



REPORT OF THE ADJUDICATOR

Complaint reference number:	12496
WASPA member(s):	Strike Media
Membership number(s):	0014
Complainant:	Public
Type of complaint:	Spam
Date complaint was lodged:	2011-03-30
Date of the alleged offence:	Not ascertainable
Relevant version of the Code:	10.0
Clauses considered:	Clause 3.9, 5.2 and 5.3.
Relevant version of the Ad. Rules:	Not applicable
Related cases considered:	Previously adjudicated case 6542.

Complaint

Complaint 12496 is the escalation of unsubscribe request 1014941 regarding spam. The complainant alleges that notwithstanding a previous unsubscribe request he is still receiving unsolicited messages from the SP. He also references a previous case relating to spam received by him. In particular, he alleges the following:

1. He requested that his number be blocked;
2. The SP agreed to block the number;
3. He continued to receive spam.

As an aside, and in response to a statement made by the SP, he further alleges that he has been on the DMA's "do not contact" list and yet he still received messages.

Service provider's response

The SP explained that they are an aggregator of content from various IP's. They did honour the complainant's unsubscribe request but only in respect of the IP requested. The complainant may have been receiving messages from other IP's but

that there had been no unsubscribe request received from the complainant in respect of such IP's.

Sections of the Code considered

Clause 3.9 Information providers

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

3.9.2. Where any information provider that is not a WASPA member conducts any activity governed by the provisions of this Code, and makes use of the facilities of a WASPA member to do so, that member must ensure that the information provider is made fully aware of all relevant provisions of the Code and the member shall remain responsible and liable for any breach of the Code resulting from the actions or omissions of any such information provider.

3.9.3. A WASPA member shall, by obtaining the information provider's signature on the WASPA template agreement, be deemed to have taken all reasonable steps to ensure that the information provider is fully aware of the terms of the WASPA Code of Conduct and this shall be considered as a mitigating factor for the WASPA member when determining the extent of any possible liability for the breach of the provisions of the WASPA Code of Conduct as a result of any act or omission by the information provider.

3.9.4. The member may suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

3.9.5. The member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

Clause 5.2. Identification of spam

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- the recipient has requested the message;
- the message recipient has a direct and recent (within last 6 months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- 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.

Clause 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

I find that the SP is not in breach of the WASPA Code due to the fact that:

1. The SP is an aggregator;
2. They did comply with the Complainant's requests and unsubscribed him from the IP in question;
3. They have an agreement in place with all IP's which complies with the requirements of the WASPA Code in that have an agreement in place with all their IP's which requires their compliance with and adherence to the WASPA Code which in turn fulfils the requirements of section 3.9 of the Code.
4. They furthermore have all the required mechanisms in place for dealing with and preventing spam.

Whilst I understand the frustration of the Complainant, the SP is merely required to comply with the provisions of the Code. I further cannot make a finding in respect of anything other than such compliance or non-compliance. The SP is not in breach of the Code. Accordingly I have no justification for any penalty being levied.

Claim dismissed.

Sanctions

None.