4) Commit to never do this again

Exactmobile has blacklisted this number on our system and therefore no marketing messages from Exactmobile will ever be sent to this user again.

Sections of the Code considered

Without the Complainant specifying which sections of the Code were breached, the Adjudicator, after reviewing the Complaint, considered the following sections of version 6.1 of the Code of Conduct:

5.1.3. Any mechanism for allowing a recipient to remove him or herself from a database must not cost more than one rand.

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 (within the last six months) 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.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. In this matter the Adjudicator has reviewed the complaint and taken note of the alleged spam. In its response the SP did not deny the allegation but provided a reason as to why the Complainant received the unsolicited messages.

It has further become clear to the Adjudicator that this was in fact not a subscription service and that the SP responded immediately to alleviate the original complaint by removing the Complainant from its marketing database.

The basis for the formal complaint seemed to stem from the Complainant's dissatisfaction for paying R1.00 to stop receiving a message that was unsolicited in the first place. Although the SP explained his rights in terms of section 5.1.3 of the code, note must be taken of the fact that this only implies to solicited commercial messages and not to unsolicited messages.

The Adjudicator is satisfied with the remainder of the SP's response and it is the Adjudicator's contention that there was no malice on behalf of the SP.

However, it is not the responsibility of the consumer to carry errors on behalf of the SP, whether these errors were caused by innocent mistakes or otherwise.

The Adjudicator is therefore of the opinion that the SP did indeed seem to have breached section 5.3.1 of the code. However, the SP has to be commended for its compliance with section 5.3.2 and its efforts in rectifying the errors that related to the complaint's origin.

The complaint is partially upheld.

In determining sanctions against the SP the following factors are considered:

- The prior record of the SP with regard to breaches of the relevant sections of the WASPA Code of Conduct; and
- The SP's immediate actions and follow-up with the Complainant.

The SP is fined an amount of R 5 000, 00, payable to the WASPA Secretariat within 5 days of notification of this Adjudication.

The SP is also ordered to refund the Complainant with R20, 00 for any inconvenience caused within five (5) days of notification hereof.
