



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Two Screens Ltd
Information Provider (IP):	Not applicable
Service Type:	Spam SMS
Complainants:	Craig Allan
Complaint Number:	5769
Code Version:	6.2
Advertising Rules Version:	N/A

Complaint

The Complainant lodged the following complaint:

“Spam from 36306. I am unable to determine who the service provider is. SMS as follows between the lines: FreeMsg: txt YES to 36306 and claim your reward of 150 SMS to use from www.textpeek.com! Subscribe 10R/week inc 150 sms pm.16 stop? Txt Stopwww.textpeek.com. This spam originated from 36306 at 11:36 on 13 February 2009. If the spammer and network provider are prosecuted I am willing to make sworn affidavits and statements and to appear in court to ensure a successful prosecution.”

Code Breached: 4.1.1, 5.1.5, 5.2.1a, 5.2.1b, 5.2.1c, 5.3.1, 5.3.2.

4.1.1 Spammer did not provide details of the cost of sending a STOP notice. It could be the case that a STOP notice could incur the maximum premium service charge.

4.1.1 By replying I could be giving tacit agreement to a subscription service or be forming a relationship which would allow them to spam me.

5.1.5 No clear detail is provided on how to stop this spamming. Cryptic message conflicts with principles and clear example provided in Sec 5.1.5

5.2.1a I did not request this message.

5.2.1b I have no commercial relationship with the originator and do not expect to receive their junk mail.

5.2.1c I have NOT given my consent to them sending this message to me.

5.3.1 The originating network has not taken steps to prevent spamming. The message is proof.

5.3.2 The originating network has not taken any steps to deal with this spam. It is hiding behind a short number (36306) that gives no indication of which network is responsible for this spam.

Service provider's response

In its response, the SP stated the following:

"Code Breached:

>>4.1.1 Spammer did not provide details of the cost of sending a STOP notice. It could be the case that a STOP notice could incur the maximum premium service charge.

Point 4.1.1 of the code of conduct states: "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"

Pricing information for the service is clearly visible in the promotional text message, I refer you to the following: "Subscribe 10R/week inc 150 sms" In regards to the customers issue with the price of the STOP message - there is no price on the text as it does not cost anything to text in STOP to our shortcode. The customer's statement; "It could be the case..." is pure speculation and I don't see how it is relevant in a complaint. It clearly states to subscribe you must text in YES and only YES: "txt YES to 36306"

>> 4.1.1 By replying I could be giving tacit agreement to a subscription service or be forming a relationship which would allow them to spam me.

Again this is speculation on the customer's behalf and the only way to form a relationship with the service provider or the service is to text in YES as stated above.

>>5.1.5 No clear detail is provided on how to stop this spamming. Cryptic message conflicts with principles and clear example provided in Sec 5.1.5

5.1.5 of the code states: "Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message"

Section 5.1.5 in the code only relates to customers who have subscribed to the service. Every customer that texts stop to our shortcode received an adequate reply in line with the code of conduct. We also send out monthly

reminder messages to our subscribers stating customers are subscribed to our service and we also give clear instructions on how to stop. Please see below for the message: "Thank you for using Text Peek. Your account has been topped up to 150 credits. Subscribed at R10 pw. To stop, reply with STOP. Support : 0114613253" In direct response to the customers problem with how to stop receiving messages it clearly states on the promotional message: "stop? txt STOP" Text messages have limited space however we ensure all aspects are covered, I believe that anyone could understand the above example indicates how to stop receiving messages.

>>5.2.1a I did not request this message.

We were provided opt in information for the number in question and as a service provider had no reason to doubt the user had opted in to receive promotional messages. Our data partner gave us the following details of how the user opted in to receive marketing messages: User accessed www.gototonez.com from IP: 196.35.158.184 at 2008-10-17 08:03:17

>>5.2.1b I have no commercial relationship with the originator and do not expect to receive their junk mail.

Again we were provided opt in information which suggests otherwise.

>>5.2.1c I have NOT given my consent to them sending this message to me.

See opt in information supplied.

>> 5.3.1 The originating network has not taken steps to prevent spamming. The message is proof.

The message was not spam based on the opt in information we had in our database.

>> 5.3.2 The originating network has not taken any steps to deal with this spam. It is hiding behind a short number (36306) that gives no indication of which network is responsible for this spam.

We have live support staff, working within office hours, manning our South African support number as per the code of conduct. We also have a proficient voicemail service should the user call out of hours or when our support staff are currently on calls. All voicemail messages are dealt with and the customers called back within 1 working day of leaving the message. All customers are dealt with fully, until the customer is truly satisfied.

The customer in question never contacted us. They did however contact our aggregator, Integrat, who in turn contacted us with a request to block the number and remove it from our database. We did this immediately upon receipt of the request and informed Integrat that we had done so. The promotional message contained our shortcode, which is registered to us, and our website where there is full contact details. There is no malicious

intent to hide our identity - we have a fully compliant service that has been ok'd by all networks and aggregators.”

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.

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent.

5.1.4. For SMS and MMS communications, a message recipient must be able to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). If replying 'STOP' as set out in 5.1.3 will result in a charge greater than the lowest tariffed rate available, then instructions for the lowest tariffed rate opt-out must be included in every message sent to the customer.

5.1.5. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

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 and has also reviewed the terms and conditions displayed on the website where it is alleged the complainant registered.

The Adjudicator concurs with the SP on the allegation surrounding section 4.1.1 purported by the Complainant in this matter. This is nothing but mere speculation.

The issue raised by the Complainant pertaining to section 5.1.5 is not in the mind of the Adjudicator a valid allegation and there is nothing indicating that the information provided, is cryptic in nature.

A breach of sections 5.2.1 (a) – (c) is not founded. The SP indicated that the Complainant registered on the website www.gototonez.com. The terms and conditions on the website stipulate the following:

By entering your mobile details on this site, you accept that we have the right to send you (free) marketing messages promoting similar products and services to you, and you also accept that our preferred partners may also offer you 3rd party marketing and promotions of products and services we think you may enjoy. By entering your mobile details on this site, you also acknowledge that such promotions may be some time in the future from when your initial details were entered. You may choose not to receive any promotional messages from us or our partners, by replying to the promotional message with the word STOP at any time.

The Complainant therefore gave his consent to receive commercial marketing and can there be no assumption of unsolicited marketing.

Although the Adjudicator cannot concur with the Complainant that a breach of sections 5.3.1 and 5.3.2 occurred, the Adjudicator is of the opinion that a breach of section 5.1.1 took place. Section 5.1.1 states that all commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

The Adjudicator is of the opinion that the SP in this matter did not make provision in identifying itself appropriately. This would therefore make it difficult

for a consumer to contact them. Nothing in the message sent, or anything contained in the allotted website, gave an indication of who the message originator is.

The SP is therefore found to be in breach of section 5.1.1 and the Complaint is partially upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct;

The SP is given a formal reprimand in assuring that it complies in future with section 5.1.1.

The SP is further ordered to amend its advertising in order to comply with the Code before further placement and subsequently instructed to withdraw any current advertisements which are not complying with the said Code (including the disputed message in this matter).

The WASPA Secretariat is also ordered to instruct the WASPA Monitor to ensure that the SP is indeed complying with this.
