



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Cointel (Pty) Ltd Cell C
Telephone Network(s)	MTN Vodacom
Information Provider (IP) (if applicable)	
Service Type	Unsolicited Commercial Messages
Source of Complaints	Public
Complaint Number	#0018

Complaint

A complaint was received regarding unsolicited commercial messages from “+27 83 920 0132” with a reply number being the short code “42408”. In addition, the complainant indicated that an unsubscribe option was given but unsubscribe requests were not honoured.

The Secretariat conducted an investigation into the service offered by the SP.

The following breaches of the WASPA Code of Conduct were raised:

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.

The following additional breaches were considered:

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 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. 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.

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

Investigation

The Secretariat received a response from the SP. The SP indicated:

- It is aware of the provisions of Clause 5.1 of the WASPA Code of Conduct governing the transmission of commercial messages and fully support and abide by these regulations;
 - There has been a period of transition in terms of ensuring that the correct fail safes are in place to ensure all unsubscription attempts are timeously actioned;
 - The complainant is a client of the SP and has previously purchased related products from the SP but should correctly have been unsubscribed when he previously sent through such request. The SP has experienced difficulties in differentiating which services the client wished to no longer receive any communication on, when all replies are received on a single bulk number. The SP indicated that the instant matter is, regrettably one of those cases that have “slipped through the cracks” prior to the implementation of a failsafe unsubscription protocol;
 - The SP has taken the action of unsubscribing the complainant from all commercial communication and the necessary steps have been taken to ensure that the SP is “100% compliant” with the WASPA Code of Conduct with effect from 1 September 2005.
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Decision

The Adjudicator upheld the complaint in respect of Clause 5.1.2 of the WASPA Code of Conduct.

The Adjudicator did not uphold the complaint in respect of Clauses 5.2 and 5.3 of the WASPA Code of Conduct. This decision was a direct result of the SP’s submission that the complainant had previously purchased content from the SP, thus creating a “direct and recent prior commercial relationship” as provided in Clause 5.2.1(a) of the WASPA Code of Conduct. The Adjudicator noted that the WASPA Code of Conduct does not give a complainant the opportunity to respond to the SP’s response and should the complainant wish to dispute such submission (in respect of the prior commercial relationship, or the remedial action taken by the SP, or otherwise), he will need to submit a further complaint.

The Adjudicator formally reprimanded the SP for its breach of Clause 5.1.2 of the WASPA Code of Conduct in failing to act timeously or at all on the complainant’s request to remove himself from the SP’s list of commercial message recipients. The Adjudicator found that there was no need for a sanction regarding rectification of the breach, as the SP has indicated in its response that the complainant has now been removed from the SP’s list of commercial message recipients.