



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Buongiorno UK
Information Provider (IP)
(if any)
Service Type Subscription
Source of Complaints WASPA Secretariat
Complaint Number 7452
Date received 27 August 2009
Code of Conduct version 7.4

Complaint

The SP has failed to comply with some of the sanctions imposed by the adjudicator for a previous complaint 4677. This is a breach of clause 13.3.6 of the WASPA Code and the matter has been once again referred for adjudication.

The SP did pay the fine imposed, but has failed to provide confirmation that all subscribers had been refunded.

The relevant sanction imposed in the previous complaint was as follows:

All subscribers who have been billed from the time the contravening advert was first flighted must be refunded and written confirmation that such refunds have been paid must be furnished to the WASPA Secretariat within 10 (ten) days of the SP being notified of this decision.

The SP has failed to provide WASPA with confirmation that all subscribers had been refunded.

SP's response

The SP states that it had stopped using the keyword "FREE" in all of its advertising and erroneously believed that the matter was then resolved. On receiving notification of this complaint, the SP then initially stated that it had to request all MSISDN's that had sms'd in the keyword "free" when the original advertisement was running.

The SP subsequently responded that it was not able to supply the list of MSISDN's due to issues of customer confidentiality. The SP then asked whether they should send a message to these MSISDN's, and what the content of such message should be.

Sections of the Code considered

13.3.16. If no appeal is lodged, or if the adjudicator has specified certain sanctions as not being suspended pending an appeal, the failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

Decision

I am not satisfied with the SP's explanation for its non-compliance with the sanction imposed in complaint 4677. Firstly, the furnishing of the requested information to WASPA would not constitute a breach of the SP's duty of confidentiality to its customers. Secondly, the SP's internal administrative procedures, and consequent delays, for furnishing the requested information is of no concern to WASPA.

The SP simply has to confirm whether it has refunded all subscription fees to the relevant subscribers. The fact that it has failed to provide WASPA with such confirmation is not only a breach in itself, but also leads to an adverse inference being made that no refunds have been paid.

This complaint is accordingly upheld.

Sanction

The SP is suspended from WASPA until such time as it has complied with the relevant sanctions imposed by the adjudicator in complaint 4677.