



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Opera Interactive

Information Provider (IP)
(if any)

Service Type Subscription service

Source of Complaints Mr G Willemse

Complaint Number 8321

Date received 15 December 2009

Code of Conduct version 8.0

Complaint

The complainant logged an unsubscribe request on the WASPA unsubscribe system on 2 December 2009. The SP responded by unsubscribing the complainant. However, the complainant was not satisfied with the response and this matter has been escalated as a formal complaint for adjudication.

The complainant was receiving sms messages from a firm of attorneys threatening legal action. He replied to these messages and provided the attorneys with his telephone number to call him. No further legal action was taken and he requests that the messages be stopped as they were unsolicited.

SP's response

The SP confirmed that it provides the sms service on behalf of VVM attorneys, who in turn are acting for the SABC. The attorneys have indicated that legal action is being taken against the complainant. The attorneys also state that the telephone

number was provided by the complainant himself, hence they believe they are within their rights to correspond in this manner. Due to the confidential nature of the proceedings, the attorneys elected not to provide further particulars of their client's claim, other than to say that Mr Willemse owed their client an amount which he had committed to settle but had not yet done so. Upon final settlement of this account the legal processes would be suspended.

Sections of the Code considered

2.8. A “**commercial message**” is a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

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

Based on the information provided, it appears that the complainant is currently indebted to the SABC for an amount less than R100. The SABC have instructed a firm of attorneys, VVM Attorneys, to recover the amount owing from the complainant.

VVM have, in turn, used the services of the SP to send the complainant numerous sms messages claiming the amount owing and threatening legal action if he fails to pay.

The sms messages sent to the complainant are not commercial messages as defined in the WASPA Code of Conduct, in that they are not designed to promote the sale or demand of goods or services.

The sms messages sent to the complainant are legal correspondence. The question of whether the frequency or nature of such correspondence is unlawful falls outside the jurisdiction of WASPA and should be referred by the complainant to the relevant law society having jurisdiction over VVM Attorneys.

The complaint is accordingly dismissed.