



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 / Subscription Service
Source of Complaints	Public
Complaint Number	#0030

Complaint

A complaint was received regarding the receipt of unsolicited commercial messages and the unknown billings. The only number provided by the complainant was the short code "42408".

The complaint concerned charges for SMS messages appearing on the complainant's monthly bill which SMS messages the complainant alleges were not sent by him.

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

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

4.1. Provision of information to customers

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

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:

- The service is a subscription service.
 - The complainant is a client of the SP and subscribed for the service (on 02 August 2005, prior to the introduction of the WASPA Code of Conduct). The complainant then unsubscribed (18 September 2005) and this was confirmed with the complainant within a matter of seconds.
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Decision

The Adjudicator did not uphold the complaint as:

- The SP has shown a “direct and recent prior commercial relationship” as provided in Clause 5.2.1(a) of the WASPA Code of Conduct.
- Charges were levied in terms of a subscription service.
- The complainant subscribed for the subscription service prior to the introduction of the WASPA Code of Conduct.

The Adjudicator notes with concern the complainant’s alleged ignorance that he had subscribed to a subscription service, as this may indicate that the complainant was not adequately informed that the service is a subscription service. The Adjudicator concedes that the SP may be correct in its submission that the complainant is now attempting to avoid making payment for a service he initially and knowingly requested. It is highly relevant to note that the complainant unsubscribed from the service some eight days prior to instituting the complaint.

Certain WASPA members are advocating that all subscriptions for subscription services dating back prior to the introduction of the WASPA Code of Conduct should be terminated and subscribers would need to re-subscribe for the subscription service. Such a remedy is inappropriate in this matter and if it were appropriate, it falls outside of the Adjudicator’s authority to impose a sanction as stipulated in Clause 13.4 as read with 3.9 of the WASPA Code of Conduct.