



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Securicom Messaging
Information Provider (IP):	Not applicable
Service Type:	Unsolicited SMS
Complainants:	Chris Rolfe
Complaint Number:	5746
Code Version:	6.2
Advertising Rules Version:	N/A

Complaint

This is a brief summary of events unfolding:

Complaint #5746 was lodged in respect to an unsolicited sms received.

- The WASP was notified on 2009-02-10, and acknowledged receipt on the same day.
- Correspondence from the WASP to the complainant resulted in the complaint being closed informally on 2009-02-19.
- However a further complaint (#5885) was lodged after repeat unsolicited sms were received.
- Complaint #5885 was closed, and #5476 re-opened as a formal complaint with additional information on 2009-02-25 and the WASP acknowledged receipt the same day.
- Further correspondence from the WASP and their client was sent to the complainant for resolution. However the matter was not informally resolved.

The complainant wrote the following:

"Unsolicited SMS sent to me for a second time by this organization (virgin lifecare/securicom), I had one of these last week and complained to WASPA.

The response was: I quote my clients response mail:

"This member is a Virgin Active staff member on our system and hence he received the SMS as part of an internal staff communication which was sent to all Virgin Active and Virgin Life Care staff members. I am

following up with Virgin Active to confirm that he is in fact still a staff member, as if reflected on our database. In the meantime, I have removed his details from our communication list."

I have not contacted the service provider and believe this matter requires WASPA's attention."

The Complainant then went further and stated the following:

"Their response seems pretty feeble in my opinion. Please review the date of the first infraction and the comment in the email excerpt below:

"...It seems that the latest SMS sent to Chris Rolfe had already been scheduled and queued before the original complaint..."

How far in advance do they queue their message of a standard marketing nature such as the one I received?"

Service provider's response

To clarify the sequence of events, some facts containing the Complainant's statements are provided together with the SP's response.

The SP's representative was informed by their client, Virgin Life Care, that the Complainant was an actual staff member of Virgin Active and due to this fact received the sms as a part of internal staff communication. After the complainant had stated that the complaint hadn't been resolved to his satisfaction the SP sent the following reply to WASPA:

"My client, who sent the SMS, is copied in this mail.

The complainant's Cell phone number was listed as a staff member of my client. The SMS was send as part of internal communication and thus the complainant received the SMS.

I have requested my client to address this, after which the cell number was removed from my client's distribution list.

I quote my clients response mail:

"This member is a Virgin Active staff member on our system and hence he received the SMS as part of an internal staff communication which was sent to all Virgin Active and Virgin Life Care staff members. I am following up with Virgin Active to confirm that he is in fact still a staff member, as is reflected on our database. In the meantime, I have removed his details from our communication list."

This issue was handled promptly and sufficiently, but I would appreciate it

if the complaint can inform us, as to how he would have otherwise wanted us to handle this scenario.”

The complainant agreed to be a Virgin Active member and Virgin Life Care member but stated the following:

“I have not ask them to send me communications via email.
The onus is on them to prove that I asked to be contact via SMS”

The SP's client Virgin Life Care, contacted the complainant and presented the following explanation after which the complaint was closed (19.02.09) due to the complainant's satisfaction:

“Together with Virgin Active, we are currently running a staff campaign called 'Get Moving'. The purpose of this campaign is to encourage all Virgin Active and Virgin Life Care staff members to become more active through the logging and tracking of their exercise sessions and measurements. Our records do show that you have opted out of receiving SMS communication from Virgin Life Care, but due to the fact that this SMS was an 'in-house' staff communication and not a direct marketing SMS, this 'opt out' was not applicable. The Virgin Active database states that you have a STAFF – permanent (classic) membership which is why you were included in this communication to all staff members.

Upon further investigation, we have been informed that you are in fact no longer a Virgin Active Staff member and I can assure you that you will not receive any future SMS communications from Virgin Life Care. I apologise for the inconvenience caused by this misunderstanding.”

The complaint was re-opened as a formal one on the 25.02.09 due to the fact that another unsolicited sms was received.

SP's client, Virgin Life Care sent the following explanation:

“It seems that the latest SMS sent to Chris Rolfe had already been scheduled and queued before the original complaint was received and so was sent out to him even though his details had already been removed from our database. I have been assured now that there are no longer any pending SMS queues and so he should not receive any SMS communication from us again.”

The complainant was not satisfied and sent the following:

“Their response seems pretty feeble in my opinion. Please review the date of the first infraction and the comment in the email excerpt below:

“It seems that the latest SMS sent to Chris Rolfe had already been scheduled and queued before the original complaint. How far in advance do they queue their message of a standard marketing nature such as the one I received?”

The SP replied:

“As my client have mentioned before, this was an internal campaign run for several weeks. If you look at the messages you clearly see it makes note of the weeks. (2 weeks and 4 weeks) Please refer to the below details of the SMS send.

The SMS where scheduled in advance because the campaign was not intended to change or stop in the middle and thus the messages was scheduled before hand.

2009-02-09 11:49:09 +27100101 +27726256505 Get Moving week 2! Take your weight at the HealthZone and log 2 exercise sessions at the HealthZone or on the LifeZone before Friday - great prizes to be won!

2009-02-24 09:22:37 +27100101 +27726256505 Get Moving week 4! Take your weight at the HealthZone and log 2 exercise sessions at the HealthZone or on the LifeZone before Friday, great prizes to be won!

I have notice that the complainant is also a WASPA member and SMS Service provider. Surely he should also be familiar with exactly this type of situation and that we can schedule SMS campaigns in advance?”

The SP's client Virgin Life Care, forwarded the following:

“With something as predictable as an internal staff event we try to be as efficient as possible with our IT resources and will set up the communication for the full 6 week campaign. Because of the nature of the campaign nobody would opt out throughout the 6 weeks and it was not anticipated that non staff members would be on the VASA database as staff members. Although we have taken his details off our dataset we have also asked Virgin Active to correct this as a matter of urgency on their database.”

Sections of the Code considered

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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.

5.2.2. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

5.3. Prevention of spam

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. The Adjudicator has taken note of the SP's response.

Throughout this matter the SP has done everything possible to try and alleviate the situation the Complainant had found himself in. The SP has also provided its full co-operation with WASPA and upon becoming aware of the complaint, made sure that the Complainant was removed from its database.

In this specific matter, the SP acted on instruction of its client and scheduled a SMS campaign in advance. It sent SMSs to a database, VASA, provided by its client aimed at internal staff.

Section 5.2.1 of the Code inter alia states that any commercial message is considered unsolicited (and hence spam) unless:

the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

In the opinion of the Adjudicator, it would seem that all staff members who were on the SP's client's database have provided such consent. The SP in conjunction with its client would therefore have been under the impression that SMSs were only sent to those staff members.

It seems clear that due to an administrative error, the Complainant's name and number got added to this database, due to its subscription as a gym member of the SP's client.

It is the opinion of the Adjudicator that there was no malicious intent on behalf of the SP or its client to send these specific SMSs to the Complainant.

With regards to the additional SMS received, the Adjudicator is of the opinion that the SP supplied a reasonable response and the Adjudicator can here also find no malicious act on behalf of the SP.

The Complaint is dismissed.
