



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	PayPROFIT (Pty) Ltd / Celerity Systems
Information Provider (IP):	Not applicable
Service Type:	Unsolicited sms's
Complainants:	Anonymous
Complaint Number:	9845
Code Version:	9.0
Advertising Rules Version:	2.3

Complaint

The Complainant wrote:

Received SPAM message from short code 41659 saying
'Over indebted? Struggling to get by each month? pay what you can afford...
reply less to 41469, opt out sms "No"

I have not agreed to receive messaging as such, the message comes from a short code which is illegal as per Vodacom and there is no company information - I did not reply in fear of being subscribed to a stealth billing program."

The Complainant was not satisfied with the SP's response and wrote the following:

"I received no feedback from them at all - first time I've had feedback - Also this doesn't explain where the client got neither my number nor why they were allowed to do this. I would like it pressed further."

Service provider's response

The SP wrote:

"In response to complaint # 9845, Celerity Systems wishes to submit the following after an investigation of this complaint:

1. There is no record of the message having been sent from our system.
 2. The standard rated short code 41659, which is part of Celerity Systems' inventory, is allocated to the use of PayPROFIT, a WASPA Affiliate Member. It is suggested that this formal complaint be directed to PayPROFIT to resolve as it seems that a client of PayPROFIT is using the short code as a sender ID and had sent the message via another WASP.
 3. A further note: yesterday, prior to the receipt of this formal complaint from WASPA, we had noted a large number of unsubscribe requests related to the short code 41659. We then communicated this fact to PayPROFIT to investigate and are awaiting response from PayPROFIT.
- Please could the WASPA Secretariat advise what steps should be undertaken in regard to this complaint."

The SP redirected the complaint to the IP, PayProfit. They wrote:

"Thank you for the information.

1. I have contacted my client last week when this information became available with regards to using a premium rated SMS as a sender ID and he was not aware that it is against the rules.
2. He immediately disabled the use of his premium rated SMS as a sender ID and obtained long codes from another supplier for this purpose.
3. A standard rate premium SMS number was used so it does not appear as if an attempt was made to make money from the public with this method. It appears as if this error was made rather from lack of knowledge of what is allowable and what is not.
4. The message in question was also not sent from our systems, but from the client's own systems.

Can you please advise what other course of action needs to be taken."

Sections of the Code considered

4.2.2. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.

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.

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.

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

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SPs' subsequent response.

It would seem as if none of the SPs in this matter want to take any responsibility for the subsequent breaches of the Code.

The Adjudicator is however of the opinion that both Celerity Systems and Payprofit are responsible for the short code, although in this instance, it is Payprofit that will be held accountable for the **use** of the short code in question.

None of the pre-conditions in section 5.2.1 has been fulfilled and the Adjudicator has no hesitation in ruling that there was a breach of section 5.3.1.

There is also no certainty on how the Complainant's information was obtained but without any clear evidence, the Adjudicator is not prepared to rule on section 4.2.2.

The Complaint is upheld.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's subsequent response.

The SP (Payprofit) is instructed to inform the WASPA Secretariat of how its client obtained the Complainant's personal information. This must be communicated by the Secretariat to the Complainant in this matter.

The SP (Payprofit) is fined R50 000 for its breach of section 5.3.1 payable to the WASPA Secretariat within 5 (five) working days of notice hereof.

