



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Grapevine Interactive
Information Provider (IP): SA Home Loans (Pty) Ltd
Service Type: Commercial
Source of Complaints: Public
Complaint Number: 0182

Complaint

A complaint was received from a member of the public, who, although employed by a network, lodged the complaint in his private capacity. The complainant alleged that an unsolicited commercial message was received on 21 February 2006. Two other persons employed at the network also alleged that they had received the unsolicited commercial messages. The complainant alleged that the message was “spam” in that he had no prior commercial relationship with the sender and had not consented to the sending of the message.

SP Response

The SP did not submit a response, although a response was submitted by the IP who stated that their management team had been made aware of the complaint, that their email policy had been extended to cover all forms of electronic communications and that the issue had been addressed directly with the individual responsible for sending the message. The IP also apologised to the complainant.

Decision

Section 5.3.1 of the WASPA Code of Conduct provides that members must take reasonable measures to ensure that their facilities are not used by others for the sending of “spam”. The SP did not provide details of any measures that it takes to ensure that its facilities are not used for the sending of “spam”. To the extent that it has failed to take such reasonable measures, it could be held to be in breach of section 5.3.1 of the Code. I have not found it necessary to make a factual determination on this point as section 3.9 of the WASPA Code, in any event, provides that all members must bind any information provider with whom they contract for the provision of services to ensure that no service contravenes the Code of Conduct. SP’s can contractually oblige their clients to make payment of any fines that may be levied against the WASPA member or even take a security deposit or withhold revenue to cover possible fines.

Neither the SP nor the IP disputed the complainant's allegation that the message was an unsolicited commercial communication and the complaint is accordingly upheld.

Sanctions

The SP is directed to ensure that the names and contact details of the three persons mentioned in the complainant are removed from the IP's database (including the complainant). The other measures taken by the IP have been noted and are welcomed.

The SP is formally reprimanded and directed to make a copy of this adjudication available to the IP.

In terms of section 3.9.2 of the WASPA Code of Conduct, a member must suspend or terminate the services of any information provider that provides a service in contravention of the Code. It is noted, however, that this is the first complaint of its type to be lodged against the SP. Accordingly, the SP is directed to cease the provision any services to the IP for a period of 7 days from the date of this adjudication, which sanction is to be suspended for a period of six months provided that no further complaints of unsolicited commercial messages are upheld against the SP in respect of messages sent in that six month period on behalf of the same IP.