



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	ViaMedia
Information Provider (IP):	Not applicable
Service Type:	Subscription service
Complainant:	Competitor
Complaint Number:	8681
Code Version:	9.0
Advertising Rules Version:	Not applicable

Complaint

Complainant states that he received unsolicited sms's from the WASPA member constituting spam.

Service provider's response

The WASPA member responded via a detailed and comprehensive email in which they canvassed each and every aspect of the sections of the Code complained of namely clauses 5.1-5.3. An extract of the email is set out below:

“The Complainant sites various breaches in section 5 dealing with commercial communications. Namely sections 5.1, 5.2 and 5.3. He doesn't elaborate specifically on what the contraventions are, so we will therefore have to address each and every clause:

For convenience we have quoted the clauses and his comments in italics, with our response below in **BOLD** type .

“5.1. Sending of commercial communications

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

There is no contravention of the above. The complainant himself sites the required originating number, namely +2782004824002287, of the message with is required in the clause above.

“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.”

There is no contravention of the above. As required there is an opt out facility on the service number itself. A simple reply of STOP or OUT to the Originating number would have removed the user.

"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."

There is no contravention of the above. As explained above a reply of STOP or OUT would have taken the recipient off the database. These instructions were included as required in the SMS sent, as confirmed by the Complainant himself.

"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."

There is no contravention of the above. The reply of STOP or OUT is at the lowest tariff available.

"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."

There is no contravention of the above. The reply of STOP or OUT results in an immediate response from the system, confirming that the user has been removed from the database.

"5.1.6. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the service provider must honour the opt-out request as if the word 'STOP' had been used."

There is no contravention of the above. The use of any of those words listed results in the user being removed from the database as if STOP had been sent.

"5.1.7. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained."

There is no contravention of the above. Any enquiry to our call centre will result in a response with all the information required above. In this case the Complainant was sent the required details and our Managing Director even followed up and spoke to the Complainant on the phone.

5.1.8. Commercial communications may not be timed to be delivered between 20:00 and 06:00,

unless explicitly agreed to by the recipient, or unless delivery during this period forms part of the upfront description of the service.

There is no contravention of the above. The message was delivered in the allowable time period.

“5.2. Identification of spam

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.

There is no contravention of the above. Case b) above is satisfied as the complaint had a direct and recent commercial relationship with the company offering the service. This was demonstrated to him and explained and can be easily verified if required. Therefore the message is not considered spam.

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.

This clause is not relevant in these circumstances.

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.

We do everything in our power to prevent our customers sending Spam through our systems. Should we discover that Spam was sent we would terminate the relationship with that customer unless there were mitigating circumstances. To date our company has never had a case where Spam was sent and neither is that the case here.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

We have a very good customer care centre and escalation process to satisfy the above requirement.

Addressing the specific content of the complaint, the Complainant wrote:

“I would like this service provider to immediately disclose where they obtained my contact details, as per section 45(1) of the ECT Act and I did not opt in to receive this message or pay for this subscription service”

We did, as requested, disclose to the Complainant where his details were obtained. And as demonstrated there was a direct and recent commercial relationship with the service provider.

"and would like to request to no longer receive any unwanted marketing or promotional material from this provider."

We did, as requested, immediately remove the Complainant from the database and he will no longer receive such messages.

"Since this is a subscription service costing the receiver money I would like this to be investigated if possible, this seems like a scam! I have not opted in to this subscription service of R3/day."

We are not sure exactly what is suggested here. The service is certainly not a scam. It is a legitimate content subscription service for Lotto, Powerball and Lotto plus numbers and information with benefits like the one promoted here where a number of official lotto tickets are bought (in this case 500 Powerball tickets) and any winnings pooled and distributed to members. A lotto club. This is quite clear in the message sent. "

Following receipt of this email the complainant was still not satisfied mainly in respect of the fact that he felt no recent and direct commercial relationship with the company offering the service had not been shown, nor had the source of where his data had been obtained been provided to him. In response to these reiterated complaints the WASPA member demonstrated, via a letter from the legal department of Autopage, the direct and recent commercial relationship and the source of the data. A copy of this letter is attached. The complainant continues to deny the relationship nonetheless and continues to complain of further sms contact.

Sections of the Code considered

5.1-5.3.

Sections of the Advertising Rules considered

N/A

Decision

I feel that the WASPA member has done everything required of it in terms of the Code of Conduct. Short of conducting their own investigation into verifying the obtaining of data legally for the purposes of sending sms's to customers by Autopage even in the face of a letter from their legal department, which I feel would be excessive and which is not required by the Code and I don't feel could in anyway be inferred into the Code, the WASPA member has done everything possible to satisfy the complainant and WASPA itself. The complaint is therefore dismissed

Sanctions