



REPORT OF THE ADJUDICATOR

WASPA Member (SP):	CLICKATELL
Information Provider (IP):	N/A
Service Type:	SPAM
Complainants:	Walter Pike
Complaint Number:	11222
Code Version:	10.0
Advertising Rules Version:	2.3

Complaint

The Complainant in this matter alleged SPAM and based on the ECT Act wanted to enquire where his information was acquired from.

Service provider's response

In its response the SP stated the following:

“Regarding the WASPA formal complaint logged against us we have been in touch with our client regarding the unsubscribe complaint.

- Client confirmed that most of our subscribers are based on word of mouth referrals.
- The number was obtained on the 23/02/2010 from Mr Pinker had referred our client to Mr Pike's website www.pike.co.za details were retrieved from there.
- On the 10 November 2010 11:29 AM client confirmed:
The number forwarded had been removed from our database for sms purposes. We provide our website URL for opt-outs.

MESSAGE EXAMPLE:

APIMSGID: 22d0ed2767f8014bfe3bdf59d4737931
MESSAGE DATA: Walter Pike : Should we remove your info from our database , please confirm : info@mrparking.co.za
ORIG. TIME: Tue 09 November 2010 14:55:13
DESTINATION ADDRESS: 27824447612

- We have sent our client the latest WASPA code of conduct and requested they will need adhere to the code to avoid suspension.

We are going to take further steps if client does not comply.”

Sections of the Code considered

5.1.7. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.

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 (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.

5.2.2. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

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.

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 SP's subsequent response.

Section 5.2.1 states that any commercial message is considered unsolicited (and hence spam) unless:

1. the recipient has requested the message;
2. 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
3. the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

From the allegations purported, the conditions stipulated in paragraphs 1 and 2 seem to be obviously absent. It would also seem obvious that when organisations follow a word of mouth approach in its marketing campaigns, members might risk breaching the Code of Conduct.

Although the SP in this matter has acquired sufficient evidence from its client as to where it obtained the information from the Complainant, that in itself would not absolve the occurrence of SPAM in this instance.

Section 5.3.1 states that 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.

From the communication received from the SP in this matter with its client, it would seem clear that the SP has attempted to convince its client from refraining from conducting marketing in the said manner.

Although not a direct breach by the SP in this matter, the Adjudicator has no alternative but to find the SP in breach of section 5.3.1 for the conduct of its client.

The Complaint is upheld

Sanctions

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

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

The SP is fined R 20 000-00 for its breach of section 5.3.1 of which the whole fine is suspended for 6 months from date hereof.

Should the SP breach section 5.3.1 during the suspended period, the suspended fine will be triggered and the SP will be held liable for payment thereof.

The IP is further instructed to provide the WASPA Secretariat a detailed report in how it managed to obtain the personal information of the Complainant in this matter within five (5) working days after receiving notice hereof.