



REPORT OF THE ADJUDICATOR

WASPA Member	Cellsmart
Service Type	Distribution list
Source of Complaints	Public
Complaint Number	7734
Date lodged	1 October 2009
Code of Conduct version	7.4

Complaint

This complaint is an escalation of an unsubscribe request lodged with WASPA by the complainant. The WASPA Secretariat referred the matter to adjudication after the member failed to respond to the request. No response was received from the member to the formal complaint when this was lodged with them.

The adjudicator has reviewed the various automated and non-automated notifications and requests sent to the member, and is satisfied that more than sufficient notice was given to the contact addresses provided for the purpose of receiving such notifications.

The original complaint lodged reads as follows:

"I have opted out several times from CellSmart sms's to me. I have called their offices both in Johannesburg and Cape Town and asked to be removed as well as sending them an unsubscribe request via the contacts page on their website. My last call to them was on 13 April 09 and I spoke to Lisa. I also spoke to one of their employees on this number 073 895 8164 prior to 13/4 to unsubscribe. I am still getting their corporate promotional sms's, the last one being received on 11 Sept 09 - Please remove MSISDN from your mailing list."

Sections of the Code considered

The following sections of the Code were considered:

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. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

Decision

1. In the absence of any response from the member the Adjudicator can only accept the version advanced by the complainant and find that the member has breached section 5.1.2 of the Code of Conduct.
2. The member has an excellent record as regards compliance with the Code, and the Adjudicator is reluctant to impose a punitive sanction in this matter. Nevertheless, the success of WASPA in regulating the industry and protecting consumers is dependent on the co-operation of members. The complainant has been unnecessarily inconvenienced and has had to take the time to pursue the matter through WASPA in order to achieve something which could and should have been sorted out immediately.
3. The following sanction is imposed:
 - 3.1. The member is ordered to provide the complainant with a written letter of apology.
 - 3.2. The member is ordered to ensure that the complainant is unsubscribed from all distribution lists which it controls and to confirm that this has been done in writing to the WASPA Secretariat. The member is reminded that any failure to comply with a sanction imposed and which has not been appealed is itself regarded as a further contravention of the Code which could lead to the imposition of more severe penalties.
 - 3.3. The member is fined the sum of R1 000, payable to the WASPA Secretariat within five (5) days of date of receipt of the relevant invoice from the WASPA Secretariat.
 - 3.4. The member is ordered to confirm their primary and secondary contact details as required by section 3.10.1 of the Code.
4. The Secretariat is requested to use all reasonable measures to bring this Adjudication to the attention of the member and to ensure that the member appreciates its responsibilities as regards unsubscribe requests and responding to requests for information from the Secretariat.