



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	HugeSMS Managed Messaging Solutions
Information Provider (IP):	Not applicable
Service Type:	Commercial service
Complainant:	Member of the public
Complaint Number:	8852
Code Version:	8.0
Advertising Rules Version:	2.3

Complaint

The complainant is a member of the public who lodged the following complaint with WASPA, apparently on behalf of his business partner who actually received the sms messages that form the subject matter of this complaint:

Constant sms messages advertising property that is for sale. I never subscribed or gave permission. Multiple faxes requesting to stop. Conversations with a manager who said he'd remove my number. They come repeatedly, daily.

Originating numbers include:

*+2782007086100020, +2782007086100021,
+2782007086100022, +2782007086100023,
+2782007086100024, +2782007086100026,
+2782007086100027, +2782007086100030,*

The complainant filed a follow-up to the initial complaint stating the following:

Anton deleted all the related SMSes from his phone. He did this as he received an sms from someone at Sothebys apologising and stating that no more sms messages would ever be sent.

However, over the past few days Anton has received numerous sms messages of the same nature from Sothebys (+2782007086100038 is one of the originating numbers).

Please can you pass on the result or actions taken for the original complaint and advise on the way forward considering the sender continues to send illegal messages.

Thank you

The complaint appears to be largely focused on unsolicited sms messages and the SP's apparent failure to remove the complainant from a contact database.

Service provider's response

The SP appears to have unsubscribed the complainant and blocked his number from the sms service it was operating roughly three days after receiving notice of the complaint. The SP also appears to have sent the complainant a notification of this fact.

Sections of the Code considered

Code version 8.0

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.

2.22. "**Spam**" means unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1.

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.

Code version 8.0
<p>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.</p>
<p>5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:</p> <ul style="list-style-type: none">(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.
<p>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.</p>

I have highlighted the sections of the Code I found to be particularly relevant.

Sections of the Advertising Rules considered [if applicable]

Not applicable.

Decision

The complainant made numerous attempts to have his partner's mobile number removed from the SP's contact database and even once the complaint or his partner was assured that the relevant was unsubscribed, a further message was sent to the number concerned.

It appears that the unsubscription requests sent to the SP or its customer were not complied with and it took a complaint to WASPA to have the number removed from the service.

The Code provides for sms unsubscriptions from commercial message services but does not appear to require that unsubscription requests only be made using this

medium. I see no reason why faxed requests that the number be unsubscribed should not be honoured and, in this case, they do not appear to have been honoured.

I therefore uphold the complaint.

Sanctions

The SP is fined R10 000 for its failure to expeditiously unsubscribe the complainant or the complainant's partner from its commercial message service. This fine is payable on demand by the WASPA Secretariat.